



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



In the matter of:)	
)	
)	ISCR Case No. 22-01878
)	
Applicant for Security Clearance)	

Appearances

For Government: Troy Nussbaum, Esq., Department Counsel
For Applicant: *Pro se*

11/22/2023

Decision

OLMOS, Bryan J., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 3, 2022. On October 25, 2022, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under 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) promulgated in Security Executive Agent Directive 4 (SEAD 4), *National Security Adjudicative Guidelines* (December 10, 2016), for all adjudicative decisions on or after June 8, 2017.

Applicant answered the SOR on December 8, 2022, and requested a hearing before an administrative judge. On September 8, 2023, the Defense Office of Hearings

and Appeals (DOHA) issued a notice scheduling the hearing for September 26, 2023, via video teleconference. I convened the hearing as scheduled.

During the hearing, Department Counsel offered Government Exhibits (GX) 1 through 7, which were admitted without objection. Applicant testified and did not submit any exhibits. I held the record open until October 10, 2023, for either party to submit additional exhibits. Applicant subsequently submitted exhibits that I admitted, without objection, as Applicant Exhibits (AX) A through E. DOHA received the hearing transcript (Tr.) on October 5, 2023.

Findings of Fact

The SOR alleges 14 delinquent debts totaling approximately \$105,254. These include delinquent federal taxes totaling \$9,675 (SOR ¶ 1.a); two mortgage accounts that were past due in the amount of \$81,327 (SOR ¶¶ 1.i and 1.j); four credit card accounts totaling \$11,856 (SOR ¶¶ 1.b-1.d and 1.f); five delinquent medical accounts totaling \$2,151 (SOR ¶¶ 1.e, 1.g, 1.h, 1.l and 1.n); and two utility accounts totaling \$245 (SOR ¶¶ 1.k and 1.m). In her Answer, Applicant admitted SOR ¶¶ 1.a-1.h and 1.j and denied SOR ¶¶ 1.i and 1.k-1.n with explanations. Her admissions are incorporated into the findings of fact. The debts are also established by Applicant's credit reports from January 2022, August 2022, and September 2023. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 61 years old. She is not married, lives with a cohabitant and has three adult children. She completed some community college courses from 1981 through 1984 and again in 2012, but did not earn a degree. She has been with her sponsoring employer since March 2019 and has worked as an inspector since May 2023. She has never held a security clearance. (GX 1, 6; Tr. 21-25)

Applicant initially experienced financial difficulties from 2010 through 2015 where, despite consistent employment, she struggled to pay her bills. In April 2016, she transferred from a position with a large company in State A to a new position with the same company in State B. She rented an apartment in State B, but continued to own her home in State A. She allowed her son to live in her home in State A at a reduced rent. However, the rent and her new salary were not enough to cover the increased bills. She withdrew an unrecalled amount from her 401k retirement plan and used credit cards in an effort to cover her expenses. (GX 1, 6; Tr. 29-31, 61-62, 76)

Although her financial struggles continued, Applicant was able to purchase a vehicle in 2017. Through about February 2018, she continued to work in State B. However, her monthly bills remained greater than her earnings. She did not like the new work and wanted to be closer to family in State A. She described being overwhelmed during this period. (GX 2-3, 6-7; Tr. 30-32)

In about March 2018, Applicant returned to State A. She was unable to transfer her position within the company back to State A and resigned. She described being

confident that she could obtain new employment easily. Nevertheless, she experienced about six months of unemployment before securing a part-time position as a substitute instructional aide in about September 2018. This work paid less and was inconsistent, resulting in a significant reduction in income. She also lacked health insurance during this period and experienced additional medical expenses. She was unable to pay all of her monthly bills. (GX 1, 6; Tr. 27-30, 42-44)

During this time, she withdrew additional funds from her 401k and did not initially pay the additional taxes and penalties that resulted. (See discussion under SOR ¶ 1.a below). By 2019, she could no longer afford the mortgages on her home. Believing the bank would seek foreclosure, she abandoned the property, choosing to rent a nearby apartment instead. No foreclosure actions were ever initiated. (GX 1, 4, 6; AX A; Tr. 49-52, 79-81)

Even after Applicant started with her current employer in March 2019, she continued to struggle to meet her monthly expenditures. Her income was garnished to pay for taxes on the property that she still owned and personal property taxes for the vehicle. Those garnishments were later resolved through the completion of payments. (GX 1, 6; Tr. 27-28, 46-47)

In August 2022, Applicant accepted a modified loan agreement regarding her first mortgage and moved back into her home in State A. However, she has not initiated any payments toward the second mortgage. (GX 5, 7; Tr. 80-88)

The evidence concerning the specific SOR allegations is summarized below.

SOR ¶ 1.a are delinquent federal income taxes totaling approximately \$9,675. Applicant admitted this debt in her answer to the SOR. She testified that this tax related to her early withdrawal of 401k funds in 2018 to assist with her move back to State A from State B. In late 2021, she initiated a payment plan with the IRS whereby an auto-withdrawal of \$123 occurs every month. The IRS also offset her refunds from subsequent tax years. Account statements show that, from February 2022 through May 2023, the balance of her tax debt decreased from \$9,675 to \$5,467. Applicant stated she intends to continue making monthly payments towards this tax debt. (GX 1, 4, 6; AX A; Tr. 49-52)

SOR ¶¶ 1.b, 1.c and 1.f are credit card accounts that were placed for collection or charged off totaling approximately \$9,713. Applicant admitted these debts in her Answer to the SOR and stated she would be requesting a settlement arrangement with each of the creditors. However, she later testified that she had not reached out to any of these creditors because she could not afford to make any payments. (GX 1-3, 6-7; Tr. 54-63)

SOR ¶ 1.d is a credit card account that was charged off in the approximate amount of \$2,143. Applicant admitted this debt in her answer to the SOR and stated that it was being paid through a wage garnishment. An undated correspondence from a

collection agency showed that the debt had been satisfied and Applicant's September 2023 credit report showed the debt as a paid charge off. (GX 1-3, 6-7; AX B; Tr. 58-60)

SOR ¶ 1.e is a medical account that has been placed for collection in the approximate amount of \$1,631. Applicant admitted this debt in her answer to the SOR. At hearing, she did not recognize the debt, but admitted that she had several medical expenditures before and after she obtained health insurance through her current employer. The debt is reflected in her January 2022 and August 2022 credit reports. Applicant stated no payments had been issued toward this debt. (GX-1-3, 6-7; Tr. 64-66)

SOR ¶¶ 1.g, 1.h, 1.i and 1.n are medical accounts that have been placed for collection in the total approximate amount of \$520. In her answer to the SOR, Applicant admitted ¶¶ 1.g and 1.h and stated that she had been offered a settlement, but had not resolved the debts. She denied ¶¶ 1.i and 1.n, stating that the accounts had been paid, but did not provide any supporting documentation. At hearing, Applicant testified that she still had not resolved ¶ 1.g and ¶ 1.h and needed to call the creditor. All of these accounts appear in Applicant's January 2022 and August 2022 credit reports. (GX-1-3, 6-7; Tr. 67-75, 89-90)

SOR ¶ 1.i is a mortgage account that was past due in the approximate amount of \$44,305 with a total loan balance of \$162,363. In her answer to the SOR, Applicant denied this debt and claimed that she had been approved for a loan modification involving her home in State A. At hearing, she testified she moved back into the home in August 2022 following the loan modification. She has since been making timely payments on the modified mortgage. Applicant's September 2023 credit report reflects that the account is current. (GX-1-3, 6-7; Tr. 69-72)

SOR ¶ 1.j is a second mortgage account that is past due in the approximate total loan amount of \$37,023. Applicant admitted this debt in her answer to the SOR and claimed she was seeking a modification of the loan. However, at hearing, she admitted that the modification request had been denied and that she continued to receive monthly statements requesting payment. She asserted that she had insufficient funds to issue payments and had not communicated with the creditor in over a year. (GX-1-3, 5-7; Tr. 70-75, 86-88)

SOR ¶ 1.k and 1.m are a cable and utility bill that were placed for collection in the total approximate amount of \$245. Applicant denied both allegations in her answer to the SOR and claimed that the debts were paid. Subsequent to the hearing, Applicant provided documentation showing that both accounts had been resolved in 2023. (GX-1-3, 6-7; AX C-E; Tr. 87-90)

