



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



In the matter of:)	
)	
)	ISCR Case No. 22-00829
)	
Applicant for Security Clearance)	

Appearances

For Government: Brittany C. M. White, Esq., Department Counsel
For Applicant: *Pro se*

08/16/2023

Decision

MURPHY, Braden M., Administrative Judge:

Applicant has unpaid federal student loans, past-due federal income taxes, and unfiled state and federal income tax returns. She did not provide sufficient evidence to mitigate the resulting financial security concerns. Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 14, 2020. On September 29, 2022, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued her a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD CAF took this action under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR on December 30, 2022, and requested a decision by an administrative judge from the Defense Office of Hearings and Appeals (DOHA) based on the administrative (written) record, in lieu of a hearing. She provided a recent credit report, which I have admitted, without objection, as Applicant's Exhibit (AE) A.

On February 24, 2023, DOHA Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 9. DOHA mailed the FORM to Applicant the same day, and she received it on March 13, 2023. She was given 30 days from receipt of the FORM to submit materials in response, and to object to the Government's evidence.

On or about May 2, 2023, having received no response from Applicant, the case was forwarded to the DOHA hearing office. The case was assigned to me on June 1, 2023. Government Items 1 and 2, the SOR and the Answer, are the pleadings in the case. Government Items 3 through 9 are admitted without objection.

Findings of Fact

Applicant admitted all but two of the allegations in the SOR, as further discussed below. For each allegation, she provided a brief explanation. Her admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 55 years old. She is married with two adult daughters. She earned her bachelor's degree in 2014. She served in the U.S. Air Force Reserve (USAFR) from 1986 until 2013, when she retired as a technical sergeant (E-6). (Items 3, 9) She was on active duty from about 2009 to 2012 and returned to work in the defense industry in 2013. She has worked for various defense contractors since then. She has worked for her current employer since November 2017. She has maintained a clearance since her time in the USAFR. (Items 3, 9)

This case resulted from her 2019 credit bureau report (CBR) accessed through the DOD's Continuous Evaluation Program. That CBR noted that Applicant had incurred over \$80,000 in delinquent debts. (Item 5)

Applicant disclosed on her January 2020 SCA that she had unfiled federal income tax returns, state and federal income tax debts, and about \$90,000 in federal student loans, for which she said she was on a bi-weekly payment plan. (Item 3) She discussed her various debts at length in her September 2020 background interview. (Item 9)

In the fall of 2021, Applicant responded to an interrogatory from the DOD CAF about her various debts, chiefly her federal student loans and her federal taxes. Her response is undated, but the documentation she provided from the Internal Revenue Service (IRS) is dated in September and October 2021. (Item 4)

The September 2022 SOR alleges that Applicant has unpaid federal student loans of about \$76,000 (SOR ¶¶ 1.a – 1.m), about \$4,000 in medical and other past-due debts (SOR ¶¶ 1.n – 1.t), about \$4,700 in past-due federal income taxes (SOR ¶¶ 1.u, 1.v), and two years of unfiled federal and state income tax returns (SOR ¶¶ 1.w, 1.x). Applicant acknowledged that her admitted debts had not been paid. (Items 1, 2; AE A) The non-tax debts alleged in the SOR are established by CBRs in the record, from August 2019, August 2020, January 2022, and February 2023. (Items 5 – 9) The tax debts and unfiled returns alleged are established by Applicant’s 2021 Interrogatory Response. (Item 4)

Applicant explained in her background interview that her tax and other financial issues began after she retired from her most recent period of active duty as an activated Air Force Reservist, in 2013. She made a good income on active duty and found it difficult to replicate that income in civilian life. She began working as a part-time contractor and did not have health insurance. She and her husband incurred medical debts they could not afford to repay. She also used federal student loans to pursue a bachelor’s degree. Due to her underemployment and limited income at the time, she depleted her federal Thrift Savings Plan (TSP) retirement pension. Since she was not over the age of 59½, she had to pay penalties and taxes on the withdrawals. State and federal income tax debts resulted. (Item 9; Item 4 at 12)

SOR ¶¶ 1.a through 1.m concern Applicant’s unresolved federal student loans, which total \$76,645. (Items 5-7) The SOR alleges that the debts “were in delinquent status prior to being placed in forbearance due to the pandemic.” (Item 1) In her Answer, Applicant admitted these debts and acknowledged that she had not made any student loan payments. She asserted that the garnishment of her student loan payments was stopped due to the COVID-19 pandemic. (Item 1)

Applicant’s CBRs from August 2020 and January 2022 show several federal student loan accounts as being past-due and in collection status. (Item 6 at 7-10, Item 7 at 2-5) A February 2023 CBR submitted by the Government shows that Applicant has 13 USDOE loans, totaling the same \$76,645 as alleged. Those loans are listed as “Pays account as agreed.” (Item 8)

The U.S. Department of Education (USDOE) paused collection of federal student loans beginning in March 2020 due to the COVID-19 pandemic. This likely explains why they are currently in good standing, since Applicant acknowledged that she has not made any payments on them. However, the USDOE’s COVID-19 student loan forbearance program is ending. On September 1, 2023, interest resumes, and payments will be due beginning in October 2023. See <https://www.usa.gov/covid-student-loan-help>.

