



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 22-02158
)
Applicant for Security Clearance)

Appearances

For Government: Sakeena Farhath, Esq., Department Counsel
For Applicant: *Pro se*

04/16/2024

Decision

MASON, Paul J., Administrative Judge

The listed allegations involve four student loans that were opened between 2008 and 2011. While Applicant claimed that she made payments to the student loan lender over the years, documented proof of payments did not begin until 2023. The financial considerations remains unmitigated. Eligibility for security clearance access is denied.

Statement of the Case

On April 13, 2020, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to apply for a security clearance required for a position with a defense contractor. The Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Facility (CAF) could not make the affirmative findings required to continue a security clearance, and issued Applicant a Statement of Reasons (SOR), dated December 1, 2022, detailing security concerns raised by financial considerations (Guideline F). The action was taken under Executive Order (E.O.) 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) effective in the DOD on June 8, 2017. On January 2023, Applicant provided a response to the SOR with an attached statement.

The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 8, 2023, for a live in-person hearing on December 19, 2023. The Government's six exhibits (GE 1-6) were admitted into evidence without objection. (Tr. 16). Applicant's exhibits (AE) A through C were admitted without objection. (Tr. 17 and Tr. 26) Applicant submitted five post-hearing exhibits (AE D through AE H) that were entered into evidence on January 10, 2024, without objection. DOHA received the hearing transcript (Tr.) on January 4, 2024 The record closed on January 10, 2024.

Summary of Allegations

The SOR alleges that Applicant owes four delinquent student loan debts totaling to \$98,327. In her January 2023 answer to the SOR, she admitted owing the debts. Her mother and father originally cosigned for the loans between 2008 and 2011. The mother made the student loan payments until she passed away in 2011. Applicant claims that she, her father, and her brother, have been paying on the debts over the years. See January 2023 answer to the SOR, attachment.

Findings of Fact

Applicant is 33 years old and single with no children. In May 2013, she earned her bachelor's degree in exercise science. She has about a one and a half years to go to receive a master's degree in project management. (GE 1 at 12; Tr. 7-8) Since April 2019, Applicant has been employed as a recruiting coordinator of engineers. She was previously employed as an administrative research assistant from October 2017 to April 2019. From March 2016 to October 2017, Applicant worked as a receptionist and benefits coordinator at a physical therapy clinic. GE 1 at 13; Tr. 8-10)

SOR ¶ 1.a through ¶ 1.d – Applicant's parents co-signed for four of her college loans between 2008 and 2011. Applicant's father is retired from state employment, and her mother was nursery school director. (GE 4 at 4-5; Tr. 25, 34, 39)

Over the life of the four listed student loans, Applicant never made payments on the loans because her mother paid all the household bills, including the student loans which she paid upon receipt of the loan notices. (Tr. 47) When she passed in 2011, Applicant's father fell behind on paying the loans and they defaulted at some time. The delinquent loan notices were initially sent to her father since he had also cosigned for the listed loans. (Tr. 38, 39) At the time her mother died, Applicant did not know what the monthly payments were. She could not recall when the listed student loans defaulted in her name because she was living in another state.

Applicant claimed that she called the listed **state lender** a few years after her mother's death, but they told her that she would have to repay the interest first. The

state lender gave her three options involving consolidation that she could not meet. (Tr. 35-37) Applicant provided no additional information explaining the three options.

In 2020, Applicant contacted the **state lender** again and they offered three different repayment options for each of the four loans. Applicant did not provide sufficient detail about the three options, but agreed that the new settlement agreement would call for a total monthly payment of \$1,200 for the four loans. She could not meet the settlement payment option. (Tr. 37-38)

During the December 2023 hearing, Applicant provided testimony that she has been paying eight student loans to a **second student lender** monthly since 2013. She provided documentation of paying the **second student lender** \$143 in December 2023 by automatic withdrawal from her checking account. (AE C at 1-2) The exhibit also includes documentation from a **third student loan lender** indicating that her father is paying \$283 a month on a student loan that is only his responsibility, with an outstanding principal balance of \$5,585. (AE C at 3-5)

The credit bureau reports show that Applicant pays all her bills in a timely manner except for the listed student loans. (AE 3, 4, 5) She paid off her car loan and is responsible with her finances. Applicant is current on the eight student loans to the **second student lender**. (Tr. 23; GE 3, 4, 5)

Applicant earns about \$1,873 a month after taxes. Her expenses amount to \$1,500 a month. After payment of her expenses, she estimated she has a \$600 monthly remainder. After putting \$500 in savings every month, she has about \$100 remaining. In her checking account she has \$1,800. She has multiple savings accounts. One account that is earmarked for rent contains \$22,000. A savings account through her job contains \$9,000. She has a mental budget that is not in writing. She has never had financial counseling. Though she owns her car, she does not want to use it for collateral to raise money. (GE 1 at 31; Tr. 29-34, 43-44)

On January 4, 2024, Applicant (identified as borrower) and the **state lender** of the four listed SOR loans entered into a settlement agreement with the **state lender** agreeing to accept \$120,000 without additional interest as final settlement of the listed loans listed in the SOR (8515701, 9514518, 10509943, 11510842), conditioned upon Applicant's compliance with repayment terms of 240 monthly installments of \$500 beginning on January 15, 2024. After nine out of ten consecutive payments have been made, the loans will be considered rehabilitated, thereby removing the defaulted status of the loans from the Applicant's credit report. If, after the rehabilitation period, Applicant defaults on the agreement for a period of more than 180 days, the loans will be removed from a rehabilitative status and transferred to a defaulted status. Then, the loans will no longer be eligible for rehabilitation. Upon default, the state lender may file suit and enter judgment against Applicant to recover remaining amounts due on the listed loans, including all accrued interest and attorney fees. Applicant made the first \$500 payment on January 3, 2024. (AE D; AE G, Section II; and III at 2, 3, 4, 5, 6, 7)

In addition to her mother paying on the four listed student loans, Applicant claimed that her father and brother paid on the loans over the years. Regarding her father's payment contribution, Applicant was certain that he made payments, but she did not know how much. (Tr. 18) On the subject of Applicant's purported payments to the listed student loan debts before the issuance of the SOR in December 2022, she claimed that she and her father have been paying as much as they could each month. (Applicant's January 2023 answer to the SOR) She claimed that she made occasional payments to the listed creditors during the pandemic (2020 to 2022). (Tr. 47) The record shows that Applicant's payments on the listed student loan accounts did not begin until 2023. In that year, she made 11 or 12 monthly payments totaling \$600 to the collection firm representing the listed **state lender**. Hence, her claims regarding earlier payments are unsupported and therefore not credible. She has presented no documentation, i.e., bank statements, receipts, or payment ledgers, or documentation from her father or brother to support her claims. The credit bureau reports show no payment activity on the listed accounts from 2018 to January 2023. See, GE 3, 4, and 5.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines are flexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with common sense and the general factors of 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(d) 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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

Analysis

Guideline F, Financial Considerations

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. 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.

AG ¶ 19. Conditions that could raise a security concern and may be disqualifying include:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Failing to manage personal finances in a responsible manner can have a negative impact on an applicant's safeguarding classified information. If she shows irresponsibility with her personal finances, she may demonstrate the same imprudent attitude toward security rules and regulations that she chooses not to abide by. Adverse evidence from credit reports can usually meet the Government's obligation of proving delinquent debts. See, e.g., ISCR Case No. 14-02403 at 3 (App. Bd. Aug. 18, 2015); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) The Government's credit reports establish that the debts listed in the SOR became delinquent in June 2018. The total amount of debt posted in the SOR is \$98,327. AG ¶¶ 19(a) and 19(c) apply. AG ¶ 19(b) does not apply based on Applicants track record of payments to satisfy the unalleged **second lender**.

AG ¶ 20. Conditions that could mitigate security concerns include:

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

AG ¶ 20 (a) is not available for mitigation. The student loan accounts were opened between 2008 and 2011. Applicant claimed that she, her father, and her brother paid on the student loans over the years and occasionally during the pandemic between 2000 and 2022. Though the record shows payment activity until 2018, the record shows no evidence of payments on the listed debts at any time by Applicant until 2023, when she began paying \$50 a month on the delinquent loans. The payments did not begin until after she received the SOR in December 2022. Applicant's lack of evidence addressing the student loans before 2023 continues to cast doubt on her current reliability, trustworthiness and judgment.

Applicant's failure to pay on the listed delinquent loans cannot be based on employment issues, as she has been continuously employed since 2016. There is no record of any kind of unexpected event that contributed to her delinquent loans. In addition, there is no evidence that she acted responsibly before she received the SOR in December 2022 to address the delinquent loans. See ISCR Case No. 17-01213 at 5 (App. Bd. Jun. 29, 2018) AG ¶ 20(b) does not apply.

AG ¶ 20(c) does not apply as Applicant has not had financial counseling. Though there is some evidence that she lives frugally, she did not furnish evidence of financial strategies, i.e., a written budget, or other accounting system, that could continuously enable her to monitor her financial obligations.

While Applicant warrants some mitigation under AG ¶ 20(d) based on the January 2024 settlement agreement, the mitigation due is insufficient to overcome the lack of evidence of loan payments by Applicant before 2023. In addition, based on the figures that she provided regarding her income and expenses, it will be difficult for her to absorb an additional \$500 a month expense for the next 240 months without running a monthly deficit.

In Guideline F cases, the DOHA Appeal Board has repeatedly held that, to establish her case in mitigation, an applicant must present a "meaningful track record" of debt repayments that result in debt reduction. See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). While an applicant is not required to show that every debt listed in the SOR is paid, the applicant must show that she has a plan for debt resolution and has taken significant action to implement the plan. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). Applicant's year-long record of payments in 2023 and January 2024 settlement is insufficient to overcome the absence of student loan payments by her at any time before 2023, specifically after 2018. AG ¶ 20(d) is unavailable for mitigation because of the absence of a meaningful track record of repayments.

Whole-Person Concept

I have examined the evidence under the specific guidelines in the context of the nine general factors of the whole-person concept 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 access to classified information must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Having weighed the disqualifying and mitigating conditions of the financial considerations guideline with all the surrounding circumstances of this case under the whole person concept, Applicant's evidence has not mitigated the security concerns arising from the financial considerations guideline.

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.d:	Against 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 access to classified information. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge