



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 21-02813
)
Applicant for Security Clearance)

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: *Pro se*

08/10/2023

Decision

MURPHY, Braden M., Administrative Judge:

Applicant has a history of bankruptcies and delinquent debts. She and her husband filed Chapter 13 bankruptcy in 2016 and she made payments for several years, though the bankruptcy was dismissed in early 2021. She is resolving her debts through a Chapter 13 bankruptcy petition filed in October 2022. The bankruptcy is ongoing, but she is again making regular monthly payments. She has established a track record of good faith through steady payments into the bankruptcy plan and her debts are being resolved and are under control. Applicant provided sufficient information and documentation to mitigate financial considerations security concerns over her bankruptcies and delinquent debts. Applicant’s eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on October 15, 2020, in connection with her employment. On December 20, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (financial considerations). The CAF issued the SOR under Executive Order

10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (AG) effective within the DOD on June 8, 2017.

When Applicant initially answered the SOR, on a date that is unspecified, she waived her right to a hearing. Subsequently, on March 28, 2022, she changed her mind and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). (Tr. 5) The case was assigned to me on April 18, 2023. On May 2, 2023, DOHA issued a notice scheduling the hearing for June 1, 2023, by video-teleconference through an online platform.

The hearing convened as scheduled. At the hearing, Department Counsel offered Government's Exhibits (GE) 1 through 9. Applicant testified and offered Applicant's Exhibits (AE) A through H. (She had included AE A through F with her Answer). All the exhibits were admitted without objection. At the end of the hearing, I held the record open until June 15, 2023, to provide her the opportunity to submit additional information. She timely submitted an additional statement (AE I) along with 12 post-hearing (PH) documents that I have marked as PH 1 through 12 (as Applicant labeled them in AE I). Her post-hearing exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on June 13, 2023. The record closed on June 21, 2023.

Amendment to the SOR

During her testimony, Applicant disclosed a recent, ongoing bankruptcy case. (Tr. 38-44) As a result, at the end of the hearing, the Government moved to amend the SOR to add a new allegation under Guideline F, under Para. E.3.1.17 of Enclosure 3 (Additional Procedural Guidance) of the Directive. The new allegation is as follows:

1.I: You filed a voluntary petition in Chapter 13 bankruptcy in October 2022.

Applicant did not object to the new allegation and the motion to amend the SOR was granted. Department Counsel also provided GE 8 and GE 9, related to the bankruptcy. (Tr. 38-44, 79-82) As noted above, I held the record open to allow Applicant to provide additional information.

Findings of Fact

In Applicant's answer to the SOR, she admitted SOR ¶¶ 1.a through 1.k, with explanations and provided supporting documents. She also admitted SOR ¶ 1.I. Her admissions are included in the findings of fact. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 44 years old. She and her husband married in 1998. They have two grown children in their 20s and she has a 16-year-old stepson. They all live at home. Applicant has some college credits. (GE 1)

Applicant served on active duty in the U.S. Army from 1997 until 2017. She held a clearance in the Army. She retired as a sergeant first class (E-7). She was awarded the Meritorious Service Medal, five Army Commendation Medals, six Army Achievement Medals, six Good Conduct Medals, and appropriate service medals. She served in Iraq in 2004-2005. (PH 4)

Applicant was posted to State 1 from 2009 until she retired from the Army in 2017. Until 2015, her husband was also there. After retiring, she began working for defense contractor P, on a military facility. She worked there as an analyst with an annual salary of \$79,000. That contract ended in August 2021. She then worked for defense contractor Y, with a \$55,000 annual salary, as an executive administrative assistant. She worked there until late 2021, when the withdrawal of her interim clearance meant she was not able to work. Applicant remains sponsored for a clearance but has not been employed since October 2021. She is taking online courses to complete her college degree. The Department of Veterans Affairs (VA) is financing her education. ((GE 1; AE I; PH 1; Tr. 10-11, 14, 28-36, 63-67, 74-78)

On her SCA, Applicant declared that she had filed for Chapter 13 bankruptcy in 2016 and was then making monthly payments. (GE 1) Her debts occurred because in 2015, her husband was transferred to a new duty station in State 2, and it was difficult to maintain the expenses of two households. She also was making less money in her new job. (Answer; GE 2; Tr. 36-37, 55-56) She consulted a bankruptcy attorney and she said she was advised to stop making payments on her bills so they would become 90 to 120 days late so they could be included in the bankruptcy. (GE 2) She was paying about \$3,800 a month into the bankruptcy plan. This included her full retirement check, plus other funds. (Tr. 57) She stopped making payments into the 2016 bankruptcy in 2020 because she could not keep up with them. (Tr. 58)

Applicant's husband moved home in 2021 after he retired from the Army with 24 years of service, also as an E-7. They remain legally married and they live in the same house, but they have maintained separate lives for about the last year. They divide monthly expenses, though the mortgage is in her name. He receives \$2,400 a month in retirement pay. He works as a stocker for a large retailer and is also a personal trainer. Applicant said the family's finances have improved because they no longer need to pay for two households, though the loss of their regular Army income has also been an adjustment. (GE 2; Tr. 30-38, 60-61)

Applicant receives \$1,750 in retirement pay. She is also a 100% disabled veteran, and receives \$3,950 in disability compensation from the VA. (Tr. 28-30, 33; PH 2, PH 3, PH 4)

Applicant's bankruptcies (SOR ¶¶ 1.a, 1.b, 1.l) and delinquent debts (SOR ¶ 1.c-1.k) are alleged in the SOR. She admits them all. They are also listed on bankruptcy documentation (GE 6 – GE 9) and credit reports from May 2023, October 2021, and October 2020. (GE 3 – GE 5)

Applicant and her husband first filed Chapter 13 bankruptcy in November 2007. They became financially overextended when they were just starting out in the Army and starting a family. The bankruptcy petition was discharged in June 2012. (GE 6; Answer) (SOR ¶ 1.b)

As discussed above, Applicant and her husband jointly filed for Chapter 13 bankruptcy in October 2016. (GE 3, GE 4, GE 7; AE A; Tr. 35) (SOR ¶ 1.a) The 2016 Chapter 13 bankruptcy listed about \$46,812 in nonpriority unsecured claims. Secured claims included Applicant's home and vehicles. They listed \$9,955 in monthly income and \$5,669 in expenses. (GE 7 at 7-8)

Applicant explained in her Answer that her Army retirement pay went towards the bankruptcy balance, but she was unable to make up the difference. (Answer) She documented, however, that between October 2016 and May 2021, she had paid over \$105,000 into the payment plan. (AE A) She said she paid about \$3,000 a month into the bankruptcy but stopped making payments because maintaining two households made it too expensive. (Tr. 54-58) The petition was dismissed in April 2021. (GE 3)

Applicant filed for individual Chapter 13 bankruptcy protection again in October 2022. That bankruptcy proceeding is ongoing and will run for five years. (GE 3, GE 8, GE 9; AE G. Tr. 41) (SOR ¶ 1.l) She declared just under \$20,000 in unsecured claims (not including secured claims such as home and vehicle). She declared \$5,333 in monthly income and about \$3,900 in expenses. (GE 8 at 8)

Applicant said she is paying regular monthly payments towards her bankruptcy, through an automatic withdrawal. (Tr. 38-44, 65) She documented that from October 2022 to June 2023, she had paid \$12,620 into the bankruptcy plan, and was paying \$1,915 a month. (PH 6)

The SOR debts total about \$16,920, and are detailed as follows:

SOR ¶ 1.c (\$7,719) is a debt that has been charged off. (GE 4) Applicant made \$350 monthly payments between August 2021 and August 2022. (AE B, AE C; PH 9) The amount owed is now \$5,495. It is listed in the current bankruptcy petition. (GE 8 at 26; AE I; PH 9; Tr. 52-53, 68) It is being resolved.

SOR ¶ 1.d (\$5,006) is an account that has been charged off. (GE 4) Applicant had paid all but \$554 on this debt, through the 2016 bankruptcy. (AE D, AE I) It is also listed in the 2022 bankruptcy as a \$5,006 debt owed to another creditor, C. (GE 8 at 25; Tr. 48-51, 68-69) It is being resolved.

SOR ¶ 1.e (\$1,007) is a charged-off account (#5131) with bank F. The balance is actually \$1,077. (GE 4) SOR ¶ 1.f (\$681) is a charged-off account (#5121) with bank F. (GE 4) Applicant had begun making payments on these debts. One debt to bank F, for \$535, is listed in the current bankruptcy proceeding. (GE 8 at 26; AE I; Tr. 69-70) These debts are either resolved or being resolved.

SOR ¶ 1.g (\$534) is a loan account that has been charged off. The loan was originally for \$5,000. Applicant was making payments in 2016 before the debt was charged off. (PH 11) The account is listed in the current bankruptcy. (GE 8 at 24; Tr. 47-48, 70) It is being resolved.

SOR ¶ 1.h (\$436) is a credit account that has been charged off by a large retailer. (GE 4) This account has been paid. (GE 3; AE E; PH 10; Tr. 70)

SOR ¶ 1.i (\$297) is an account that has been charged off. (GE 4) This account was paid in October 2021. (AE I; PH 8, PH 12; Tr. 70-71)

SOR ¶ 1.j (\$644) is a credit account that has been charged off by a retailer. (GE 4). The debt is being resolved through the current bankruptcy. (GE 8 at 27; AE I; PH 5; Tr. 71)

SOR ¶ 1.k (\$596) is a credit-card account that has been charged off. (GE 4, GE 5) Applicant asserted in a post-hearing statement that this is an old debt that is her husband's responsibility. It is not listed in the current bankruptcy but is also not listed on recent credit reports. (GE 3; AE I; Tr. 71)

The 2022 bankruptcy lists other delinquent accounts to be resolved through that process. (GE 8; AE I) Among them is \$769 in past-due federal income taxes for tax year 2021. (GE 8 at 25-27; Tr. 45-47, 52-53, 72-73) Applicant's 2022 taxes have been filed and she received small refunds. (Tr. 64)

Applicant has participated in credit counseling through the bankruptcies. She has also learned financial counseling through her business management classes. (Tr. 58-59, 72-73; PH 7) She has a monthly budget and has enough money to keep ahead of expenses. (Tr. 61-68; PH 1) She projected a monthly income of \$8,164 which is comprised of her retirement and disability of \$5,701; a \$938 education stipend from the VA; plus her husband's income of \$1,524. (PH 1) She projected monthly expenses of \$7,537, including her \$1,915 bankruptcy payment, leaving a monthly balance of about \$630 (PH 1) All debts on a May 2023 CBR are listed as "pays as agreed," "Included in Chapter 13," or show a zero balance. (GE 3)

Applicant testified that she is fully dedicated to resolving her debts, which is why she filed a Chapter 13 bankruptcy. (Tr. 43) When asked to explain how she will be able to control her finances in the future, given her three bankruptcy filings, Applicant said she accepts responsibility for her debts, which is why her current filing is individual. She wants

to make a fresh start and keep things on track and she is “fully committed” to completing her bankruptcy. (Tr. 77, 84-85)

A close friend who has known Applicant for many years provided a reference letter. She attested that Applicant was a dedicated soldier, and she has been a good and trusted friend and an excellent mentor. (AE H)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision.”

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for financial considerations is set out, in relevant part, in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. . . .

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has a history of financial instability and incurring delinquent debts. She and her husband filed for Chapter 13 bankruptcy protection twice, in 2007 and 2016. The delinquent debts alleged in the SOR are also admitted and established by the record evidence. AG ¶¶ 19(a) and 19(c) apply.

The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) does not apply. Applicant has filed for bankruptcy three times (twice jointly with her husband). She made several years' worth of payments following their Chapter 13 bankruptcy filing in 2016, but was not able to complete the payment plan, and the bankruptcy was dismissed in 2021. She filed Chapter 13 bankruptcy individually in October 2022 and has been making regular monthly payments ever since. The current bankruptcy is ongoing, so the debts are not resolved. She has also not established that the debts were incurred due to isolated, unusual circumstances that are unlikely to recur.

However, Applicant is given credit under AG ¶ 20(d) for making several years' of payments into her prior bankruptcy (2016-2021), payments totaling over \$100,000, even though the debts were not fully discharged. She has also renewed making good-faith monthly payments in her more recent bankruptcy filing. Further, in doing so, she has established that her debts are being resolved and are under control. The financial counseling requirement of AG ¶ 20(c) is also satisfied. AG ¶¶ 20(c) and 20(d) both fully apply. While her debts are ongoing and not fully resolved, it is likely that she will continue to make regular payments under her bankruptcy plan and she has the financial capacity to do so.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(a), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. I also considered Applicant's credibility as well as her Army career as positive whole-person evidence in her favor. Applicant provided sufficient evidence to mitigate the security concern shown by her delinquent debts. Overall, the record evidence leaves me without questions or doubts as to her continued eligibility for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a-1.l: For Applicant

Conclusion

Having considered all of the circumstances presented, it is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

Braden M. Murphy
Administrative Judge