



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



In the matter of:)	
)	
)	ISCR Case No. 21-00007
)	
Applicant for Security Clearance)	

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

09/25/2023

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On February 19, 2021, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 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 the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on March 18, 2021, and she requested a hearing before an administrative judge. The case was assigned to me on July 3, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice on July 25, 2023, scheduling the hearing for September 7, 2023. I convened the hearing as scheduled. The

Government offered exhibits (GE) 1 through 4. Applicant offered documents marked as Applicant Exhibits (AE) A through D. There were no objections to any exhibits, and they were all admitted in evidence. The record was held open until September 21, 2023, to permit Applicant an opportunity to provide documents she wanted considered. She submitted post-hearing documents and labeled some of them corresponding to the SOR allegations. To prevent confusion, I have marked the documents corresponding to the SOR as AE SOR A through AE SOR O. The remaining exhibits I have marked as AE P through S. They were admitted without objection, and the record closed. DOHA received the hearing transcript (Tr.) on September 15, 2023.

Findings of Fact

Applicant admitted all of the allegations in the SOR. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 48 years old. She has never married and has a 24-year-old daughter. She earned a bachelor's degree in 1997 and two master's degrees in 2017 and 2023. She has been employed by the same federal contractor since 2000. (Tr. 16-17, 22, 24)

Applicant testified that she was never educated about how to manage finances, and she has not always been a good steward of her money. She said she should have been more conscientious about managing her money. In 2013, she purchased a house. In 2014, she decided to accept a different position within her company that paid her approximately \$10,000 less than she was earning. She believed the new job had potential for growth and was more career enhancing. When she accepted the job, she was unable to pay all of her bills because of the decrease in her income and chose not to do so. She testified that from approximately 2015 to 2021, she did not make payments on the debts alleged in the SOR. (Tr. 28-34)

Applicant testified that she missed some mortgage payments due to the reduction in her salary but was able to bring them current (SOR ¶ 1.f-past due \$1,241). (Tr. 27, 50-51; AE A, B, AE SOR F)

In 2017, Applicant's daughter graduated from high school and began college. Applicant testified that her daughter received financial aid and funded most of her own tuition. Applicant helped with tuition for the last two semesters when her daughter was attending part-time and was not eligible for financial aid. In February 2021, her daughter gave birth to a baby. They both live with Applicant. Applicant's daughter graduated in December 2022. Applicant presently provides some support for both her daughter and granddaughter. Her daughter helps with some of the joint expenses. (Tr. 22-24, 49)

Applicant's brother was diagnosed with cancer and moved in with her in approximately January 2017. He had medical insurance, and his expenses were paid but she helped cover some of the incidentals associated with living with her. Her brother passed away in May 2020. She testified that she received about a \$10,000 inheritance.

In January 2021, her heating and air conditioning unit broke, and she was able to use the inheritance to pay the \$7,729 bill for a new unit. (Tr. 38, 42, 51-53, 83-84; AE P)

In March 2021 after receiving the SOR, Applicant paid the debts in SOR ¶¶ 1.g (\$1,338), 1.h (\$688), 1.i (\$545), and 1.j (\$194). These were for various consumer purchases. She used a portion of the inheritance money to pay these debts. (Tr. 32-36, 52-53; AE C, AE SOR G, H, I, J)

Applicant testified that she did not have the money to pay her remaining delinquent debts. After receiving the SOR, she wanted to clear her credit and contacted some creditors. From the creditors in SOR ¶¶ 1.b (\$4,764), 1.c (\$4,057) and 1.e (\$1,114), she received IRS Cancellation of Debt forms 1099C that she filed with her 2022 federal income tax return. The income reported increased her federal income taxes by approximately \$3,800. She was unable to pay the taxes when they were due and has a payment arrangement with the IRS. She is making \$400 monthly payments until the taxes are paid. These debts were for delinquent credit cards. (Tr. 37-40, 44-47; AE SOR B, C, E)

In 2013, Applicant hired a local contractor to build a porch on her house. She secured a loan of approximately \$7,000 to \$8,000. In approximately 2015, due to her reduced salary, she stopped paying the loan. (SOR ¶ 1.a-past due \$3,980 with total balance of \$5,142). She did not contact the creditor to discuss the debt or arrange a plan for repayment after 2015. She received notifications from the creditor requesting payment. In July 2021, after receiving the SOR, Applicant used some of her inheritance from her brother and other funds to pay \$5,434 and resolve the debt. (Tr. 27-32, 42-44; AE SOR A)

In Applicant's answer to the SOR, regarding SOR ¶¶ 1.d (\$1,503), 1.k (\$1,097, 1.l (\$500), and 1.n (\$139), she admitted all of them and stated that she would be contacting the creditors to set up payment plans to satisfy the debts and would provide proof of t/heir resolution at her hearing. She testified that she thought she paid the debt in SOR ¶ 1.d and requested the creditor provide her documents. Post-hearing, she provided a statement saying she had verified the debt and was going to resolve it. (Tr. 49-50, 53-57; AE SOR D)

Applicant testified that she did not have a payment plan with the creditor in SOR ¶ 1.k. Post-hearing, she stated in the past she had tried to locate the creditor without success. She has now found a contact number and will seek to resolve it. She testified that she believed she paid the debt in SOR ¶ 1.l and would provide proof. Post-hearing, she stated in the past she had tried to locate the creditor and was unable. She has now found a contact number and will seek to resolve it. Applicant provided proof she paid the debt in SOR ¶ 1.o in July 2021, after she received the SOR. (Tr. 49-50, 53-57; AE SOR K, L, O)

In Applicant's answer to the SOR, she admitted the debt in SOR ¶ 1.m (\$252) and said she paid it years ago. She said she was contacting the creditor and would locate the

documents to show she paid it. She said she would satisfy the debt if it was still outstanding. At her hearing, she said she paid the debt and would provide proof. Post-hearing, she provided a statement saying she had contacted the creditor with whom she had no communication since July 2016. She reiterated that she believed the debt was resolved, but they advised her there was a balance on the debt of \$254 as of November 2016 and had been sent to collection. She said the creditor believed that the collection company might have gone out of business. She was unsure how to resolve the debt. It is reflected on her July 2020 credit report. (Tr. 54-55; GE 3; AE SOR M)

In Applicant's answer to the SOR, she said she would contact the creditor in SOR ¶ 1.n (\$139), a medical account, and resolve it. She said she would provide proof of payment at her hearing. At her hearing, she stated she thought she paid the debt in 2020 or 2021. Post-hearing, she stated that she was unable to determine the creditor holding the medical debt after diligently contacting her providers. She did not provide proof of payment. (Tr. 57-58; AE S)

Applicant testified that her finances are much better, and she has been working hard to get her debts in order with a few exceptions. She stated she did not take into account the impact her finances might have on her security clearance. She said she did not realize that not paying her bills would affect her livelihood. She now pays most of her bills through automatic withdrawals. She is teaching her daughter about the consequences associated with not being conscientious about paying bills on time. (Tr. 58-59)

In Applicant's June 2020 security clearance application (SCA) she disclosed that she purchased a computer in 2013 for approximately \$3,160. She failed to make the required payments. She acknowledged the creditor began collection efforts. Applicant testified that she had reached a payment agreement with the creditor, but a judgment was entered in March 2016. She made the payments in accordance with the judgment, and it was paid in 2019. (Tr. 61-68; GE 1; AE Q)

Applicant also disclosed in her 2020 SCA a garnishment order for a credit card with an approximate balance owed of \$4,744. Her pay was garnished until the balance was paid in approximately 2018. (Tr. 64-68; GE 1)

Applicant testified that when she completed her SCA, she retrieved a recent credit report and was aware of her negative accounts. She stated in her SCA that she was working with her creditors to repay her debts. She disclosed in her SCA the debts alleged in SOR ¶¶ 1.a, 1.b, 1.c, 1.e, 1.g, 1.h, 1.i, and 1.j. She testified that after retrieving her credit report she did not take action to resolve her debts with the creditors. She said she was "purposefully blind to the situation that I was in." She did not seek financial counseling. (Tr. 69-70)

Applicant attributed some of her delinquent debts to the financial hardship created when her brother moved in with her in late 2017. (Tr. 37-38) She further stated:

