



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



In the matter of:

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ISCR Case No. 20-03778

Applicant for Security Clearance

Appearances

For Government: Jeffrey Kent, Esq., Department Counsel
For Applicant: *Pro se*

11/27/2023

Decision

MALONE, Matthew E., Administrative Judge:

Applicant did not mitigate the security concerns about her finances caused by her accumulation of multiple unpaid debts. Her request for a security clearance is denied.

Statement of the Case

On March 26, 2020, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to renew her eligibility for a security clearance required for her employment with a federal contractor. Based on the results of the ensuing background investigation, adjudicators for the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) could not affirmatively determine that it is clearly consistent with the interests of national security to grant Applicant's request for a security clearance.

On December 7, 2021, DCSA CAF issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under the adjudicative guideline for financial considerations (Guideline F). The SOR was issued pursuant to Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and Security Executive Agent Directive (SEAD) 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

Applicant timely responded to the SOR (Answer) and asked for a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was assigned this case on August 4, 2023. On September 13, 2023, I convened a hearing by video teleconferencing. The parties appeared as scheduled, and I received a transcript of the hearing (Tr.) on September 22, 2023.

Department Counsel proffered Government Exhibits (GX) 1 – 7, which I admitted without objection. Department Counsel also provided as a demonstrative exhibit a matrix cross-referencing the SOR allegations to specific points in GX 1 – 7. It is included in the record as Hearing Exhibit (HX) 1. Also provided were a list of Government exhibits and a copy of a discovery letter dated September 22, 2022, which are included as HX 2 and 3, respectively. Applicant testified in her own behalf and presented Appellant Exhibits (AX) A and B, which I admitted without objection.

Findings of Fact

Under Guideline F, the SOR alleged that Applicant owed \$156,000 for 35 delinquent credit card accounts (SOR 1.a – 1.ii). In response, Applicant admitted each allegation, and provided documents in support of some of her responses. (Answer) In addition to the facts established by Applicant's admissions, I make the following findings of relevant fact.

Applicant is an investigator working mainly on personnel security clearance background investigations. She works as an independent 1099-contractor simultaneously for multiple private companies, who have contracts with the Department of Defense (DOD) and other federal agencies. She first received a security clearance from DOD in 2009 and is being sponsored for renewal of her clearance by a DOD contractor. (GX 1; AX A; Tr. 37 – 39)

From 1969 until she retired in 1989, Applicant worked as a police officer and detective for a police department in a major U.S. city. She and her husband were married in 1986. After retiring from law enforcement, she has worked almost entirely as a self-employed investigator. In 1989, she and her husband bought a house in State A, where they lived and worked. In 1993, they started their own private investigation agency; however, her husband worked almost exclusively as a self-employed commercial

fisherman until he was seriously injured in 2019. Due to his injuries and subsequent complications therefrom, he has not worked since 2019, resulting in a loss of about \$3,000 in monthly income. Their private investigation agency has been largely dormant, producing little or no income, since about 2005. (AX A; Tr. 42 – 44, 63 – 67)

Between March 1997 and April 2015, Applicant earned about \$90,000 annually from her work for a single private sector company in State B. Concurrently, she also worked on a part-time basis as an investigator for other companies. When her employment in State B ended, she obtained full-time investigative work with at least three companies to make up for the loss of income. Some of that work required she travel between State A and State B, and to distant parts of State A, incurring travel and lodging expenses that offset some of her income. Additionally, she used credit cards to help her husband pay business-related expenses, including major boat repairs. She estimates that about half of the debt reflected in the SOR is attributable to her husband's business. The other half reflects her use of personal credit to meet expenses when her income fell in 2015 and when her husband became disabled in 2019. Credit reports produced by the Government show that most of the accounts in the SOR were past due, charged off, or became delinquent in 2019. Up to that point, Applicant and her husband remained in good standing by making minimum monthly payments on their credit cards. There is no indication in this record that her husband's business was incorporated or that any of the credit cards at issue were opened in the name of that business. (Answer; GX 1; GX 2; GX 3; GX 4; AX A; Tr. 40 – 44, 67 – 70)

In 2005, Applicant and her husband bought a small farm on which they boarded and cared for rescued horses. The home they had purchased in 1989 remained their primary residence until 2018, when they decided to rent out that property and move to the farm. They then sold the first house in 2020, realizing about \$20,000 profit that went to farm repairs and some debt payments not specified in this record. (GX 1; GX 7; Tr. 52 – 55)

In May 2020, Applicant was interviewed by a government investigator as part of her most recent background review. She and the investigator discussed multiple debts that were past due or delinquent according to a credit report obtained in April 2020. As to each of the then unresolved debts they discussed, Applicant told the investigator she had "made arrangements to resolve [the debt] by starting negotiations for [a] payment plan." In her January 2022 responses to each of the SOR allegations, she stated "Agreed – Payment Plan." At the hearing, Applicant testified that when she answered the SOR, she had not established any payment plans for any of her debts. In 2019 and 2020, when she tried to negotiate payment plans with her creditors, they wanted more than she could afford to pay and would not accept partial payments. (Answer; GX 7; Tr. 43 – 45, 72)

At the hearing, Applicant provided information showing she has resolved the debts alleged at SOR 1.a and 1.x. Both debts, owed to the same creditor, were settled in August 2023 in response to civil lawsuits brought against her by that creditor. She also provided information showing that she has agreed with that creditor to monthly payment plans to

settle the debts alleged at SOR 1.ee and 1.gg. Those agreements were made about a week before her hearing, with first payments due about two weeks after the hearing. The record does not contain any further information showing how or if Applicant has acted to pay or otherwise resolve any other SOR debts. (Answer; GX5; GX 6; AX B; Tr. 37 – 38, 46 – 48)

Applicant has not sought assistance from a professional financial counselor to resolve her financial problems. She and her husband currently earn about \$8,100 each month from her investigative work, as well as from her law enforcement pension, and Social Security benefits for both. She estimates their monthly expenses are about \$5,100 and that, after other expenses, they have about \$2,000 remaining each month. (Tr. 49 – 50, 55 – 59)

Applicant has a good reputation among friends and associates for diligence, hard work, reliability, and integrity. She dedicates much of her personal time and resources to the care of old and infirm horses. She has not incurred any new unpaid debts, and she has always filed and paid her taxes as required. (AX A; Tr. 67 – 68)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). (See Directive, 6.3) Decisions must also reflect consideration of the factors listed in ¶ 2(d) of the guidelines. Commonly referred to as the “whole-person” concept, those factors are:

- (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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest for an applicant to either receive or continue to have access to classified information. (See Department of the Navy v. Egan, 484 U.S. 518 (1988))

The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion. (Egan, 484 U.S. at 528, 531) A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. (Egan at 531; see AG ¶ 2(b))

Analysis

Financial Considerations

The Government met its burden of producing sufficient, reliable information to support the SOR allegations that Applicant accrued significant past-due or delinquent debts. This information reasonably raises a security concern about Applicant's finances that is articulated at 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.

More specifically, available information requires application of the following AG ¶ 19 disqualifying conditions:

- (a) inability to satisfy debts; and

- (c) a history of not meeting financial obligations.

By contrast, I have considered the following AG ¶ 20 mitigating conditions that pertain to these facts and circumstances:

(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; 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's debts are multiple and substantial. By virtue of the fact as many as 33 of the 35 debts alleged remain unresolved, her financial problems are recent and ongoing. Further, her overreliance on personal credit and her failure to take steps to resolve her debts reflect poorly on her judgment and reliability.

As to AG ¶ 20(b), Applicant asserts her financial troubles began when her husband was injured and became unable to work, a circumstance that continues to this day. She further claims that she was already struggling to make ends meet after being laid off from a well-paying job in 2015, which resulted in working at least three investigative jobs at the same time. When her husband was disabled, she was unable to continue making required minimum payments on more than 30 credit cards she had been carrying for several years. The 2015 lay-off and her husband's injury were conditions largely beyond her control. Nonetheless, the record also presents a severe overreliance on credit cards over time that left her with little or no margin for error should such unforeseen events arise. I conclude it was reasonably foreseeable that Applicant put herself in a precarious financial condition that was bound to fail, and which showed poor judgment in managing her personal finances. AG ¶ 20(b) does not apply here.

AG ¶¶ 20(c) and 20(d) do not apply. Applicant has not sought any professional financial counseling to assist in the resolution of her debts or the management of her finances. Additionally, she has not addressed her debts in a prompt or reliable way. Her resolution of the debts at SOR 1.a and 1.x occurred recently and only because of legal action against her by the creditor. The two payment plans for SOR 1.ee and 1.gg were put in place only about a week before the hearing and were not scheduled for first

payment until after the hearing. Applicant's overall inaction to resolve her debts since 2019 undermines confidence that she is acting in good faith to resolve her financial problems. On balance, I conclude that the security concerns raised by the adverse information about Applicant's finances are not mitigated.

I also have considered the potential application of the whole-person factors at ¶ 2(d). Despite the positive information presented, the record evidence as a whole leaves unresolved the doubts about Applicant's suitability for a clearance that have been raised by the Government's information. Because protection of the national interest is the principal focus of these adjudications, those remaining doubts must be resolved against the granting of access to classified information.

Formal Findings

Formal findings 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.ii: Against Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

Matthew E. Malone
Administrative Judge