



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 21-00795
)
Applicant for Security Clearance)

Appearances

For Government: Tovah A. Minster, Esq., Department Counsel
For Applicant: *Pro se*
08/04/2023

Decision

MASON, Paul J., Administrative Judge:

Except for Applicant’s satisfaction of a debt to a collection agency, her unsupported claims of paying on or paying off some of her other delinquent debts are not mitigated under the financial considerations guideline. Eligibility for security clearance access is denied.

Statement of the Case

On July 17, 2020, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), applying for a security clearance required for a position with a defense contractor. On August 11, August 20, and August 28, 2020, she provided personal interviews (PSIs) with an investigator from the Office of Personnel Management (OPM). The Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Services (CAS) could not make the affirmative findings required to continue a security clearance, and issued to Applicant a Statement of Reasons (SOR), dated June 25, 2021, detailing security concerns raised by financial considerations (Guideline F). The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective in the DOD on June 8, 2017.

Applicant provided her answer to the SOR on July 15, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 13, 2022, for a hearing on August 1, 2022. The hearing was cancelled because of an unanticipated change in Applicant's work schedule. The hearing was rescheduled to June 13, 2023, and conducted by TEAMS video teleconference. I entered the Government's four exhibits (GE) 1-4 into evidence without objection. After the conclusion of the hearing, the record remained open until June 28, 2023. At Applicant's request, she was granted until July 13, 2023, to provide additional documentation. See Hearing Exhibit (HE) 1. No documentation was furnished. DOHA received the transcript (Tr.) on June 27, 2023. The record closed on July 13, 2023.

Findings of Fact

Procedural History of Case

In September 2021, Department Counsel provided Applicant a copy of the documents it intended to submit at a future security clearance hearing in support of the listed allegations of the SOR. On July 14, 2022, Department Counsel sent Applicant a second copy of the documents in anticipation of the hearing that was originally set for August 1, 2022. Department Counsel resent a hard copy of the documents on May 25, 2023 for the June 2023 hearing. In the three documentary submissions, Department Counsel advised Applicant to bring the SOR and the documents for reference during to the scheduled hearings. She did not respond to two Case Management Orders (CMOs), which were issued on July 13, 2022, and May 10, 2023. (Tr. 29-30) Applicant did not have a hard copy of the exhibits in-hand at the June 2023 hearing.

At the beginning of the June 2023 hearing to determine whether Applicant was qualified to represent herself, she explained that the proposed Government exhibits were stored in her cell phone, but she did not have a hard copy of the proposed exhibits for the hearing. I asked her several questions concerning her educational and professional background. I concluded that she was qualified to represent herself. (Tr. 6-13) Because Applicant did not have a hard copy of the proposed Government exhibits in-hand, I described the essential portions of each exhibit to her. Initially, she could not recall her July 2020 security clearance application (GE 1) or her August 2020 PSIs (GE 2), but after I read the contents of parts of the exhibits to her, she remembered and did not object to the exhibits being admitted into evidence. She objected to the credit bureau reports (CBRs) at GE 3 and GE 4 because they were dated. She believed that an updated CBR should be entered into evidence. I informed her of her responsibility in proving her case to submit an updated credit report. I then stated to her that though GE 3 and 4 were dated, the age of the reports did not preclude their admissibility. The four exhibits were admitted into evidence. (Tr. 17-24)

There are 14 delinquent accounts alleged in the June 2021 SOR. The accounts include an installment loan for a repossessed car, student loan accounts, medical accounts, and utility accounts. The total amount of debt is about \$37,524. The debts

became delinquent between July 2014 and July 2020. Applicant admitted that she owed all the debts except for the accounts identified at SOR ¶¶ 1.b, 1.d, 1.k, 1.m, and 1.n. The Government credit bureau reports confirm the existence of the delinquent accounts. (GE 3, 4; Answer to SOR)

Applicant is 29 years old and single. Her son was born in December 2020. (Tr. 46) She earned some community college credits between August 2015 and April 2017, but received no degree. (GE 1 at 12-13) Since February 2019, Applicant has been employed as a protective security officer. From December 2018 to February 2019, she was unemployed. From August 2018 to December 2018, she worked as a security officer. She was unemployed for a month in July 2018. From June 2018 to July 2018, Applicant was a pharmacy technician, but resigned before she completed training. She worked as a security officer during the month of May 2018. (GE 1 at 12-18) Applicant has never been investigated for a security clearance. (GE 1 at 30)

In Applicant's August 2020 PSIs, the OPM investigator asked her about her delinquent debts listed in the SOR. After conveying her knowledge about the status of most of the debts, her uniform explanation for why the listed accounts became delinquent was that she was young, she did not earn a sufficient amount of money, she did not understand debts, and did not comprehend how bad credit would affect her later in life. (GE 2 at 4-5)

SOR ¶ 1.a – This is an installment loan account for a car that was charged off in July 2016 (AE 3 at 6), and repossessed in October 2017. She made no payments on the car after it was repossessed. (Tr. 31-33) Applicant was waiting until after the sale of the auto to determine how much she may owe. (GE 2 at 5) The account has not been resolved.

SOR ¶ 1.b – This is student loan account that Applicant's stepfather opened at a federal credit union. Applicant explained in her August 2020 PSIs that her stepfather cosigned for the loan and was supposed to pay the account for her. However, when Applicant's mother divorced the stepfather, he decided not to repay the loan. As maker of the account, Applicant is still primarily responsible for the loan, with the cosigner becoming liable when the maker defaulted. (GE 3 at 5) Applicant claimed the posted amount was incorrect. At the conclusion of the hearing, she promised to investigate the status of the account and make a payment. No additional documentation was provided.

SOR ¶¶ 1.c, 1.e, 1.f, 1.g – These four student loan accounts were opened between September 2014 and January 2017. The accounts became delinquent in July 2017. (GE 4 at 4-5) Applicant claimed the accounts had been consolidated into one account and were being paid through garnishment. The Government was garnishing 15% of her wages. Applicant could not remember when the garnishment started, but the accounts have been in forbearance due to the imposition of the Government pause on repayment of student loans that commenced in March 2020. (Tr. 35-38) Because Applicant's student loan accounts were delinquent for about three years before the

Government pause in March 2020, her delinquent student loan accounts (SOR ¶¶ 1.c, 1.e, 1.f, and 1.g) cannot be considered in a current status based on the Government temporary suspension of loan repayments. The student loan account is not resolved.

SOR 1.d – This account was transferred to a collection agency by the original creditor, a phone company. The account became delinquent in July 2019. Applicant claims that someone opened this account by fraudulently using her name. She claimed that she contacted the original creditor in August 2018, and does not understand why the debt still appears in her credit report. The account is unpaid.

Applicant also claimed that she had enrolled in a debt consolidation firm about a year ago and was making \$100 a month in payments to the firm. Applicant offered to provide documentation of her agreement. (GE 2 at 6; Tr. 40) With no documentation showing enrollment or monthly payments to the company, her claims are not credible.

SOR ¶ 1.h – Applicant could not identify this account, but claimed that her debt consolidation firm was working to pay off this account. The account became delinquent in July 2019. (GE 2 at 7; Tr. 42) With no evidence from Applicant's firm supporting her claim, the account is still unpaid.

SOR ¶ 1.i – This is a medical account that Applicant's hospital billed her instead of her insurance company. Appellant intended to investigate the account and pay once she determined whom to pay. She testified that she had not paid the account. (GE 2 at 7; Tr. 42) The account has not been satisfied.

SOR 1.j – This is a medical account that has not been paid. The account became delinquent in July 2020. (GE 3 at 8; Tr. 43)

SOR ¶ 1.k – This is a gas utility account belonging to Applicant during her enrollment in college. The account became delinquent in June 2017. (GE 3 at 8) In August 2020, she did not know the account was delinquent. (GE 2 at 7) She testified without documentary support that she paid the account. (Tr. 43-44) The account has not been resolved.

SOR ¶ 1.l – This is a medical account that became delinquent in November 2019. (GE 3 at 9) Though she admitted the account in her July 2021 response to the SOR, she was unable to identify the debt at the June 2023 hearing. (Tr. 48-49) The debt has not been paid.

SOR ¶ 1.m – This electric utility account became delinquent in April 2019. (GE 3 at 8) Applicant was sure that she paid this account. (Tr. 43-44) As with the other delinquent accounts listed in the SOR, Applicant produced no evidence to confirm this account has been paid.

SOR ¶ 1.n – This medical account became delinquent in February 2016. The Government documentation establishes that this account was satisfied in February 2021. (Item 4 at 2) The account is resolved.

After discussing her delinquent debts during her August 2020 PSIs, Applicant considered herself in a better financial position. She promised to pay all her debts as soon as possible. She indicated that she was disputing two of the delinquent accounts, but she could not remember which ones. The investigator asked her to supply additional documentation concerning her delinquent debts, but she never did. (GE 2 at 10-11)

During the hearing, Department Counsel asked Applicant when she believed her financial problems began. She replied that the troubles emerged while she was attending school in another state. Her August 2020 PSIs indicate that she was enrolled at out-of-state schools from August 2015 to April 2017. (Tr. 57; GE 2 at 4) Applicant also noted she was off work for a year after the birth of her son. She paid \$960 a month for her son's day care until January or February 2023, when she and her former boyfriend (her son's father) began evenly dividing the cost of her son's monthly daycare expenses. (Tr. 52-54) She mentioned helping her mother in unidentified ways and assisting her siblings. (Tr. 57)

During the hearing, Applicant was reminded several times to submit documents to bolster her claims of addressing the listed debts or enrolling in a debt consolidation plan, but no documents were furnished. She did not bring a copy of the Government exhibits to the hearing because she had never faced a security clearance hearing before. (Tr. 63) She agreed to submit a budget describing her income and expenses, but no budgetary information was submitted. (Tr. 50, 55)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines are flexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with common sense and the general factors of 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(d) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

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

Analysis

Guideline F, Financial Considerations

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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19. Conditions that could raise a security concern and may be disqualifying include:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

A person's practice of paying her bills is a private matter until evidence reveals that she is not paying her debts in a timely fashion. Adverse evidence from credit reports can usually meet the Government's obligation of proving delinquent debts. *See, e.g.,* ISCR Case No. 14-02403 at 3 (App. Bd. Aug. 18, 2015); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) The Government credit reports establish that the listed debts became delinquent between 2014 and July 2020. While Applicant asserts the Government pause shields her from adverse action regarding her student loan accounts, the loans had already been delinquent for three years before the pause. She has provided no supporting evidence of her garnishment claims. She has provided no mitigating evidence addressing the other claims. AG ¶¶ 19(a) and 19(c) apply. AG ¶ 19(b) applies because there is no documented evidence in the record to support Applicant's August 2020 PSI claims of intending to pay off or settle 13 of the 14 delinquent debts listed in the SOR.

AG ¶ 20. Conditions that could mitigate security concerns include:

- (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;

(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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

AG ¶ 20 (a) does not apply since Applicant still owes about \$37,461 in delinquent debt to 13 creditors or collection agencies. With no discernible changes in her financial practices, her financial problems will probably persist in the future. Applicant's failure to take charge of her delinquent debt responsibilities continues to raise doubts about her reliability and judgment.

AG ¶ 20(b) recognizes that a person's financial problems can be caused by events beyond her control. While Applicant has experienced two short periods of unemployment, she has been consistently employed since February 2019. I have considered her maternity leave for a year after her son was born in December 2020. However, only limited mitigating weight is given to this evidence given the plethora of undocumented claims she has made in her August 2020 PSIs and at the June 2023 hearing about paying on or paying off the listed delinquent debts. Neither AG ¶¶ 20(b) nor 20(d) apply as there is no good-faith effort to repay the past-due accounts.

AG ¶ 20(c) applies when financial counseling demonstrates that there are clear indications the financial problems are being resolved or under control. Though Applicant presented no evidence of financial counseling, she also submitted no evidence of her enrollment in the debt consolidation company. AG ¶ 20(c) is unavailable for mitigation.

AG ¶ 20(e) does not apply to the circumstances of this case. Though Applicant complained that someone opened a phone account in her name, she provided no evidence to substantiate the basis of the dispute. AG ¶ 20(e) does not apply.

Whole-Person Concept

I have examined the evidence under the specific guidelines in the context of the nine general factors of the whole-person concept 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 access to classified information must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant has not furnished sufficient evidence to establish that her delinquent debts are being resolved or under control. In Guideline F cases, the DOHA Appeals Board has repeatedly held that, to establish her case in mitigation, an applicant must present a "meaningful track record" of debt repayments that result in debt reduction. See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007) While an applicant is not required to show that every debt listed in the SOR is paid, the applicant must show that she has a plan for debt resolution and has taken significant action to implement the plan. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). From the record presented, Applicant has no plan in place and furnished no evidence, except for her pay off of SOR ¶ 1.n, of even sporadic payments on the past due accounts. After a full review of the entire record from an overall common-sense point of view, Applicant's ongoing financial problems have not been mitigated.

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.m:	Against Applicant
Subparagraph 1.n:	For Applicant

Conclusion

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

Paul J. Mason
Administrative Judge