I guess I thought at some point I would get better, do better, and be able to pay them off. But truthfully, I think it was easier for me not to do it so I didn't. And I didn't see or think of the bigger picture of how it would hurt me in my career or hurt me with my security clearance. So it was an error in judgement on my part. I didn't see this happening, to be honest. (Tr. 39)

Applicant also stated her financial hardship occurred because she chose to take a job that paid less to accept a new position. She initially indicated her pay cut was \$6,000. At her hearing, she said it was \$10,000. Applicant was asked what actions she took regarding her financial situation after she completed her SCA, and she said she did not do anything. (Tr. 38-40; GE 1)

Applicant was interviewed by a government investigator in June 2020. She acknowledged to the investigator most of the debts alleged in the SOR and that she had not made payments on the debts after her reduction in pay in 2014 because of the additional financial strain from her brother living with her. She acknowledged receiving phone calls from creditors and telling them she was going through a rough time. She said she intended to pay all of her delinquent debts. (GE 2)

Applicant funded her education with student loans. She testified that she owes approximately \$100,000 for the degree she earned in 1997. She said she made some payments, but the loans were deferred over the years and are now under the pandemic deferment. She received a scholarship for her first master's degree and owes \$20,000 in student loans for the second. She said she has been in contact the student loan creditor and negotiated a monthly payment plan of \$250 that is to begin in November 2023. She anticipates increasing that payment after she satisfies her tax debt with the IRS. (Tr. 17-22, 88-89)

Applicant is embarrassed about her financial situation and has not sought financial counseling. She testified that after her interview with the government investigator in 2020 she did not hear anything about her security clearance or financial issues so she thought it was resolved. She stated: "Even though I had requested the hearing I hadn't heard anything. So, I thought, well, everything's okay. I paid off the debts. They probably just reviewed it and we're good to go." (Tr. 78-79) She testified that she did not confirm her assumptions with her facility security officer (FSO). Post-hearing, Applicant said she spoke with her FSO about participating in financial counseling. (Tr. 69, 70, 78-80; AE S)

Applicant's annual salary is \$97,000. She has about \$1,300 in her bank account. She previously had about \$700 remaining after paying her bills, but it is now about \$300 because she is making payments to the IRS. She stated that her payment should be completed in approximately March 2024. She has about \$80,000 in a pension plan. In 2021 her vehicle that she drove for 18 years was beyond repair, and she purchased a new car for \$44,730 and pays \$880 a month. She said she found a car she liked and purchased it. She purchased a used car for her daughter (\$12,572). Applicant had been making the payments but now that her daughter has graduated from college and is

employed, she is responsible for the payments. (Tr. 24, 83-85, 87-88, 91; GE 3, 4; AE A, S)

In early 2023, Applicant began planning a trip to Hawaii with her daughter and granddaughter that occurred the end of August and early September 2023. She saved and paid for the airline tickets (approximately \$5,000) and hotel (\$1,700) before the trip. She estimated the costs of incidentals while on the trip such as rental car, food, drinks, and entertainment were \$2,500. She used a credit card to pay for these expenditures. She stated the balance on the card is about \$4,000. The remaining amount was used for other purchases not associated with the trip. She explained she had not taken a vacation in a very long time and felt like she never gets to do anything. She did not think it was an issue because she paid for most of it up front and over time everything would be okay. (Tr. 71-80; AE S)

In June 2023, Applicant purchased a timeshare. The company provided her with a credit card to make the \$2,000 down payment that is interest free for nine months. She estimated the balance on the card is \$2,500. The total cost of the timeshare was \$13,000 and she has five years to pay it. Annual fees on the timeshare are \$800. She thought it would be a good idea because she would have a place to go. (Tr. 76-81 93-94; AE S)

Applicant testified that her plan for maintaining her finances in the future is to reduce frivolous spending, such as eating out. She is considering getting a part-time job and she expects her daughter to share more of the household expenses. Post-hearing, she said she obtained a part-time job. Applicant maintains a budget on a worksheet. Post-hearing, she provided a copy of it. She said she is taking strides to put herself in a better financial position. (Tr. 70-71, 89-91; AE R, S)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. 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(c), 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 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. Directive ¶ E3.1.15 states 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.

