



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



In the matter of:)	
)	
)	ISCR Case No. 22-01861
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

11/28/2023

Decision

HALE, Charles C., Administrative Judge:

Applicant did not provide sufficient information to mitigate the financial considerations security concerns arising from her delinquent debts. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 7, 2022. On November 18, 2022, the Department of Defense (DoD) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations). The DoD acted under Executive Order (Exec. Or.) 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) implemented by the and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on January 13, 2023, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on March 30, 2023. On March 30, 2023, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and

submit material to refute, extenuate, or mitigate the Government's evidence. She received the FORM on April 6, 2023. Department Counsel granted two extensions to file a response to the FORM. Applicant submitted a response consisting of 43 exhibits, which she marked using numbers. Four days after the suspense date for her response she offered an additional exhibit, which Department Counsel stated she did not "have any objections to consideration of the applicant's submissions." I marked her response exhibits as Applicant's Exhibit (AE) and the number she assigned. Her final submission, submitted out of time, is marked AE 44. Her exhibits were admitted into evidence without objection. The case was assigned to me on September 28, 2023.

Findings of Fact

In Applicant's answer to the SOR, she admitted to all the allegations. Her admissions are incorporated in my findings of fact.

Applicant is a 55-year-old program manager who has worked as a federal contractor for the past 20 years. She married in 1991, divorced in 1993, and remarried in 2005. She has two children and two stepchildren. She received a bachelor's degree in 1990 and a master's degree in 1997. She last received a security clearance in 2012. (Item 4 at 9-10, 17, 23-24, 26-28, 64)

The SOR alleges 20 delinquent debts totaling over \$200,000 (SOR ¶¶ 1.a-1.t), a 2002 Chapter 7 bankruptcy (SOR ¶ 1.u), and a Federal tax debt from delinquent taxes in the amount of \$25,682 for tax years 2019 and 2021 (SOR ¶ 1.v). The bankruptcy filing is reflected in court records (FORM Item 6), and the delinquent debts are reflected in credit reports from June 2021 and May 2020. (FORM Items 7 and 8.) Her tax debts are discussed in her security clearance interview, and she provided installment agreement with her response. (Item 5 at 10; AE 44.)

Applicant moved in May 2020 to take a new position in a different state. At the time of the relocation, she had homes in both states (hereinafter Q and Z) she worked in. She cites the financial burden of maintaining homes in two states, relocation, loss of job, and COVID-19 hardships for her financial situation. (Item 4 at 66-77; Item 5 at 2-3.) After approximately ten months in her new position Applicant had delinquent debts totaling over \$200,000. She hired a debt reduction firm (Firm) on March 22, 2021, to assist her in resolving her debts and on March 23, 2021, she informed her security manager of her situation and actions, which the security manager treated as a "self-reported" event. (AE 7.) In her Answer, she provided the status of each account along with documentation of the Firm's duties in assisting her in resolving her debts. The Firm had her making a monthly payment to it and the Firm at some point would use the funds to negotiate settlements with the creditors. The Firm advised her to stop making payments on her debts, which is reflected in the credit reports for when the first delinquencies are reported. (Item 5 at 3; See individual debt analysis below.) She included her payment history to the Firm. (AE 6.) She stated in her Answer she had paid off or settled accounts with seven creditors and the Firm would handle the remaining creditors. The Firm filed for bankruptcy in March 2023. (AE 9.) The accounting sheet she provided indicated she paid the Firm

over \$20,000. (AE 8.) In April 2023, she hired an attorney to assist her in reducing four of her debts totaling over \$136,000. (AE 11; AE 12; AE 13; AE 14.) She provided a detailed summary of the SOR debts with her response, which in the “notes” section of the exhibit she explained the status of the debt and her actions. (AE 16.) The status of the allegations is as follows:

SOR ¶ 1.a: Credit card debt charged off in the amount of \$747. (AE 15 at 46.) AE 15 is a May 22, 2023 credit report. The account was opened in February 2018 and was first reported delinquent in March 2021. (AE 15 at 48.) Applicant settled account for \$400. (AE 22.)

SOR ¶ 1.b: Credit card debt placed for collection by in the amount of \$15,847. (AE 15 at 149.) The first reported delinquency was in May 2021. (AE 15 at 151.) Applicant agreed to a payment plan of \$135 per month on June 1, 2023, but did not provide documentation of any payments made. (AE 23.)

SOR ¶ 1.c: Credit card charged off in the amount of \$1,048. (AE 15 at 38.) The account was opened in December 2017 and was first reported delinquent in May 2021. (AE 15 at 40.) Applicant agreed to a settlement of \$600 on May 23, 2023, in two payments. The first payment of \$300 was due on June 28, 2023. (AE 20.) She did not provide documentation of any payments made.

SOR ¶ 1.d: Credit card debt charged off in the amount of \$26,821. (AE 15 at 42.) The account was opened in January 2015 and was listed as past due starting in February 2021. (AE 15 at 44.) Applicant engaged an attorney to settle the account after the Firm had gone bankrupt on June 5, 2023. (AE 12.) She did not provide documentation of any payments made.

SOR ¶ 1.e: A store credit card debt charged off in the approximate amount of \$6,821. (AE 15 at 54.) The account was opened in January 2014 and was first listed as past due in May 2021. (AE 15 at 56.) Applicant agreed to a payment plan over a two-year period on June 2, 2023. She agreed to pay \$169.95 each month for two years commencing on June 24, 2023. (AE 21.) She did not provide documentation of any payments made.

SOR ¶ 1.f: Credit card charged off in the amount of \$943. (AE 15 at 58.) The account was opened in November 2007 and was first listed as past due in April 2021. (AE 15 at 60.) Applicant reported the account was owned by her husband. The March 2022 credit report lists her as an authorized user. (Item 7 at 8.) She claimed that he has retained legal counsel to settle the account. (AE 16.) She did not provide documentation that this debt is resolved.

SOR ¶ 1.g: A store credit card debt charged off in the approximate amount of \$1,574. (AE 15 at 66.) The account was opened in November 2007 and was first listed as past due in May 2021. (AE 15 at 68.) Applicant reported the account was owned by her husband. The March 2022 credit report lists her as an authorized user. (Item 7 at 7.)

She claimed that he has retained legal counsel to settle the account. (AE 16.) She did not provide documentation that this debt is resolved.

SOR ¶ 1.h: Credit card debt charged off in the amount of \$9,787. (AE 15 at 62.) The account was opened in May 2018 and was first listed as past due in May 2021. (AE 15 at 64.) Applicant reported the account was owned by her husband. The March 2022 credit report lists her as an authorized user. (Item 7 at 4.) She claimed that he has retained legal counsel to settle the account. (AE 16.) She did not provide documentation that this debt is resolved.

SOR ¶ 1.i: Credit card debt charged off in the amount of \$4,592. (AE 15 at 15.) The account was opened in January 2012 and was first listed as past due in May 2021. (AE 15 at 17.) Applicant reported the account was owned by her husband. The March 2022 credit report lists her as an authorized user. (Item 7 at 5.) She claimed that he has retained legal counsel to settle the account. (AE 16.) She did not provide documentation that this debt is resolved.

SOR ¶ 1.j: Credit card debt charged off in the amount of \$1,852. (AE 15 at 84.) The account was opened in January 2003 and was first listed as past due in May 2021. (AE 15 at 86.) The account is shown as paid and closed on her credit report. (AE 15 at 87.) Applicant listed the debt as paid off on February 15, 2023, citing AE 24 and AE 24(A).

SOR ¶ 1.k: Credit card debt charged off in the amount of \$3,499. (AE 15 at 70.) The account was opened in June 2007 and was first listed as past due in May 2021. (AE 15 at 72-73.) On September 12, 2022, Applicant entered into a ten-payment stipulation of judgment in which she agreed to make \$300 monthly payments starting on September 30, 2022. (AE 16; AE 24.) Her credit report shows March 2023 as the date of the last payment. (AE 15 at 73.)

SOR ¶ 1.l: Credit card debt charged off in the amount of \$5,437. (AE 15 at 74.) The account was opened in November 2003 and was first listed as past due in April 2021. (AE 15 at 76.) The creditor obtained a judgment against Applicant on December 2, 2022. A garnishment order was issued. (AE 16; AE 24.) Her credit report shows March 2023 as the date of the last payment made. (AE 15 at 77.)

SOR ¶ 1.m: Credit card debt charged off in the amount of \$4,989. (AE 15 at 4.) The account was opened in August 2017 and was first listed as past due in May 2021. (AE 15 at 6.) Applicant agreed to a payment plan on April 28, 2023. After an initial payment of \$450.04 she agreed to pay \$211.97 each month for one year commencing on May 27, 2023. (AE 16; AE 17.) She did not provide documentation of monthly payments made.

SOR ¶ 1.n: A store credit card debt charged off in the amount of \$2,888. (AE 15 at 7.) The account was opened in October 2017 and was first listed as past due in May 2021. (AE 15 at 9.) After the Firm went bankrupt in the Spring of 2023, Applicant has sought to settle the account but did not provide documentation that it is resolved. (AE 16.)

SOR ¶ 1.o: Credit card debt charged off in the amount of \$36,030. (AE 15 at 26.) The account was opened in February 2014 and was first listed as past due in April 2021. (AE 15 at 28.) After the Firm went bankrupt Applicant has been attempting to negotiate a settlement utilizing a legal office but did not provide documentation that it had been resolved. (AE 11-14; AE 16.)

SOR ¶ 1.p: A store credit card debt charged off in the amount of \$2,436. There is a ten-dollar discrepancy reflected on both Applicant's credit report and Item 8 and the amount alleged in the SOR. (Item 8 at 16; AE at 95.) The account was opened in November 2004 and was first listed as past due in June 2021. (Item 8 at 16; AE 15 at 97.) She cites a different account for her claim that her credit report shows no balance owed on the account. (AE 15 at 117; AE 16.) She did not provide documentation of any payments made.

SOR ¶ 1.q: An account that is past due in the approximate amount of \$2,867 with a total outstanding balance of \$18,479. (AE 15 at 99.) The account was opened in October 1989 and was first listed as past due in May 2021. (AE 15 at 101.) Applicant reported the account was owned by her husband. The March 2022 credit report lists her as an authorized user. (Item 7 at 5.) She claimed that he is retaining legal counsel to settle the account. (AE 16.) She did not provide documentation of any payments made. Item 8 at 16.

SOR ¶ 1.r: Credit card debt charged off in the amount of \$27,987. (AE 15 at 103.) The account was opened in May 2017 and was first reported delinquent in January 2021. (AE 15 at 105.) After the Firm went bankrupt Applicant has been attempting to negotiate a settlement utilizing a legal office. (AE 12-14; AE 16.) She did not provide documentation of any payments made.

SOR ¶ 1.s: Credit card debt charged off in the amount of \$35,009. (AE 15 at 107.) The account was opened in June 2016 and was first reported delinquent in December 2020. (AE 15 at 109.) After the Firm went bankrupt, Applicant has been attempting to negotiate a settlement utilizing a legal office. (AE 12-14; AE 16.) She did not provide documentation of any payments made.

SOR ¶ 1.t: An account placed for collection in the amount of \$13,564. The account was assigned to collection in January 2020 (Item 7 at 4.) Applicant admits the account and states in her Answer the Firm was handling the matter. The account was not listed on the debt list she provided the Firm. (Answer at 12-13.) She did not provide documentation of any payments made.

SOR ¶ 1.u: Applicant filed Chapter 7 Bankruptcy in about July 2002. This bankruptcy was discharged in October 2002. (Item 6.) Applicant states the bankruptcy is no longer a consideration on her credit history and that she has had excellent credit until the COVID-19 pandemic. She notes that the reason for the bankruptcy was her divorce, which left her with the marital debts, none of the marital assets, and an infant child whom

her former husband did not support. (Answer.)

SOR ¶ 1.v: Applicant is indebted to the Federal Government for delinquent taxes in the amount of \$25,682.23 for tax years 2019 and 2021. As of the date of the Statement of Reasons, the taxes remain unpaid. She notes in her Answer her tax returns were filed on time, her 2020 refund had been applied to her tax debt, and she has enrolled in a monthly payment plan of \$213 a month and would increase it to \$400, which in her response states is now \$476. (Item 5 at 10; AE 28; AE 29; AE 44.)

Applicant told the investigator in her May 2022 security clearance interview the problems developed approximately three and half years ago when she sold her home in Q, and she was unable to occupy her home in Z because COVID-19 restrictions prohibited her from removing her renters. She claimed the renters stayed until August 2020 forcing her to rent for about four months until she could occupy her home. She claimed \$25,000 in rental payments but the booking statements she provided show less than \$6,000 in expenses during this period. (Item 5 at 2; AE 2.) She also states her husband lost his job and her son began college at an out of state college, which required her to pay her son's dormitory expenses, as well as his travel expenses back to Z. She also incurred travel expenses to take care of her sick mother who resided in another state. During this period, she lived off personal loans and credit cards, but her finances "snowballed." (Item 5.) Her SCA shows numerous international vacations between August 2016 and December 2019. (Item 4 at 36-60.)

Applicant's financial statement reflects a monthly income of just over \$15,000 with expenses just over \$3,500. She has set aside over \$9,000 for debt relief leaving a net remainder of just over \$2,300. (AE 30.)

Policies

[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. Administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with

access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline F, Financial Considerations

The security concern under this guideline 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. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise

questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, the evidence in the FORM, and Applicant's response to the FORM establish the following disqualifying conditions under this guideline:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(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.

The following mitigating conditions are potentially relevant:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

AG ¶ 20(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; and

AG ¶ 20(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.

AG ¶ 20(a) is not established. Applicant's delinquent debts are numerous and recent. The record 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 that she 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) is partially established. The record reflects Applicant had been residing and working in Z for approximately nine months when she stopped making payments on her debts in the Spring of 2021, which was at the same time she hired the Firm. Hiring the Firm demonstrated she was trying to act responsibly under the circumstances. The bankruptcy of the Firm was a condition largely beyond her control, which partially impacted her ability to resolve her debts. She promptly pivoted after the Firm's bankruptcy and initiated settlement agreements, but she has not established a track record of debt payments on the settlement agreements. Those SOR debts (SOR ¶¶ 1.a, 1.j, 1.k, 1.l, 1.m, 1.u, and 1.v) with a documented payment history have been mitigated.

AG ¶ 20(c) is not established. While Applicant may have received counseling in 2002 there was no evidence of recent credit counseling and there are not clear indications that the problem is being resolved or under control.

AG ¶ 20(d) is not established. Prior to the Firm filing for bankruptcy in March 2023 there had been no debts settled by the Firm. After the Firm's bankruptcy Applicant sought settlement agreements, but she has not established a track record of debt payments. Her resolution of the debts at SOR ¶¶ 1.k and 1.l occurred only because of legal action against her by the creditor.

After approximately a year in her new position Applicant had delinquent debts totaling over \$184,000 (See AG ¶ 20(e) reduction) and has mitigated or resolved by court action just over \$16,500 of the total debt. Even if an applicant has paid his or her debts, an administrative judge may still consider the circumstances underlying the debts for what they may reveal about the applicant's eligibility for a clearance. ISCR Case No. 14-02394 (App. Bd. Aug. 17, 2015.)

AG ¶ 20(e) is established for SOR ¶¶ 1.f-1i, and 1.q. As an authorized user she is not responsible for the debts.

AG ¶ 20(g) is established for SOR ¶ 1.v. Applicant filed her tax returns on time, and she is resolving her tax debt through a payment plan. The record reflects she was resolving her tax debt before she received the SOR.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate her credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). 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 delinquent debts.

Formal Findings

I make the following formal findings on the allegations in the SOR:

- | | |
|--|-------------------|
| Paragraph 1, Guideline F (Financial Considerations): | AGAINST APPLICANT |
| Subparagraphs 1.a, 1.f-1.j, 1.m, 1.q, and 1.u-1.v: | For Applicant |
| Subparagraphs 1.b-1.e, 1.n-1.p, and 1.r-1.t: | Against Applicant |

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is denied

Charles C. Hale
Administrative Judge