



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



In the matter of:)	
)	
)	ISCR Case No. 22-02384
)	
)	
Applicant for Security Clearance)	

Appearances

For Government:
Jeff Nagel, Esquire, Department Counsel

For Applicant:
Pro se

October 19, 2023

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

Applicant submitted her most recent Electronic Questionnaires for Investigations Processing (e-QIP) on October 25, 2021. (Government Exhibit 1.) On December 8, 2022, the Defense Counterintelligence and Security Agency Central Adjudication Services (DCSA CAS), formerly the Department of Defense Consolidated Adjudications Facility, issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended

(Directive); and the Adjudicative Guidelines effective within the Department of Defense after June 8, 2017.

Applicant answered the SOR in writing (Answer) on December 20, 2022, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on February 22, 2023. The case was assigned to another administrative judge on March 7, 2023. The case was reassigned to me on April 6, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on April 12, 2023. The case was heard on June 14, 2023. DOHA received the transcript (Tr.) of the hearing on June 23, 2023.

The Government offered Government Exhibits 1 through 8, which were admitted without objection. Applicant testified on her own behalf. She asked that the record remain open for the receipt of additional documentation. She submitted Applicant Exhibit A in a timely fashion, which was admitted without objection. The record closed on July 26, 2023.

Findings of Fact

Applicant is 55 years old and divorced from her second husband. She has a high school diploma and is currently attending college. She has been employed by a defense contractor since 2005 and is currently a senior analyst. She seeks to retain national security eligibility and a security clearance in connection with her employment. (Government Exhibit 1 at Sections 12, 13A, 17, and 25; Tr. 17-21.)

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because she is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant admitted all the allegations under this guideline with explanations.

The SOR specifically alleged that Applicant has seven debts that were charged-off, or in collection, in the total amount of approximately \$46,521. (SOR 1.a through 1.g.) The existence and amount of these debts is supported by Applicant's admissions in her Answer. They are also confirmed by credit reports submitted by the Government dated April 1, 2021; February 4, 2022; October 24, 2022; February 22, 2023; and June 13, 2023. (Government Exhibits 4, 5, 6, 7, and 8.) The existence of all the debts is also supported by Applicant's answers during an interview with an investigator from the Office of Personnel Management (OPM) on August 9, 2022. (Government Exhibit 2; Tr. 40-44.)

Applicant stated that her financial difficulties were due to having to take care of her ailing mother, as well as other family-related emergencies. Her financial issues came to

a head in approximately 2015 and she has not been able to resolve them since that time. (Tr. 20-24.)

Applicant has worked with two debt resolution firms (DRF 1 and DRF 2). She worked with DRF 1 starting in 2017 or 2018, as shown by documentation from DRF 1 provided by Applicant. She was paying them approximately \$433 a month to help her resolve her debts. The documentation did not show the debts they were paying or whether Applicant successfully completed the program. She testified that she had stopped using DRF 1 in either 2020 or 2021. Government Exhibit 8 does show several paid charge offs during the time she was using DRF 1. (Government Exhibit 8 at 16, 18,-20; Applicant Exhibit A at 12-16; Tr. 26-28, 39-40, 42-43.)

Applicant began working with DRF 2 in August 2022. She was still working with them at the date of the hearing. Documentation from DRF 2, provided by Applicant, indicates that she is paying \$468 a month to them to help resolve her debts. The documentation dated July 26, 2023, states that six accounts are enrolled, one of which has a settlement agreement in place. That particular account is not identified. In addition, the partial account numbers of the six accounts shown do not match any of those of the allegations in the SOR. It is noted that some of the DRF 2 accounts are reflected in the Government's credit reports. (Government Exhibit 5; Applicant Exhibit A at 9-11; Tr. 28-29, 44-45, 47-49, 52-53.)

Applicant testified that she is unhappy with the service she is receiving from DRF 2 and may attempt to resolve her debts on her own. (Answer; Tr. 22-23, 52-53.)

The current status of the debts is as follows:

1.a. Applicant admitted owing Creditor A \$19,980 for account ending 2288. This debt was charged off, as confirmed by the latest credit report in the record. This debt does not appear in the documentation from DRF 2. No further information was provided. This debt is not resolved. (Government Exhibit 8 at 20; Tr. 24-27.)

1.b. Applicant admitted owing Creditor A \$11,992 for account ending 2582. This debt was charged off, as confirmed by the latest credit report in the record. This debt does not appear in the documentation from DRF 2. No further information was provided. This debt is not resolved. (Government Exhibit 8 at 21; Tr. 30-31.)

1.c. Applicant admitted owing Creditor C \$4,096 for account ending 8058. This debt was shown as charged off with a balance owing on the credit report dated October 24, 2022. The credit reports dated February 22, 2023; and June 13, 2023, show the debt with no past-due amount and the statement, "Consumer disputes after resolution." This debt does not appear in the documentation from DRF 2. However, based on the existing record I find there is insufficient evidence to show Applicant continues to owe this debt.

This allegation is found for Applicant. (Government Exhibit 6 at 2; Exhibit 7 at 10; and Exhibit 8 at 7; Tr. 31.)

1.d. Applicant admitted owing Creditor D \$3,309 for account ending 3198. This debt was charged off, as confirmed by the latest credit report in the record. This debt does not appear in the documentation from DRF 2. No further information was provided. This debt is not resolved. (Government Exhibit 8 at 4; Tr. 32.)

1.e. Applicant admitted owing Creditor E \$2,812 for account ending 5382. This past-due debt appears in the October 24, 2022 credit report with the annotation, "Account information disputed by consumer." This debt does not appear in the latest two credit reports in the record. This debt also does not appear in the documentation from DRF 2. However, based on the existing record I find there is insufficient evidence to show Applicant continues to owe this debt. This allegation is found for Applicant. (Government Exhibit 6 at 3; Exhibit 7; and Exhibit 8; Tr. 32-33.)

1.f. Applicant admitted owing Creditor F \$2,447 for account ending 9331. This charged-off account appears on the February 22, 2023 credit report with the annotation, "Consumer disputes after resolution." This debt does not appear in the latest credit report in the record. This debt also does not appear in the documentation from DRF 2. However, based on the existing record I find there is insufficient evidence to show Applicant continues to owe this debt. This allegation is found for Applicant. (Government Exhibit 6 at 2; Exhibit 7 at 10; and Exhibit 8 at 7; Tr. 34-35.)

1.g. Applicant admitted owing Creditor G \$1,885 for account ending 1072. This debt was charged off, as confirmed by the latest credit report in the record. This debt does not appear in the documentation from DRF 2. No further information was provided. This debt is not resolved. (Government Exhibit 8 at 4; Tr. 35.)

Applicant testified that her current financial situation is tight. She does not have much discretionary income. Applicant realizes her finances can affect her national security eligibility but has not yet been in a position to reduce or pay off her past-due indebtedness. It is noted that Applicant was often confused during her testimony as to the actual status of her debts. (Tr. 35-38, 52-53.)

Paragraph 2 (Guideline E - Personal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because she has engaged in conduct that shows poor judgment, untrustworthiness or unreliability. Applicant admitted the factual allegations under this guideline. However, she denied having an intent to falsify the questionnaire.

Applicant filled out her e-QIP on October 25, 2021. Section 26 of that questionnaire concerns Applicant's financial situation. Several subsections ask whether, within seven

years of filling out the questionnaire, Applicant had bills or debts turned over to a collection agency; or had an account or credit card suspended, charged off, or cancelled for failing to pay as agreed? Applicant answered both questions, “No.” As stated, Applicant had past-due debts, so this was an incorrect answer to a relevant question about her financial situation. (Government Exhibit 1.)

Applicant was interviewed by a Government investigator on August 9, 2022. When first questioned about delinquent debts, “Subject [Applicant] indicated she is currently up to date on all her financial obligations.” When confronted with the fact she had delinquencies she stated she was working with DRF 1. She further stated that she believed DRF 1 had resolved all of her debts. This was incorrect. (Government Exhibit 2 at 2.)

Applicant subsequently stated in her Answer:

I deny that I attempt[ed] to falsify information. I provided information to the best of my ability the debts in questioned [sic] happened in 2015-2016 timeframe, which is outside of seven-year scope. I was working with a debt consolidation [service] to settle these outstanding debts. I was under the impression that once this was initiated all negative credit reporting would cease.

In her testimony, Applicant expanded on these statements. She stated that she had a good-faith belief that working with DRF 1 and DRF 2 meant that she was not delinquent on the debts since she was agreeing to the revised payments and payment plans in a legal and above-board way. (TR 38-39, 50-51.)

Mitigation

Applicant submitted documentation showing she is a respected person and employee. Her supervisor stated, “I know her to be trustworthy with program information and customer hardware and documentation.” (Applicant Exhibit A at 5-8.)

Policies

When evaluating an applicant’s suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1 (Guideline F, Financial Considerations)

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Applicant has seven debts listed in the SOR that were charged-off, or in collection, in the total amount of approximately \$46,521. Each of these debts involved contracts for discretionary consumer purchases. While she has been working with two debt resolution firms for several years, she was unsure of the present status of any of these debts. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes three conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties:

- (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, or a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has not mitigated the security significance of her past-due indebtedness, except in part. As stated, SOR allegations 1.c, 1.e, and 1.f are found for Applicant due to a lack of evidence showing that they are current delinquent debts. However, the remaining debts have been in existence for many years, and Applicant admitted having little information as to their current status. The documentation submitted by Applicant from

DRF 1 and DRF 2 was insufficient to show that the remaining debts have been paid, or that there is a plan to pay them. There is insufficient evidence that Applicant has behaved responsibly under the circumstances, as required by AG ¶ 20(b). She is fully aware of the impact delinquent debt can have on her security clearance eligibility, but has not done sufficient work to resolve the issue. None of the mitigating conditions are applicable to Applicant's situation. Paragraph 1 is found against Applicant.

Paragraph 2 (Guideline E - Personal Conduct)

The security concerns pertaining to the personal conduct guideline are set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

The Government alleged in SOR ¶ 2 that Applicant falsified the e-QIP that she filled out on October 25, 2021, by not admitting that she had delinquent debts. I find that Applicant did not intend to falsify her answers on the questionnaire. The evidence is clear that Applicant had a good-faith, if erroneous, belief that she did not have to say her debts were delinquent because she had turned them over to the DRF, and they were working with the creditors. In other words, she believed that the action in hiring the DRF to help her meant that the debts were no longer delinquent since active negotiations were going on.

In addition, Applicant also argued that her debts arose in 2015 and therefore were outside of the seven-year window for delinquency stated in the question. The questionnaire was completed in 2021. This argument also has some merit.

Based on my finding that Applicant did not intend to falsify her answers on the questionnaire, none of the disqualifying or general Personal Conduct guideline concerns apply to Applicant's conduct. Paragraph 2 is found for Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's potential for national security eligibility 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 national security 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 pertinent facts and circumstances surrounding this case. Applicant is a successful employee. However, her financial situation makes her ineligible for clearance at this time. If she is able to get her finances under control, she may be eligible for a security clearance in the future. She is not eligible now because continuation of financial irresponsibility is likely, and the potential for pressure or duress remains undiminished. Overall, the record evidence creates substantial doubt as to Applicant's present suitability for national security eligibility and a security clearance.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraphs 1.e and 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS
Administrative Judge