



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



In the matter of:)	
)	
)	ISCR Case No. 20-01475
)	
Applicant for Security Clearance)	

Appearances

For Government: John Lynch, Esq., Department Counsel
For Applicant: *Pro se*

03/21/2024

Decision

HYAMS, Ross D., Administrative Judge:

Applicant did not provide sufficient information to mitigate the financial considerations security concerns arising from her unpaid debts. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on July 12, 2019. On August 31, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). Applicant answered the SOR on an unknown date and requested a hearing before an administrative judge. The case was assigned to me on October 16, 2023.

The hearing convened on November 28, 2023. Department Counsel submitted Government Exhibits (GE) 1-8, which were admitted in evidence without objection. Applicant did not provide any documentation at the hearing. I held the record open for three weeks after the hearing to provide Applicant with the opportunity to submit documentary evidence. She submitted Applicant Exhibits (AE) A-C, which were admitted in evidence without objection.

Findings of Fact

In her answer, Applicant admitted SOR allegations ¶¶ 1.a-1.i, and 1.k, and denied allegation ¶ 1.j. Her admissions are incorporated into the findings of fact. Based on my review of the pleadings, evidence submitted, and testimony, I make the following additional findings of fact.

Applicant is 55 years old. She works as a truck driver. In 2021, she started taking contract work from a government contractor. She was married in 2000 and has one adult stepchild. She earned a bachelor's degree in 1991. (Tr. 55-57; GE 1, 2)

Applicant testified that she and her husband purchased land in 1993 and started building their own home in 2005. Their plan was to finance the building costs through a construction mortgage, but they needed to cover some of the initial expenses. She claimed that in 2007, their banker told them to use credit cards to buy supplies, and the credit-card debt would be paid when the final mortgage was established. Applicant estimated that they put about \$20,000 on credit cards. When the bank gave them a \$250,000 construction loan in 2012, they were not given any funds to reimburse them for their past expenses. She stated that SOR ¶¶ 1.a-1.e, 1.h, and 1.i were debts related to construction costs. (Tr 15-25, 55-68; GE 7)

In about 2011, Applicant's husband had his overtime hours reduced, and he had two surgeries in a 2012. The first surgery put him on short-term disability for five months, and the second surgery for three months. He had part-time jobs that earned him extra money but was unable to work them while on medical leave. Around that time, Applicant's work hours were reduced for about two and a half years. She claimed they tried to keep up with their credit-card debts but were not able to maintain those payments and their other expenses. Most of the "date[s] of last activity" for the credit cards were between November 2014 through February 2015. Applicant claimed that she did not have the funds to pay or settle the debts. These debts remain unpaid. She stated that her last contact with the creditors was in the 2014-2015 timeframe. No further action has been taken. (Tr. 15-68; GE 4, 7)

Applicant started driving a truck part time in 2018. In 2021, she and her husband cashed in part of their 401k accounts and purchased their own truck. She and her husband drive together. They are out for three to six weeks at a time. Their yearly income and truck-related operating and maintenance expenses have varied greatly each year since 2021. (Tr. 25-55)

The SOR alleges 11 delinquent debts totaling about \$43,000. The status of the allegations is as follows:

SOR ¶ 1.a is a credit-card account past due for \$1,368, with a total balance of \$6,652. Applicant admitted this allegation. After the hearing, she contacted the creditor and found the debt was charged off in 2015. This debt is unresolved. (Tr. 25-55; AE A; GE 4, 5, 7)

SOR ¶ 1.b is a credit-card account placed for collection for \$6,030. Applicant admitted this allegation. After the hearing, she contacted the creditor and found the debt was charged off in 2015. This debt is unresolved. (Tr. 25-55; AE A; GE 4, 5, 7)

SOR ¶ 1.c is a credit-card account that was charged off for \$5,948. Applicant admitted this allegation. After the hearing, she contacted the creditor and found that the debt was charged off was in 2015. This debt is unresolved. (Tr. 25-55; AE A; GE 4, 5, 7)

SOR ¶ 1.d is a credit-card account placed for collection for \$5,011. Applicant admitted this allegation. After the hearing, she contacted the creditor and found the debt was charged off and collection efforts ended because it exceeded the statute of limitations. This debt is unresolved. (Tr. 25-55; AE A; GE 4, 5)

SOR ¶ 1.e is a credit-card account that was charged off for \$2,739. Applicant admitted this allegation. After the hearing, she contacted the creditor and found that collection efforts have ended because of the age of the debt. This debt is unresolved. (Tr. 25-55; AE A; GE 4, 5, 7)

SOR ¶¶ 1.f and 1.g are delinquent medical debts for \$1,571 and \$758, respectively. Applicant admitted these allegations. These debts were for an emergency surgery. These amounts were not covered by her health insurance. She claimed that these debts were supposed be paid through a payroll deduction, however they were not deducted from her paycheck after starting a new job. After the hearing, she was unable to locate the creditor. These debts are unresolved. (Tr. 25-55; AE A; GE 3, 4, 8)

SOR ¶ 1.h is a credit-card account that was charged off for \$593. Applicant admitted this allegation. After the hearing, she contacted the creditor, and they were unable to locate her account. This debt is unresolved. (Tr. 25-55; AE A; GE 4, 5, 7)

SOR ¶ 1.i is a credit-card account placed for collection for \$537. Applicant admitted this allegation. After the hearing, she contacted the creditor and found the debt was charged off in 2015. This debt is unresolved. (Tr. 25-55; AE A; GE 4, 5, 7)

SOR ¶ 1.j is a delinquent medical debt for \$81. Applicant denied this allegation and claimed the charges were covered by her health insurance and the debt should have been removed from her credit report. She did not provide supporting documentation. (Tr. 25-55; AE A; GE 4, 5, 7)

SOR ¶ 1.k is a loan for a travel trailer that was purchased in 2006 and repossessed in 2014. The debt was placed for collection for \$13,304. Applicant admitted this allegation. After the hearing, she contacted the creditor, and they were unable to locate her account. No further action was taken. This debt is unresolved. (Tr. 25-55; AE A; GE 5, 7)

Applicant provided a monthly budget statement that shows that she and her husband have about \$5,760 left over monthly, after their regular monthly expenses. They have about \$9,000 in their checking account and do not have any new delinquent debts.

They have three older cars, but also bought a luxury car in 2023. Her husband owns three motorcycles, two are only few years old. (Tr. 25-55; AE B)

Applicant submitted a character letter from a someone she has known for almost three decades, who knows her personally and professionally. The reference stated that Applicant was a valuable employee and a reliable and trustworthy friend, but it did not address any financial-related issues. (AE C)

Policies

This case is adjudicated under Executive Order (EO) 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), which became effective on June 8, 2017.

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.

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 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.

The financial considerations security concerns are established by the credit reports and Applicant’s admissions. 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:

(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;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(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.

AG ¶ 20(a) does not apply. Applicant failed to provide sufficient documentation showing that any of the alleged debts are being paid, are resolved, or became delinquent under such circumstances that are unlikely to recur. Her failure to pay these debts is both long-term and recent, as well as ongoing and unresolved. These circumstances continue to cast doubt on her current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) does not apply. Applicant's narrative established that some of her debts became delinquent from conditions beyond her control. However, she did not establish that she acted responsibly under the circumstances.

AG ¶ 20(d) does not apply. Applicant did not provide sufficient evidence showing a good-faith effort to repay creditors or resolve debts, and she has not established any meaningful track record of debt payments.

AG ¶ 20(e) does not apply. Applicant did not provide sufficient documentation to establish a reasonable basis to dispute the legitimacy of past-due debts or evidence of actions to resolve the issue.

Applicant failed to provide documentation of any past efforts to resolve her unpaid debts. While most of these debts have been charged off for eight years, she failed to establish that her financial problems are unlikely to recur and that she will be reliable and trustworthy with her finances going forward.

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 her character letter. 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 in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility for a security clearance. She did not provide sufficient evidence to mitigate the security concerns under Guideline F arising out of her unpaid debts. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for eligibility for access to classified information in the future.

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.k:	Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Ross D. Hyams
Administrative Judge