In addition to the alleged debts in the SOR, Applicant testified that she continued to owe approximately \$900 to State A in income taxes following the same 401k withdrawal in 2018 that led to the federal taxes alleged under SOR ¶ 1.a. Applicant's September 2023 credit report also reflects an additional medical account that was

placed for collection in about February 2023 in the approximate amount of \$1,076. (GX 7; Tr. 100-102)

Applicant testified that she earns about \$55,000 in annual income and was currently contributing 13% of her salary to a 401k and Roth IRA account. She did not have other sources of income and only received minimal assistance from her cohabitant, a day laborer, for paying their monthly expenditures. She did not submit a financial budget but estimated that she was able to cover her current monthly expenditures as well as her tax debt with some remainder. She testified that she will dedicate additional funds to resolving her debts in 2024, once her car payments are complete. (Tr. 26-34, 95, 102-105)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” 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 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. . . .

The financial security concern is broader than the possibility that an individual might knowingly compromise classified information 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. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012)

The adjudicative guideline notes 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's admissions and the evidence reflect that she has maintained multiple delinquent accounts and tax debt over several years. All of the above disqualifying conditions apply.

Conditions that could mitigate the 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 experienced various financial difficulties since 2010. They increased in 2016 when she moved to State B and experienced increased monthly bills. After her move back to State A in 2018, she experienced a significant period of unemployment and underemployment until starting with her current employer in 2019. Many of her debts alleged within the SOR originate from this period.

Since securing her current employment, Applicant has made progress toward resolving some of her delinquent accounts. She established a payment plan regarding her delinquent federal taxes, brought her first mortgage into good standing and resolved her utility and cable accounts that were in collection. An additional SOR debt was resolved through the completion of a garnishment.

However, Applicant has not issued any payments toward her second mortgage account or communicated with the creditor for over a year. She has also not made any recent effort to resolve her remaining delinquent credit card accounts and medical debts. She testified she lacked funds to resolve these additional accounts, but would attempt to resolve these accounts in 2024 when she believed she would have additional funds. Meanwhile, she continued to place a significant amount of her income into her retirement. By doing so, she essentially prioritized her retirement over the resolution of many of her long-standing delinquent debts.

AG ¶¶ 20(a), 20(b), and 20(g) are applicable to SOR ¶ 1.a. Applicant's tax problems were isolated to 2018 following her early withdrawal of retirement funds. She has since negotiated and maintained a payment plan with the IRS for about two years.

AG ¶¶ 20(a), 20(b), and 20(d) are also applicable to SOR ¶¶ 1.d, 1.i, 1.k and 1.m. The financial difficulties that followed Applicant's job change in 2016 and her difficulty in obtaining full-time employment in 2018 were conditions largely beyond her control. Although the resolution of SOR ¶ 1.d occurred through garnishment, she has since taken responsible action to bring her first mortgage current and resolve these additional accounts.

However, AG ¶¶ 20(a), 20(b) and 20(d) are not fully applicable to SOR ¶¶ 1.b, 1.c, 1.e-h, 1.j, 1.l and 1.n. Although Applicant's current financial position has sufficiently improved to resolve some of her debts, she has not made any recent attempts to bring her second mortgage current or communicate with any of the creditors regarding these accounts. Applicant has not shown responsible action in addressing these additional debts.

Additionally, while Applicant's State A tax debt and medical account in collection are not alleged in the SOR, they undercut assertions of mitigation as her financial issues remain recent and ongoing. After experiencing variable periods of financial difficulties, Applicant has made progress in resolving some of her delinquent debts. However, those efforts do not fully mitigate the ongoing financial security concerns.

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.

For over the last decade, Applicant has experienced an extended period of financial difficulties. She recently made some progress on her debts by resolving her federal tax issues and agreeing to a modification of her first mortgage. She also had a credit card delinquency resolve through garnishment and paid two utility bills. However, she has not communicated with the remaining creditors, including the second mortgage on her home, for over a year and not established a plan for paying her substantial remaining debts. Her statements about intending to pay and actions, to date, are insufficient to establish good-faith, responsible efforts to resolve the financial considerations security concerns.

After weighing the disqualifying and mitigating conditions under Guideline F and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by her ongoing delinquent debts.

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.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e-1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	Against Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Bryan J. Olmos
Administrative Judge