



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



In the matter of:)	
)	
)	ISCR Case No. 22-01227
)	
Applicant for Security Clearance)	

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

12/05/2023

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On July 19, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). The action was taken 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 DOD on June 8, 2017.

Applicant responded to the SOR (Answer) on August 5, 2022, and August 22, 2022, and she requested a hearing before an administrative judge. The case was assigned to me on April 28, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice on May 2, 2023, scheduling the matter for a video teleconference (VTC) hearing on June 6, 2023. DOHA issued an amended notice on May 26, 2023, rescheduling the matter for a VTC hearing on June 5, 2023, due to a scheduling conflict. Applicant waived the 15-day notice requirement required by the Directive.

I convened the hearing as rescheduled. At the hearing, I admitted Government Exhibits (GE) 1 through 5 in evidence without objection. Applicant testified, and she did not call any witnesses or present any documentation. At Applicant's request, I kept the record open until July 19, 2023, so that she could submit documentation. She timely submitted documentation that I admitted in evidence collectively as AE A without objection. DOHA received the hearing transcript (Tr.) on June 14, 2023.

Findings of Fact

Applicant admitted all the SOR allegations. She is 40 years old, married, and she has one adult child and one minor child. She earned a bachelor's degree in 2013, and a master's degree in 2015. She has lived with her family in a rental property in state A since 2019. (Tr. at 8, 22, 47-49; GE 1, 5)

Applicant served honorably in the U.S. military from 2002 to 2008. Due to her attending school and caring for her children, she was subsequently unemployed until December 2014. She then worked as a U.S. Government civilian employee overseas, where her spouse was stationed as an active-duty military member, until April 2019. Due to her recovery following a major surgery and her family's relocation to the United States, she was again unemployed until December 2019. Since then, she has remained employed by various DOD contractors. She has worked for her current employer as an information technology project manager since December 2022. She was first granted a security clearance when she served in the U.S. military. (Tr. at 5, 9-10, 22-30, 49-51; GE 1, 5)

As of the date the SOR was issued, Applicant had three credit-card accounts in collection status (SOR ¶¶ 1.a, 1.b, and 1.c), in the amounts of \$25,295, \$5,458, and \$4,463, respectively. All three debts were reported on her 2021 and 2022 credit bureau reports. Only two debts were reported on her 2023 credit bureau report, which reflected the following notations for each debt: (1) "Consumer Disputes – Reinvestigation in Progress" for SOR ¶ 1.a; and (2) "Consumer Disputes – Reinvestigation in Progress, Charged Off Account, Account Closed by Credit Grantor" for SOR ¶ 1.b. (Answer; GE 1-5)

In her SCA, Applicant reported that all three credit-card accounts were charged off due to nonpayment. She stated that she stopped making monthly payments on the accounts after she reported all three credit cards as "lost or stolen" in May 2017. She also stated that the three debts resulted from unauthorized charges made on the cards, of which she had not been aware, after she reported them lost or stolen. During her November 2021 background interview, she told the investigator that the three debts resulted from the unknown and unauthorized charges made on the cards after she reported them lost or stolen, and the high interest rates that continued to accrue on the outstanding balances. She maintained that she did not learn about her delinquent credit cards until approximately May 2021. In her Answer, Applicant asserted that the three debts resulted from her being a victim of identity theft. (Answer; Tr. at 35, 38-39; GE 1, 5)

At the hearing, Applicant stated that she did not recall providing the foregoing information to the investigator during her November 2021 background interview. She maintained that she lost her wallet, which contained the three credit cards and her military identification card, during a vacation cruise she took with her family in the summer of 2017. She did not report her lost wallet to the cruise ship authorities because she did not lose it aboard the ship. She did not think to file a police report with the local authorities. She did not immediately contact her creditors because she did not have any phone or internet service aboard the ship. When she returned from vacation less than one week later, she reported her lost wallet and military identification card to the authorities on the U.S. military base where she resided. She also contacted her creditors to report her lost wallet and close the accounts. She did not provide documentation to corroborate her testimony. (Tr. at 30-43, 45-46, 49-69)

Applicant acknowledged that all three credit card accounts had balances due to charges she made before she lost her wallet. She claimed that she continued making payments toward the balances she incurred on all three accounts after they were closed, and until they were each paid in full. She stopped monitoring the three accounts once she believed that each was paid in full. She denied any knowledge of the unauthorized charges made on each of the credit cards after she reported them lost, in the amounts of \$10,000, \$3,500, and \$4,500, for SOR ¶¶ 1.a, 1.b, and 1.c, respectively. She believed that the charges may have gone through because the accounts were not closed when she believed them to have been closed. The credit bureau reports corroborated that she made payments through April 2018 and August 2019 for the accounts alleged in SOR ¶¶ 1.a and 1.b, respectively. (Tr. at 30-43, 45-46, 49-69)

At the hearing, Applicant attributed her lack of knowledge about the delinquent accounts to having not received any correspondence about them from any of the creditors, due, in large part, to her family's relocation from their residence overseas to the United States. Although she had been monitoring her credit using Credit Karma for an unspecified period, the three credit card accounts were not reported as delinquent until about 2021 to 2022. She claimed that she had been working with the creditors and major credit reporting agencies to settle or otherwise resolve these debts and have them removed from her credit report. She also placed a security freeze on her credit reports. (Answer; Tr. at 30-43, 45-46, 49-69; GE 1, 5)

Applicant also claimed that, in the summer of 2022, she began working with and paying \$120 monthly to a credit counseling company, who was assisting her with disputing the three debts and cleaning up her credit report. She maintained that, although she had the financial means to settle and resolve these debts, she had not yet discussed this option with the credit counseling company as of the date of the hearing. She previously believed, based on her own research, as well as information told to her by the credit counseling company, that she was not responsible for paying the three debts since they had been charged off and would eventually fall off her credit report. However, she has since learned that she was mistaken in that belief and has accepted full responsibility for repaying all three debts.

Applicant provided undated documentation reflecting that she enrolled all three debts into a debt relief program with another company. She agreed to pay \$514 monthly, from which the company would make payments to settle these debts on her behalf by June 2027, with the projected next settlement to occur between December 2023 and February 2024. She did not provide any documentary evidence that she had commenced her payments, or that any of three debts had yet been settled or otherwise resolved through the program. (Answer; Tr. at 30-43, 45-46, 49-69; GE 1-5; AE A)

As of the date of the hearing, Applicant earned \$135,000 annually. She also received \$2,400 monthly for her 90% disability rating from the U.S. Department of Veterans Affairs. She had approximately \$4,000 in her bank accounts and \$20,000 in her retirement savings account. Her spouse expected to retire from the U.S. military in September 2023, after 23 years of service, and he intended to obtain employment in the private sector. She estimated that he earned \$100,000 annually. They maintain separate finances, but they share responsibility for paying the household expenses. She stated that the credit counseling company provided her with credit counseling. The credit reports do not list any other delinquent debts. An individual who has known Applicant personally and professionally for over 15 years, and for whom Applicant worked as a subcontractor after her discharge from the U.S. military, attested to Applicant's character, integrity, and responsibility. (Tr. at 23-29, 44-49; GE 1, 5)

Policies

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 to be 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, administrative judges apply the guidelines 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."

Under Directive ¶ E3.1.14, the Government must 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." The applicant 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. Section 7 of Exec. Or. 10865 provides that adverse 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F: Financial Considerations

The security concern 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 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; and
- (c) a history of not meeting financial obligations.

Applicant has a history of not paying her debts. AG ¶¶ 19(c) and 19(c) are established.

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;

(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;

(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 proffered a reasonable basis to dispute the unauthorized charges on her credit card accounts after she reported the credit cards lost, and the credit bureau reports corroborate her efforts to resolve the dispute. However, there remains substantial unresolved debt for which she accepted responsibility. She provided conflicting information about the reason for her delinquent credit cards. As such, it is not clear that circumstances beyond her control contributed to her financial problems. Even if I were to give her the benefit of the doubt, AG ¶ 20(b) requires that she provide evidence that she acted responsibly under her circumstances. She failed to do so.

Applicant did not provide any documentation showing: (1) any payments she made toward the outstanding balances she incurred on the credit cards before they were lost; or (2) any efforts she made either to resolve or to dispute the debts with the creditors and credit bureau agencies once she learned that they were outstanding sometime in 2021 or 2022. She also did not corroborate any claims of payments she made to the first credit counseling company she engaged in the summer of 2022, or to the second company she engaged at a date not in the record. She has not yet made any payments toward her debts, despite having the financial means to do so.

Applicant has not established that she has her finances under control. Given the record before me, I find that her delinquent debts continue to cast doubt on her reliability, trustworthiness, and judgment. AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(e) are not established.

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. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude that Applicant has not mitigated the financial considerations security concerns.

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
Subparagraphs 1.a – 1.c:	Against 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 Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge