



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



In the matter of:)	
)	
)	ISCR Case No. 23-01262
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

03/28/2024

Decision

BENSON, Pamela C., Administrative Judge:

Applicant lost employment in February 2014 and remained unemployed until January 2015, which caused her to experience financial indebtedness. Notwithstanding these circumstances beyond her control, she has not provided sufficient evidence to establish that she has acted responsibly to address and resolve her financial delinquencies. She also failed to disclose accurate information about her financial affairs, as required. Applicant did not mitigate the financial considerations and personal conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On September 1, 2023, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudication Services (CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations) and Guideline E (personal conduct). The DCSA 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 implemented by the DOD on June 8, 2017.

In Applicant's undated response to the SOR (Answer), she admitted the allegations regarding all 16 delinquent debts under Guideline F. She stated that she fell behind on her financial obligations after she lost her job in 2014. Under Guideline E, she denied the single SOR allegation that she intentionally omitted adverse financial information in March 2022, but she did not provide an explanation or additional information. She requested a decision by a Defense Office of Hearings and Appeals (DOHA) administrative judge based upon the written record in lieu of a hearing. (Answer)

On November 9, 2023, DOHA Department Counsel submitted a file of relevant material (FORM) and provided a complete copy to Applicant. Department Counsel's FORM includes Government Exhibits (Items) 1 through 6. In the FORM, Department Counsel provided Applicant notice that failure to respond to the FORM may be considered a waiver of any objections to the proffered exhibits.

Applicant did not provide a response to the FORM. The case was assigned to me on February 27, 2024. Items 1 through 6 are admitted without objection.

Findings of Fact

Applicant is 66 years old. She has been divorced since March 1993, and she has one adult son. She worked for a healthcare employer from June 1980 through February 2014, when she lost her job due to a plant closure. She was unemployed until January 2015, when she found employment as a shipping and receiving clerk. Since November 2016, she has been employed full time as a supply chain associate for a DOD contractor. (Item 3)

On March 22, 2022, Applicant certified and submitted an Electronic Questionnaire for Investigations Processing, also known as a security clearance application (SCA). Under Section 26 – Financial Record, she reported one delinquent account with a department store in the amount of \$2,000. A credit report obtained in June 2022 showed that Applicant had 16 delinquent accounts totaling approximately \$27,000. (Items 3, 6)

Applicant admitted the 16 delinquent accounts and stated that all of these debts developed during her period of unemployment beginning in February 2014. On her March 2022 SCA, however, she only listed one delinquent account in the amount of \$2,000. She did not disclose additional information to provide an accurate description of her current financial situation. In her SOR Answer, she denied that she had falsified or omitted adverse financial information she was required to report under Section 26 of the SCA, without further explanation. (Answer; Item 3)

In April 2023, Applicant responded to a financial interrogatory provided by the DCSA CAS. She listed that all 16 delinquent accounts were not paid, that no arrangements had been made to pay these debts, and that she was not currently making any payments to any of her delinquent creditors. She provided a personal financial statement that reflected her monthly income was approximately \$3,650 and her monthly

expenses were approximately \$2,964, which left her with a monthly net remainder of about \$686. (Items 4, 5)

The SOR alleges 16 delinquent debts totaling approximately \$27,000. (SOR ¶¶ 1.a through 1.p) Applicant's admissions and the two credit reports in the record indicate that these 16 accounts became delinquent in about 2014, after she lost her job in February 2014. There is no evidence of any payments or payment arrangements regarding these 16 delinquent accounts between their delinquency and the September 2023 issuance of the SOR. She did not provide any supporting documentation or a response to the FORM to explain why she has been unable to make progress on repaying these debts over the past nine years since she regained employment. Applicant has not provided any evidence of credit counseling or any evidence of a plan to address and resolve the delinquent SOR accounts. (Items 1-6)

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(c), 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 EO 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* EO 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’s 16 delinquent accounts total approximately \$27,000. These debts have been delinquent since at least 2014 and remain delinquent. AG ¶¶ 19(a) and 19(c) apply.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable in this case:

- (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 has initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant bears the burdens of production and persuasion in mitigation. An applicant is not held to a standard of perfection in her debt-resolution efforts or required to be debt-free. “Rather, all that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by ‘concomitant conduct,’ that is, actions which evidence a serious intent to effectuate the plan.” ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017). See, e.g., ISCR Case No. 13-00987 at 3, n. 5 (App. Bd. Aug. 14, 2014).

Applicant attributed her financial delinquencies to loss of employment beginning in February 2014. There is no evidence of any debt-resolution efforts from January 2015, when she found employment, to September 2023, after the SOR was issued. All 16 SOR accounts remain unpaid. The absence of reasonable efforts undertaken by her to resolve these long-standing financial delinquencies is concerning, especially after her submission of the March 2022 SCA and the April 2023 financial interrogatory, both of which alerted her to the government’s concerns about her overall financial indebtedness.

Under AG ¶ 20(b), Applicant must establish circumstances largely beyond her control *and* that she acted responsibly under the circumstances. Notwithstanding the financial hardship due to her unemployment from February 2014 through January 2015, Applicant has not established that she acted responsibly to address and resolve her delinquent accounts despite being employed for the past nine years. There is no evidence showing any debt payments or repayment plans she has in place for the SOR debts, or any additional communication with creditors regarding these accounts. I am unable to find that her current financial situation is under control or that additional financial problems will not develop in the future. None of the financial mitigating conditions apply. Applicant did not mitigate the financial considerations security concerns.

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

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 the national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant was aware she had developed multiple unpaid and delinquent accounts after she was unemployed from February 2014 through January 2015. In March 2022 she disclosed one delinquent department store account for \$2,000 on her SCA. She deliberately failed to disclose additional adverse financial information or provide an accurate description of her overall current financial indebtedness on the SCA, as required. The above disqualifying condition applies.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(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.

There is no evidence that Applicant made a good-faith effort to correct the omission of relevant and material information on the March 2022 SCA before she was confronted with 16 delinquent accounts that were listed on her June 2022 credit bureau report. She denied intentionally falsifying her SCA in her SOR Answer, but she did not provide a reasonable explanation for the omission. I find that Applicant intentionally omitted forthright and candid information about her significant financial indebtedness, and her omission casts doubt on her reliability, trustworthiness, and good judgment. AG ¶¶ 17(a) and (c) do not apply. Applicant failed to mitigate the personal conduct security concerns.

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 Guidelines F and E and the factors in AG ¶ 2(d) in this whole-person analysis.

Applicant experienced financial hardship when she became unemployed in February 2014. This is a situation beyond her control; however, she has not provided sufficient evidence to establish that she has acted responsibly to address and resolve her financial delinquencies. She also did not provide an explanation in her Answer why she did not disclose relevant information on the March 2022 SCA to accurately reflect her current financial predicament. Applicant did not mitigate the financial considerations and personal conduct security concerns. Eligibility for access to classified information is denied.

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.p.:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a.:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, I conclude that it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Pamela C. Benson
Administrative Judge