Applicant also asserted in her Answer, without further detail and without documented corroboration, that “submittal of Debt Forgiveness has not been processed.” This is probably a reference to President Biden’s proposed plan to forgive several thousand dollars of many borrowers’ federal student loans. That plan was held to be unconstitutional by the Supreme Court in *Biden v. Nebraska*, No. 22-506, ___ U.S. ___, June 30, 2023 (available on the Supreme Court’s website, <https://www.supremecourt.gov>)

Applicant explained in her September 2020 background interview that she dropped out of graduate school in 2015 and was supposed to begin repayments on her loans soon thereafter, but she only made payments “here and there” and her loans soon became delinquent. She asserted, without corroborating evidence, that she had been paying \$379 monthly at the time her payments were halted due to the COVID-19 debt relief program. (Item 9 at 4-5)

SOR ¶¶ 1.n (\$1,472), 1.o (\$185), and 1.p (\$791), 1.r (\$579), 1.s (\$268), and 1.t (\$53) are past-due medical debts that have been placed for collection. (Items 6, 7) Applicant admitted SOR ¶¶ 1.n, 1.o, 1.r, and 1.s. I construe her failure to respond to SOR ¶ 1.p as a denial. She denied SOR ¶ 1.t on the basis that it had been paid, without providing corroborating evidence.

The debt at SOR ¶ 1.o (\$185) is not established by the record, although one unalleged medical debt in the amount of \$180 is listed on several CBRs. (Item 5, Item 6 at 11) As of January 2022, that unalleged debt shows a zero balance. (Item 7 at 5). SOR ¶ 1.o is found in Applicant’s favor.

SOR ¶ 1.q (\$676) is a debt placed for collection to the Department of Veterans Affairs (VA). (Item 5 at 2 for \$676, Item 6 at 11 for \$1,106) Applicant admitted the debt and said she was unsure of the balance. She explained in her background interview that the debt is an overpayment of GI Bill education benefits that she believed had been paid. She did not proffer any evidence corroborating the purported payment. The debt does not appear on more recent CBRs.

SOR ¶¶ 1.u (\$1,769) and 1.v (\$2,999) concern past-due federal income tax debt for tax years (TY) 2020 and 2017, respectively. (Item 4 at 18, 28-32) Applicant admitted that these debts have not been paid.

SOR ¶¶ 1.w and 1.x allege that Applicant failed to file her 2018 and 2019 state and federal income tax returns on time, as required, and that those returns remain unfiled. IRS records reflect that they have “no record of return filed” for those years. (Item 4 at 23, 27) Applicant answered both SOR ¶¶ 1.w and 1.x by stating, “I admit that this debt [sic] has not been paid [sic].” (Item 2) I construe her answer as admitting both allegations. She provided no documentation that she has filed any of the federal or state returns for TY 2018 or 2019.

Applicant disclosed tax debt on her SCA and discussed her taxes in her background interview. She was asked in the DOHA interrogatory to provide copies of her state and federal tax returns from 2012-2019. (Item 4 at 2) Only the state returns for TY 2018 and 2019 are alleged in the SOR. It is not clear from the record why Applicant has failed to file those returns.

But for a December 2022 CBR (AE A), Applicant provided no documentation with her Answer about her recent finances, and she provided no documentation related to any subsequent debt payments, tax payments, or tax filings. She provided no documentation

about her current income stream, monthly expenses, or assets, and no documentation, such as reference letters or work evaluations, for consideration under the whole-person concept. She did not respond to the Government's FORM, so she provided no updated information since her Answer.

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 Navy v. Egan*, 484 U.S. 518, 531 (1988).

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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 national security eligibility 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 not drawn 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 to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information.

Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out 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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

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. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant experienced financial problems beginning in about 2013, after she left active duty and retired from the USAFR. She had difficulty finding full-time employment and health insurance. She used federal student loans to pursue and complete a bachelor's degree. She also depleted the funds in her TSP retirement plan, which led to unintended tax consequences. All these factors led to the delinquent debts and tax issues in the SOR. AG ¶¶ 19(a), 19(c), and 19(f) all apply.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's financial issues have persisted since 2013. None of her alleged debts have been paid or resolved, and she has unfiled tax returns as well. She has not established good-faith compliance with tax payments or tax filing requirements and has not established a track record of steady payments towards any of her debts. Her federal student loans are not currently in delinquent status due to the COVID-19 forbearance program, which mitigates her inaction since March 2020. However, she did not proffer evidence sufficient to establish a track record of payments and financial responsibility in addressing her significant federal student loan debt before March 2020, and her student loans remain outstanding. Her various debts and tax issues continue to cast doubt on her current judgment, trustworthiness, and reliability. AG ¶ 20(a) does not apply.

AG ¶ 20(b) does not apply. Applicant's debts may have begun during a period of transition from the Air Force but that was several years ago. At this point her debts and tax issues are largely due to her own failures to address them responsibly and not due to circumstances beyond her control.

Applicant has not demonstrated that she is acting in good faith. She provided no documentation to suggest that she has taken concrete steps to address her debts responsibly or to file her outstanding returns. AG ¶¶ 20(d) and 20(g) do not apply.

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 relevant 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(c), 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. Applicant has not provided enough evidence to show that she is acting responsibly in addressing her long-term delinquent debts and student loans. Overall, the record evidence leaves me with questions and doubts as to Applicant's continued eligibility for access to classified information. She did not provide sufficient evidence to mitigate financial security concerns.

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:	AGAINST APPLICANT
Subparagraphs 1.a-1.n:	Against Applicant
Subparagraph 1.o:	For Applicant
Subparagraphs 1.p-1.x:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record, it is not clearly consistent with the interests of national security to grant Applicant eligibility for continued access to classified information. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge