



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



In the matter of:)	
)	
)	ISCR Case No. 22-02023
)	
Applicant for Security Clearance)	

Appearances

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

01/22/2024

Decision

COACHER, Robert E., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns, but the personal conduct concerns were mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On February 16, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (CAS) issued Applicant a statement of reasons (SOR) detailing security concerns under Guideline F, financial considerations and Guideline E, personal conduct. The CAS acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective on June 8, 2017.

On April 20, 2023, Applicant answered the SOR and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a

notice of hearing on September 27, 2023, setting the hearing on October 31, 2023. The hearing was held as scheduled. The Government offered exhibits (GE) 1 through 6, which were admitted into evidence without objection. The Government's exhibit list was marked as hearing exhibit (HE) I and its discovery letter to Applicant was marked as HE II. Post-hearing, the Government offered GE 7 (garnishment documentation). I sent Applicant an email on November 2, 2023, asking if she had objections to GE 7, but she did not respond. I admitted GE 7. My email to Applicant is marked as HE III. While admitted into evidence, I did not consider GE 7 for any purpose in my decision.

Applicant testified and offered two exhibits at the hearing, which were marked as AE A and B, and admitted without objection. Post-hearing Applicant submitted AE C, which was admitted without objection. DOHA received the hearing transcript (Tr.) on November 9, 2023.

Findings of Fact

In her SOR answer, Applicant admitted some of the allegations and denied others. Her admissions are adopted as findings of fact. I make the following additional findings of fact.

Applicant is a 32-year-old employee of a federal contractor. She has worked for her current employer for two years as a supply technician. She served in the U.S. Army from 2011-2020. She was honorably discharged. She received a disability rating of 60 percent from the Department of Veterans Affairs (VA) and receives a monthly disability benefit of approximately \$1,200. She is a high school graduate who has taken some college courses. She has been married and divorced twice. She has no children. (Tr. 6, 25, 31-32; GE 1)

The SOR alleged under Guideline F, 10 delinquent accounts (consumer debts, bank loans, a car loan, a utility debt) totaling approximately \$30,000. (SOR ¶¶ 1.a – 1.j) The debts are established by credit reports from December 2021 and May 2023; her January 2022 background interview; her admissions to interrogatories in June 2022; and her admissions in her SOR answer. The SOR also alleged that she failed to file her 2020 federal income tax return, and that in July 2017, while still in the Army, she forged her commander's name on a form, for which she was punished under the Uniform Code of Military Justice (UCMJ), Article 15. (SOR ¶¶ 1.k – 1.l) (GE 2-3, 5-6; SOR answer)

The SOR alleged under Guideline E, the forgery allegation stated above; a UCMJ punishment under Article 15 in 2019 for absence without leave (AWOL); and a civilian-jurisdiction arrest in March 2020 for burglary of a habitation, assault causing bodily injury, and interference with an emergency request for assistance. (SOR ¶¶ 2.a – 2.c)

Financial Considerations.

Applicant attributed her financial problems to several contributing factors. During her second marriage, after she decided to divorce, she took out personal loans to pay for her living expenses. She became indebted and did not have the resources to pay the

loans. Before the divorce, she had to support her spouse who was not employed. She hired two different credit restoration services to help increase her credit score. Neither obtained satisfactory results, so she discontinued using them. She also was not financially sophisticated. She believed that she was no longer responsible for debts that were charged off. Approximately six months ago, she retained a personal financial counselor who helped her develop a payment strategy for her debts. Her current gross monthly income is approximately \$5,000. So far, she has managed to pay one of the SOR debts, as noted below. (Tr. 30-25; AE B)

The status of the SOR debts is as follows:

SOR ¶ 1.a-\$5,221. This is a charged-off loan Applicant incurred during the pendency of her second divorce. The balance date of the debt is December 2021. She admitted making no payments. This debt is unresolved. (Tr. 43-44; GE 5)

SOR ¶ 1.b-\$3,211. This is a loan in collection that Applicant incurred during the pendency of her second divorce. The balance date of the debt is December 2021. She admitted making no payments. This debt is unresolved. (Tr. 44; GE 5)

SOR ¶ 1.c-\$1,003. This is a delinquent utility debt. Applicant fell behind making payments and then moved away from that location and never paid the debt. This debt is unresolved. (Tr. 46; GE 3, 5)

SOR ¶ 1.d-\$221. Applicant documented payment for this debt in October 2023. This debt is resolved. (Tr. 36, 39, 46-47; AE A)

SOR ¶ 1.e-\$198. This is a consumer debt. Applicant used this company to fund an airplane ticket. This account was charged off. She testified that she would make this account her next priority and pay it. She failed to submit proof any payment. This debt is not resolved. (Tr. 47-48; GE 5)

SOR ¶ 1.f-\$13,716. This is a charged-off car loan. Applicant claimed she bought this car for her ex-spouse, but stopped making payments when they separated. She has not made any further payments. This debt has a balance date of August 2021. This debt is not resolved. (Tr. 48-49; GE 5)

SOR ¶ 1.g-\$3,129. This is a debt from a property management company. Applicant believed the company was seeking back rent that she did not owe. She claims that she paid the amount that she owed by taking out a loan to do so. She failed to submit proof of any payment. This account was placed in collection. She disputed the debt, but she failed to document the basis of the dispute. This debt is not resolved. (Tr. 44-45; GE 3, 5)

SOR ¶ 1.h-\$495. This is a credit union debt. Applicant does not recall this debt and denied having an account at this credit union. She did not submit documentation supporting her dispute. This debt was charged off. The last payment date was in August 2016. This debt is not resolved. (Tr. 49-50; GE 5)

SOR ¶ 1.i-\$489. This is a delinquent credit card. Applicant opened this account in September 2021. This account was charged off. She provided documentation showing she established a payment plan with the creditor. She failed to submit proof of any payment under the plan. This debt is not resolved. (Tr. 51; GE 6; AE C)

SOR ¶ 1.i-\$478. This is a delinquent consumer debt. Applicant denied this debt. It appears on her latest credit report with a first delinquency date of May 2021. She failed to submit proof of any payment or documentation to support her dispute. This debt is not resolved. (Tr. 52; GE 6)

2020 Federal Tax Return. Applicant admitted, during her background interview, that she failed to timely file her 2020 federal income tax return. During her hearing testimony, she averred that she had filed this return sometime thereafter. She failed to document filing of this return. This issue is unresolved. (Tr. 58; GE 3)

July 2017 Forgery of Commander's Name. Applicant admitted that in 2017, while in the Army, she went to an Army relief organization on post, seeking a loan to help pay her debts. She received an application from the organization and completed it. The application needed signatures from either her commander or her first sergeant. Neither were available the day Applicant sought the loan. She forged her company commander's signature on the application form and submitted it. Because she entered the incorrect email address for her commander on the form, the fraudulent nature of the form was discovered. She then faced an Article 15 UCMJ proceeding before her battalion commander. She was found guilty of forgery and was punished with a one-grade reduction in rank and 60 days of extra duties. (Tr. 62-63; GE 3)

Personal Conduct

The factual circumstances of the forgery allegation (SOR ¶ 2.a) are described above. In 2019, Applicant was in the Army and placed on "quarters duty" by a physician. This is a designation of a soldier's place of duty at their home because of medical circumstances. While in this designation, Applicant decided to fly to her home state to see her family. She did not seek authorization from her command to travel. After about seven days, she was contacted by her unit and told to report to her regular duty location the next day. She told the contacting person that she could not do that because she was in a different state. When she returned to her unit, she faced Article 15, UCMJ proceedings from her commander. She was found guilty of being absent without leave (AWOL) and reduced in rank one grade. (Tr. 64-65; GE 3)

In March 2020, Applicant was arrested and charged with burglary of a habitation, assault causing bodily harm, and interference with an emergency request for assistance. The underlying factual circumstances were that Applicant was with a friend who went to a hotel where her friend's father was staying with his girlfriend. A dispute over money arose and all parties engaged in a mutual affray. Applicant admitted stepping on the girlfriend's cell phone and breaking it. Eventually, all charges were dropped against Applicant. (Tr. 72-75; GE 3-4)

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 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.

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 that an 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.

Section 7 of EO 10865 provides that 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern for financial considerations:

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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶19 and the following potentially apply:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust; 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 has a history of financial difficulties. She incurred 10 delinquent debts totaling approximately \$30,000. All but one small debt remain unpaid. She admitted failing to timely file her 2020 federal income tax return and forging her commander's signature for financial gain. I find all disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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;

(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's debts are recent because they are ongoing and, although she paid one of the debts, she failed to address the remaining debts, which comprise the greatest portion of the overall debt amount. Applicant's forgery offense happened under unusual circumstances and is unlikely to recur since she is no longer in the Army. AG ¶ 20(a) is not applicable, except as to SOR ¶ 1.i.

Although Applicant's divorce from her second spouse was a circumstance beyond her control, she did not act responsibly concerning the debts when she failed to follow up by contacting her creditors or establish payment plans. While she engaged two credit restoration services, neither proved fruitful. While she recently used the services of a financial counselor, she failed to show any financial benefit from that action so far. AG ¶ 20(b) is not applicable.

Applicant presented evidence of recently receiving financial counseling. However, there are no clear indications that the problem is being resolved or is under control. Her track record to date does not support a good financial picture. She has had financial difficulties for a number of years. Based upon her past history, there is no reason to believe that she will right her financial ship in the near future. While she did resolve one debt, this action is too little, too late. Applicant's financial problems are not under control. AG ¶ 20(c) does not apply. AG ¶ 20(d) applies only to SOR ¶ 1.d.

Applicant disputed some debts, but she failed to produce documentation to support the basis of those disputes. Likewise, she claimed that she filed her 2020 federal tax

return, but she failed to produce documentation to support this claim. AG ¶¶ 20(e) and 20(f) do not apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the personal conduct security concern:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶16 and the following potentially applies:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

In 2017, while in the Army, Applicant forged her commander's signature in an attempt to secure a personal loan. In 2018, while in the Army, she went AWOL by flying to her home state when she was restricted, because of medical reasons, to her residence. In 2020, she became involved in a mutual affray that led to criminal charges against her. Those charges were ultimately dismissed. All these events lead to questioning Applicant's judgment, reliability, and willingness to comply with rules and regulations. AG ¶16(c) applies.

I have also considered all of the mitigating conditions for personal conduct under AG ¶ 17 and considered the following relevant:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Two of the allegations occurred in 2017 and 2018, while Applicant was in the Army, which is no longer the case. The last event occurred in 2020 and all those charges were dropped. I find that AG ¶17(c) substantially applies to all the allegations.

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(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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

I considered Applicant's military service, her VA disability, and her divorce. However, I also considered that she has not adequately addressed her delinquent debt and has not brought forward any plans to address the debt even though she recently engaged a financial counselor. She has not established a meaningful track record of debt management, which causes me to question her ability to resolve her debts in the future.

Overall, the record evidence leaves me with question and doubts about Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant has not mitigated the financial considerations security concerns. I considered the exceptions under Security Executive Agent Directive (SEAD) 4, Appendix C, dated June 8, 2017, and determined they are not applicable in this case. She mitigated the personal conduct 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, 1.e-1.k:	Against Applicant

Subparagraphs: 1.d, 1.l:

For Applicant

Paragraph 2, Guideline E:

FOR APPLICANT

Subparagraphs: 2.a-2.c:

For 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge