



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



In the matter of:)	
)	
)	ISCR Case No. 23-00116
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel O’Reilly, Esq., Department Counsel
For Applicant: *Pro se*

12/20/2023

Decision

MURPHY, Braden M., Administrative Judge:

The debts alleged in the Statement of Reasons largely originated during Applicant’s former marriage. Her ex-husband is largely responsible for the tax debts in the SOR. Applicant moved to a new state, has been gainfully employed for several years, and is resolving her debts responsibly through Chapter 13 bankruptcy. She provided sufficient information and documentation to mitigate the resulting financial considerations security concerns. Applicant’s eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on November 19, 2021, in connection with her employment in the defense industry. On April 11, 2023, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudication Services (CAS) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (financial considerations). The CAS issued the SOR under Executive Order 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 Security

Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (AG), effective within the DOD on June 8, 2017.

Applicant answered the SOR on May 1, 2023, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). (Answer) The case was assigned to me on August 29, 2023.

Pre-hearing e-mails from October 2023 between myself, Department Counsel, and Applicant about: a) whether Applicant wanted a hearing in the case; b) submission of documents on her behalf by her bankruptcy lawyer; and c) whether or not this case could be resolved or withdrawn before a hearing, are all included in the record as Hearing Exhibit (HE) I. Ultimately, Applicant confirmed that she wanted a hearing. (HE I; Tr. 7)

On October 25, 2023, DOHA issued a notice scheduling the hearing for November 13, 2023, by video-conference through an online platform. The same day, Department Counsel moved to amend the SOR on procedural and substantive grounds, as addressed below.

Preliminary Matters and Amendments to the Statement of Reasons

Likely due to a clerical error, the original SOR referred to Applicant as an “Applicant for Security Clearance” (suggesting she was seeking access to classified information), yet the case number, “ADP 23-00116,” and the introductory paragraph of the SOR, referenced this as an “ADP” case (regarding access to sensitive, but unclassified, information).

On October 25, 2023, Department Counsel confirmed that he had received information from Applicant’s facility security officer (FSO) that “Applicant is being sponsored for a Secret security position, not a [Position of] Public Trust.” (October 25, 2023 e-mail). Accordingly, Department Counsel moved to amend the caption and case number of the SOR and replace the opening paragraph of the SOR with language regarding security clearance eligibility (as detailed in the text of the motion). (HE II) That motion was granted in my e-mail to the parties on October 25, 2023. (HE III)

In the October 25, 2023 e-mail, Department Counsel also moved to amend the SOR by adding two new financial allegations, one concerning Applicant’s pending bankruptcy filing, and one concerning a tax lien. (SOR ¶¶ 1.k and 1.l). He asserted that the motion was based on newly acquired evidence. On that basis, the motion was granted. Applicant was given appropriate time to respond, and she had the right to request a continuance of the November 13, 2023 hearing. (HE II) Applicant answered the two new allegations on October 31, 2023 and did not request a continuance. (Answer to Amendment, HE II; Tr. 18)

The hearing convened as scheduled. At the start of the hearing, Applicant indicated that she had taken a new job that day. She remained employed on the military

base where she had been employed previously, but with a new employer, for whom she was seeking eligibility for access to classified information. (Tr. 11-14)

At the hearing, Department Counsel offered documents that I marked as Government's Exhibits (GE) 1 through 9. Applicant testified and offered Applicant's Exhibits (AE) A through H. AE A-G were provided by her bankruptcy counsel on her behalf, before the hearing. All of the exhibits were admitted without objection. At the end of the hearing, I held the record open until November 27, 2023, to provide Applicant the opportunity to submit additional information. Applicant timely submitted two reference letters, which I marked and admitted without objection as AE I and AE J. DOHA received the hearing transcript (Tr.) on November 22, 2023.

Findings of Fact

In Applicant's answer to the SOR, she admitted SOR ¶¶ 1.a-1.j, with a narrative statement. In answering the amendment to the SOR, she admitted SOR ¶ 1.k and denied SOR ¶ 1.l. Her admissions are accepted as findings of fact. Additional findings follow.

Applicant is 48 years old. She and her second husband were married from 2007 until they divorced in December 2021, in State 2. They did not have children. She has two children in their 20s from her first marriage. They are in college, but their father is responsible for paying for their education. Applicant has an associate degree. (Tr. 33, 46-47, 65; GE 1; AE H)

Applicant and her second husband lived in State 1 until late 2017. She was employed with a government contractor at a government facility in State 1. She left her job and they moved to State 2 for his job. In State 2, she had only temporary, clerical employment. (Tr. 35-37; GE 1)

Applicant's then-husband lost his job in State 2 in about September 2019. (Tr. 37, 47) They were offered jobs at military facilities in State 3. In September 2019, Applicant moved to State 3 for a job, but he did not move from State 2. He told her he wanted a divorce in May 2021. (Tr. 35-38, 47-48)

Applicant worked in City 1, in State 3, for two years, until September 2021, when she moved to her current location in the same state. (Tr. 47-48) She worked for contractor A in State 3 until the Friday before the hearing. She worked full time and earned \$34.79 an hour. On the day of the hearing, as noted above, she began a new job on the same base, with a new employer. She received a \$7 an hour pay raise. (Tr. 39)

As amended, the SOR concerns 11 alleged delinquent debts, discussed below. They include federal and state income tax debts, consumer debts, a repossession, past-due rent, and other debts. The debts are established by credit reports from November 2022 and April 2023, and other record evidence. (GE 4, GE 5). In her Answer to the original SOR, Applicant admitted all of the debts, and said they were being resolved through bankruptcy (SOR ¶ 1.k) or were the responsibility of her ex-husband.

The debts alleged are due to Applicant's ex-husband's employment issues and his refusal to address the marital debts. They also were not able to afford to live in State 1, a state with high taxes and a high cost of living. They addressed that by moving to State 2. Applicant did not have steady work until she moved to State 3. (Tr. 63-64)

SOR ¶ 1.a (\$11,392) concerns past-due federal income taxes, for tax years (TY) 2014, 2017, 2020, and 2021. (GE 2, GE 3; AE G) Most of these debts were incurred when Applicant and her then-husband were living in State 1. They filed joint income tax returns before their divorce. They were making payments, but he stopped doing so. They found they could not afford to remain in State 1, so they moved to State 2. Her then-husband refused to pay the taxes or any of their marital debt. "He just didn't care," she said. They could not keep up with the tax burden, and always owed \$2,000 or \$3,000 each year. State 2, where they moved, does not have a state income tax. Applicant has filed her federal income taxes individually since the divorce. (Tr. 35, 40-41, 49-51, 53-55, 63-64)

Under their divorce decree, Applicant's then-husband ("Petitioner") was ordered to pay "All IRS past-due taxes." (AE H at 2) Even so, Applicant included the tax debts in her bankruptcy per her counsel's advice. (Tr. 34, 51-52; GE 6 at 31)

SOR ¶ 1.b (\$599) concerns past-due state income taxes owed to State 3 for TY 2020. (GE 2; AE F; Tr. 50) Applicant ("Respondent" in the divorce decree) was assigned responsibility for any State 3 past-due taxes in the divorce decree, along with any debts incurred after their May 29, 2021 separation date. (AE H at 3, 6; Tr. 51-52) Her State 3 tax debt is included in the bankruptcy. (GE 6 at 30)

SOR ¶ 1.l is a 2020 state tax lien, for \$3,309 in past-due state income tax debt owed to State 1. (GE 9) Applicant initially denied the debt because she was not aware of it. (Tr. 54) She then researched the matter diligently in the days before the hearing and learned the debt was valid. She plans to include this tax debt in her pending Chapter 13 bankruptcy proceeding. (SOR ¶ 1.k) (Tr. 32-33, 42-44)

The following SOR debts are all listed on credit reports in the record as past due and in collection status: SOR ¶ 1.c (\$161), to a communications company; SOR ¶ 1.d (\$552), to an insurance company; SOR ¶ 1.e (\$315), to a lending company; SOR ¶ 1.f (\$156), a gas credit card; SOR ¶ 1.h (\$2,137), for past-due rent; and SOR ¶¶ 1.i (\$63) and 1.j (\$862), which are consumer accounts. (GE 4, GE 5)

SOR ¶ 1.g (\$10,781) is the balance due on a repossessed auto. (GE 4, GE 5) This car was repossessed after Applicant's then-husband lost his job in State 1. They could only keep one vehicle so they returned this one. (Tr. 39,59-60)

Applicant retained legal counsel and filed a Chapter 13 bankruptcy petition in April 2023. She declared about \$37,000 in liabilities and about \$69,000 in assets. (GE 6 at 20; AE B) The bankruptcy payment plan was approved in July 2023. (GE 8; AE D, AE E) She is required to pay \$1,123 per month. She has done so, in weekly payments of about \$259

since May 2023. Payments are transferred from her pay automatically. (Tr. 61-62. AE C) She is on a 60-month (5-year) repayment plan. (AE A) She had to participate in financial counseling for the bankruptcy. (Tr. 58-60) All of the original SOR debts are addressed in the bankruptcy. (GE 6)

Since moving to State 3, Applicant has had steady employment and has not had issues paying bills. She attested that she has about \$1,500 or \$2,500 left over each month. She provides financial assistance to her parents. (Tr. 56-57; GE 6 at 43; AE J)

Two prior supervisors provided strong reference letters attesting to Applicant's professional performance. She has worked closely with representatives of other companies and understands the importance of protecting confidential information. She has excellent record-keeping skills and is a highly valued employee. (AE I, AE J)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has held, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative 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 access to classified information 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 avoided drawing 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 as to obtaining 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

that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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 relevant part, 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. . . .

This concern is broader than the possibility that an individual might knowingly compromise classified information in order 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 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 pay annual Federal, state, or local income tax as required.

Applicant and her then-husband fell behind on their taxes and other debts while living in an expensive state. Their financial problems continued after they moved to another state, after which he lost his job. Applicant's debts largely resulted from these circumstances. AG ¶¶ 19(a), 19(c), and 19(f) apply.

The following mitigating conditions under AG ¶ 20 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; and

(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;

(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; 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 and her then-husband experienced financial problems when they were living in a state with a high cost of living. They addressed that by moving out of state, in 2017. He then lost his job. He also declined to take any responsible action to address their marital debts. Applicant had only sporadic employment when they lived in State 2. She took an opportunity to move to a new state for work in 2019. Her then-husband declined to follow, and two years later, they divorced. She has been gainfully employed ever since.

Applicant sought appropriate legal counseling and was advised to file Chapter 13 bankruptcy. She is now under an approved payment plan of about \$1,100 a month and has been making regular payments. This arrangement is recent and is to continue for several years. All the SOR debts are covered in the bankruptcy. AG ¶¶ 20(b), 20(c), and 20(d) all apply.

Under their divorce decree, Applicant's ex-husband is responsible for the federal tax debts at SOR ¶ 1.a (even though Applicant also listed them in her bankruptcy). AG ¶ 20(e) applies to that debt. All of Applicant's tax debts (state and federal) are also to be resolved through the bankruptcy. AG ¶ 20(g) applies.

I also had the opportunity to observe Applicant's demeanor during the hearing, and I found her testimony credible. I find that her debts were largely attributable to her marital situation, and are not likely to be repeated. She has acted reasonably under the circumstances, and her financial issues are unlikely to recur and no longer cast doubt on her judgment, trustworthiness, and reliability. AG ¶ 20(a) also partially applies, though the debts are ongoing through the bankruptcy.

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 the 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(a), 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. Applicant provided sufficient evidence to mitigate the security concern shown by her delinquent debts. Overall, the record evidence leaves me without questions or doubts as to her eligibility for a security clearance.

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:	FOR APPLICANT
Subparagraphs 1.a-1.l:	For Applicant

Conclusion

In light of all of the circumstances presented, it is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

Braden M. Murphy
Administrative Judge