



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



In the matter of:)
)
) ISCR Case No. 21-00399
)
Applicant for Security Clearance)

Appearances

For Government: Jenny G. Bayer, Esq., Department Counsel
For Applicant: *Pro se*

01/04/2024

Decision

MURPHY, Braden M., Administrative Judge:

Applicant incurred delinquent debts during periods of unemployment and diminished income. She provided sufficient evidence to mitigate the resulting security concern under Guideline F (financial considerations). Applicant’s eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on April 22, 2020, in connection with her employment in the defense industry. On April 5, 2022, the Department of Defense (DOD) Consolidated Adjudications Facility, now known as the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (CAS), issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. DOD 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 11, 2022, 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 June 1, 2023.

The case was initially set for hearing on August 15, 2023, but was then postponed until September 20, 2023, at Applicant's request, for health reasons. The day before the rescheduled hearing date, she requested and received another postponement on similar grounds. The hearing was then rescheduled for October 26, 2023, to occur by video-teleconference.

The hearing convened as scheduled. Department Counsel offered documents that I marked as Government's Exhibits (GE) 1 through 5. Applicant testified but did not submit any exhibits. At the end of the hearing, I held the record open until November 22, 2023, to provide Applicant the opportunity to submit additional information. Applicant timely submitted two reference letters (Applicant's Exhibits (AE) A and B) and excerpts from her bank statements (AE C), which were admitted without objection. DOHA received the hearing transcript (Tr.) on November 6, 2023.

Findings of Fact

In Applicant's answer to the SOR, she admitted SOR ¶¶ 1.b, 1.c, 1.e, and 1.h, all with explanations. She denied SOR ¶¶ 1.a, 1.d, 1.f, and 1.g, also with explanations. Her admissions are accepted as findings of fact. Additional findings follow.

Applicant is 46 years old. She has never married and has no children. She earned a bachelor's degree in 2000 and a master's degree in 2009. She has worked as a DOD contractor, for various employers, since March 2001, with some periods of unemployment and work stoppage. She has held a clearance since at least 2009. She was unemployed for six months from January to June 2012 due to the end of a contract with contractor S. Under that contract, she held a salary of about \$98,000. She was unemployed again in early 2018 for about three months before beginning with contractor G, since renamed contractor F, in July 2018, with annual income of about \$60,000. She has worked for them ever since, and she has been working remotely since September 2019. (Tr. 9, 22-37, 43-47, 80-83, 96-98; GE 1)

Applicant also experienced periods of work stoppage, from October 2021 to December 2021, and January 15 to April 24, 2022. During this time, she earned no income, but was able to receive some unemployment benefits. In July 2022, her job was reduced to 20 hours a week. Since early October 2023, her job has been reduced to 10 hours a week. She believes she earns \$37 to \$38 an hour, which would be less than \$400 a month. The job is her only source of income. (Tr. 22, 27-32, 36-37, 43, 80-83, 96-99)

Applicant's debts include two repossessed cars and some other, smaller debts. She disclosed several debts on her SCA and discussed them in her May 2020 background interview. They are established by credit reports from May 2020, August 2020, and June 2022. (GE 3, GE 4, GE 5) She said she was advised by the agent who

interviewed her to try to pay off at least half of the debts discussed. At the time, she was not able to address the auto debts (SOR ¶¶ 1.a and 1.b). She believes those debts were cancelled by the creditors with the issuance of an IRS form 1099-C but she never received confirmation. (Tr. 53-55)

SOR ¶ 1.b (\$12,758) is the balance due on a repossessed vehicle placed for collection. (GE 3 at 13, Acct. # 45988) Applicant admitted the debt but denies the amount owed. She purchased the vehicle in 2015 for about \$19,000. She made payments until the car broke down in July 2017. She attempted to trade the vehicle in for another working vehicle, but she was not able to do so. Out of necessity, she took out another loan in 2017 (SOR ¶ 1.a) to purchase a replacement vehicle, leaving her with two car payments.. She stopped paying on the loan at SOR ¶ 1.b in 2017 and had the car voluntarily repossessed. In about October 2017, the account was charged off by the creditor. (GE 3 at 13; GE 2 at 2; Tr. 47-52, 92-93) A June 2022 credit report reflects that this account (Acct. # 45988) was charged off, for \$21,994, but also that the account was paid for less than the full balance. It is reflected as a "Paid Charge Off" and no balance is due. (GE 5 at 13)

SOR ¶ 1.a (\$14,637) is an account placed for collection. (GE 3 at 12, GE 4) This debt concerns the vehicle Applicant purchased while attempting to trade in her previous vehicle (SOR ¶ 1.b). The amount alleged is the balance due after the vehicle was sold at auction. She purchased the car in 2017 for about \$34,000 and fell behind on payments in September 2018 due to a significant reduction in income. She said she tried to refinance this loan with a lower interest rate but was not able to do so. The car was voluntarily repossessed in July 2019. She said she paid the account off in January 2022, with a lump-sum payment on a debit card for between \$8,000 and \$10,000. She believes the remaining amount may have been canceled by the creditor. (Answer; Tr. 55-59, 85-87, 92-95) After the hearing, she also documented a \$6,000 payment towards this debt that occurred in February 2022. (AE C) This account is not listed on her June 2022 credit report. (GE 5)

SOR ¶ 1.c (\$1,367) is a credit account placed for collection. Applicant admitted the account but said a portion had been paid off and the remainder was disputed. At her hearing, she disputed the account, and said she did not take out the payday loan at issue. She also said she attempted to resolve it by paying it off. (Tr. 60-64) After the hearing, she documented a \$448 payment towards this debt in January 2022. (AE C)

SOR ¶ 1.d (\$1,043) is a medical debt placed for collection. (GE 3 at 13) This was for an emergency room visit when Applicant had no insurance during a period of unemployment in 2018. She said the account was paid off in January 2022, with a debit card. (Tr. 64-66)

SOR ¶ 1.e (\$693) is a cell phone account placed for collection. Applicant was made aware of this debt during her background interview. She admitted the debt and said she tried several times to pay it off by phone between 2020 and 2022 but was unable to do so due to a language barrier between herself and the creditor's representative. She also

explained that she was contesting some of the early termination penalties included in the amount owed. (Answer; Tr. 67-72)

SOR ¶ 1.f (\$329) is a medical account placed for collection. (GE 3 at 4) Applicant denied the debt, asserting that she paid it off in December 2021. (Answer) She incurred this debt when she was injured while stepping off of a boat in spring of 2018, a time when she was unemployed and without insurance. She believes the debt was paid in late 2020. (Tr. 72-75, 85)

SOR ¶ 1.g (\$185) is a medical account placed for collection. Applicant denies the debt, asserting that she paid it off in January 2022. (Answer, Tr. 76-77) She documented this payment after the hearing. (AE C)

SOR ¶ 1.h (\$70) is a past-due debt reported for collection. Applicant admits the debt but says she is unsure who to pay. (Answer; Tr. 77-78)

Applicant's post-hearing documentation includes excerpts from bank statements in January and February 2022, some of which are cited above. There are also some payments by check card, for \$898 and \$735, which may also concern other SOR debts (such as SOR ¶¶ 1.d and 1.e), though this is not entirely clear. (AE C)

Applicant said her debts were due to lack of income, decreased salary and unemployment. She denied living or spending beyond her means. All of her SOR debts were caused months after the purchases were made, when she fell behind on her accounts due to unemployment. (Tr. 16, 22, 33, 79)

Applicant was also the victim of an assault in 2021 and was badly injured. She had other health issues in 2023 but they did not impact her debts as she now has private health insurance. She also had a flood in her home in early 2023 that destroyed some of the documentation she might otherwise have presented. (Tr. 83-88)

Applicant has followed a budget since late 2020 but has not participated in credit counseling. Now, before she buys something, she considers whether she can afford it if she found herself unemployed. (Tr. 39-43, 81-82) A June 2022 credit report shows less than \$2,000 in collection accounts, mostly medical debts. Applicant owes just under \$50,000 in federal student loans. At the time of the hearing no payment was due, as the student loans were in deferment due to the pandemic. She intends to address them through an income contingent repayment plan. She is current on her state and federal income tax requirements. (Tr. 89-92) She loves her job and is trying to pay what she can. (Tr. 96, 101; GE 5)

Two references provided strong recommendation letters vouching for Applicant's character and worthiness to hold a clearance. Applicant's direct supervisor attests that she is a highly professional and trustworthy individual. She routinely works with sensitive information and upholds the highest standards of security and compliance with rules and regulations. She has a strong pride in her work and an excellent work ethic. (AE A, AE B)

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

Applicant incurred debts, including two repossessions and other delinquencies, during previous periods of unemployment and diminished income. AG ¶¶ 19(a) and 19(c) 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
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant incurred delinquent debts several years ago. Twice, she had cars voluntarily repossessed. One car broke down and she tried to trade it in for another but was unsuccessful. The second car that she then purchased out of necessity was also repossessed after she fell behind on payments in 2018 during a period of unemployment. She documented good-faith efforts to resolve both debts as she was able. Both debts are now either resolved or likely resolved. Applicant's other SOR debts, by comparison, are quite small, and she documented efforts to pay most of them as well. These are also mostly medical debts, incurred due to circumstances beyond her control. The most recent credit report in the record, from June 2022, shows very little debt in collection status, and most of them are also medical debts. Applicant has also experienced several declines in

income in recent years. She has gone from being a full-time employee to a part-time employee in recent years. Nevertheless, she has not incurred new debts. The above mitigating conditions apply.

I 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 employment issues. She has also had other difficult circumstances, such as injuries and depleted income, that have impacted her financial well-being. Her largest debts were incurred several years ago and her more recent credit report shows improved financial circumstances.

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.h:	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