Section 7 of EO 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F: Financial Considerations

The security concern relating to the guideline 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. 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.

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 provides conditions that could raise security concerns. The following is potentially applicable:

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

Applicant has numerous debts that were delinquent for years that she failed to resolve or only did so after receiving the SOR. She made a choice to accept a lower paying job to enhance her career opportunities and then stopped paying her bills. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. 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;
- (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.

Applicant has been employed since 2000 by the same federal contractor. In 2014 she made a choice to accept a lower-paying job with the potential to enhance her career opportunities. In approximately 2015, she stopped paying some of her bills because she could not afford to pay them. Applicant's brother had cancer and moved in with her in January 2017. The debts on the SOR were delinquent before Applicant's brother moved in with her. She testified that she incurred additional expenses because he lived with her, such as food costs and perhaps other essentials. Her brother passed away in May 2020. In June 2020, she completed her SCA and was interviewed by a government investigator. She disclosed some of her delinquent debts. She testified that she had not made any payments on any of the debts since 2015. In February 2021, she received the SOR. In March 2021, she made payments to resolve some of her delinquent debts. She also contacted other creditors to clear her credit and received IRS Cancellation of Debt form 1099C for those debts, which caused additional tax implications as it increased her income.

After receipt of the SOR, Applicant resolved some of her delinquent debts that were six to seven years old. That is not a good-faith effort to repay overdue creditors. Having her debts canceled and paying the taxes on the income may remove them from her credit report but it does not constitute a good-faith effort to repay overdue creditors or otherwise resolve her debts. She did not address her delinquent finances until after her security clearance was in jeopardy. She was aware of her delinquent debts when she went to Hawaii and then purchased a timeshare in 2023. I cannot find her behavior is unlikely to recur. Her actions cast doubt on her reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant attributed her financial problems to accepting a lesser-paying job and being unaware of its impact. I do not find this condition was beyond her control. She made no effort to repay any of her delinquent debts until after she received the SOR. Although, caring for her brother may have had some financial impact on her ability to repay some of her debts, he did not move in with her until January 2017. Her debts were already delinquent. She used her inheritance money from him to pay some of the debts after she received the SOR. I cannot find that the conditions that caused her financial problems were beyond her control. Based on her failure to address her remaining delinquent debts and her recent vacation and timeshare purchase, I cannot find she has acted responsibly under the circumstances. AG ¶ 20(b) does not apply.

Applicant has not had financial counseling and is embarrassed about her financial situation. She admitted all of the debts in her answer to the SOR but during her hearing

she disputed certain ones. I have considered that Applicant attempted to find the current creditor or collection company for some of her debts and was unsuccessful. I have also considered that because of the length of time that the debts were delinquent it likely had an impact on finding the current holder of the debt or the possibility that it is no longer reported on her credit report. She has not provided documented proof to substantiate the basis of her dispute or evidence of actions to resolve the issue. AG ¶¶ 20(c) and 20(e) 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 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(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. Some of the factors in AG ¶ 2(d) were addressed under those Guidelines, but some warrant additional comment.

Applicant has not established a stable financial track record. The fact that she may have resolved some debts "does not preclude careful consideration of Applicant's security worthiness based on longstanding prior behavior evidencing irresponsibility." ISCR Case No. 12-05053 (App. Bd. Oct. 30, 2014). An applicant who waits until his or her clearance is in jeopardy before resolving debts may be lacking in the judgment expected of those with access to classified information. ISCR Case No. 16-01211 (App. Bd. May 30, 2018) A person who fails repeatedly to fulfill his or her legal obligations does not demonstrate the high degree of good judgment and reliability required of those granted access to classified information. ISCR Case No. 15-00216 at 4 (App. Bd. Oct. 24, 2016), *citing Cafeteria & Restaurant Workers Union Local 473 v. McElroy*, 284 F.2d 173, 183 (D.C. Cir. 1960), *aff'd*, 367 U.S. 886 (1961)

Applicant has not met her burden of persuasion. The record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.e:	Against Applicant
Subparagraphs 1.f-1.j:	For Applicant
Subparagraphs 1.k-1.n:	Against Applicant
Subparagraph 1.o:	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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge