



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



In the matter of:)	
)	
)	ISCR Case No. 23-01344
)	
Applicant for Security Clearance)	

Appearances

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

04/03/2024

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On August 23, 2023, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on September 1, 2023, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on November

17, 2023. She was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 2 through 7. (Item 1 is the SOR) Applicant did not provide a response to the FORM; did not object to the Government's evidence and did not submit documents. The Government's evidence is admitted. The case was assigned to me on February 27, 2024.

Findings of Fact

Applicant denied both SOR allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 37 years old. She earned an associate degree in 2006, a bachelor's degree in 2008, and a master's degree in 2017. She married in 2009 and has three children ages 12, 9, and 5. (Item 3)

The SOR alleged two delinquent debts totaling \$40,563 (¶ 1.a - \$27,052; ¶ 1.b - \$13,511). The debts are owed to the same creditor. These debts are supported by Applicant's admissions and credit reports from February 2023 and July 2022. The debts are not on her October 2023 credit report. (Items 4, 5, 6, 7)

Applicant completed a security clearance application (SCA) in June 2022. She disclosed that the U.S. Government had never investigated her background or granted her security clearance eligibility or access in the past.¹ Section 26 - Financial Records section, asked if in the past seven years she had defaulted on a loan, bills turned over to a collection agency, accounts charged off, suspended or canceled for failing to pay as agreed, if she had been over 120 days delinquent on any type of debt not previously disclosed, or if she was currently 120 days delinquent on any debt. She responded "no." (Item 3)

In July 2022, Applicant was interviewed by a government investigator. She was confronted with the two delinquent accounts that are alleged in the SOR. She agreed that both accounts belonged to her and her husband and were loans for her husband's self-owned business. She said that she and her husband had coordinated with the creditors and had agreed upon a monthly payment plan that will likely be satisfied within the next five years. She said she overlooked disclosing these delinquent debts on her SCA. (Items 3, 7)

The government investigator questioned Applicant about a cash withdrawal of \$30,000 from her bank account in February 2021. She told the investigator that she and her husband made an \$80,000 profit on the sale of their house and withdrew the money to purchase a tractor. (Item 7)

¹ Applicant and the person who provided a character letter refer to her holding a top-secret security clearance and requesting reinstatement. Perhaps she held an interim clearance, but it appears she applied for her first security clearance in June 2022 and that is the subject of her current adjudication.

Applicant explained to the investigator that she experienced financial difficulties when her husband's business failed due to the pandemic. She said that she had made arrangements with the creditor and reaffirmed the accounts would be satisfied within five years. She said her financial situation had improved with her steady income and her spouse's employment. (Item 7)

In Applicant's answer to the SOR, which is dated September 1, 2023, she referred to a statement she made to "Defense Council and Security Agency Consolidated Adjudication Services (DCSA CAS)" in December 2023. She likely was referring to the Defense Counterintelligence and Security Agency Consolidated Adjudication Services, and I can only guess she is referring to a statement she made before her answer because December 2023 is subsequent to her answer. Her FORM does not include any statement other than ones made to the government investigator as noted above and her answer to the SOR.

In Applicant's answer she explained that her financial problems resulted from her husband's business and its financial obligations that were severely impacted due to the global pandemic. In February 2020, the business was not receiving any work due to the pandemic shut down, but the business was still responsible for the financial obligations. They attempted to save the business believing the pandemic shut down would be short-term. The business did not recover, and they relied on Applicant's income. She said they were responsible for "homes, vehicles, daycare", in addition to regular household expenses, such as utilities, food, and necessities. They retained professional advice on how to manage their finances and were told to pay the small debts one at a time. She referred to the December 2023 statement and said she told the Government her plan was to resolve the debts as soon as she could afford to do so. She said she made multiple calls to the creditor throughout 2023, but the two debts alleged in the SOR were repeatedly sold to different collectors.

Applicant further explained in her answer that she continued to pay other debts but was unable to "adequately settle with the creditors" in the SOR. She then stated that with a pay raise she paid additional debts and then settled the debts in SOR ¶¶ 1.a and 1.b. She said by not accepting a binding agreement with the creditor knowing she could not afford it shows she acted responsibly.

Applicant explained that in January 2023 she contacted the creditor and attempted to reconcile the debts but was told they were unaware of who held the debts, and she should contact them quarterly. She said she called the original creditor again in April and July 2023 and was told they found the debts. She then began settlement negotiations with the original creditor. (Item 2)

Applicant stated in her answer that as of August 2023 her accounts were no longer delinquent and that she is in a payment plan for the debt in SOR ¶ 1.a and settled and paid the debt in SOR ¶ 1.b. The document Applicant provided regarding the debt in SOR ¶ 1.b specifically states "This letter confirms the offer by [creditor] to settle the following [creditor] loan account according to the terms and conditions." (emphasis added) It notes

the current balance is \$13,511.23. The terms included that the creditor must receive a total of \$6,756 no later than August 23, 2023, sent to the address on the letterhead. The payment must not be returned as unpaid for any reason. Applicant did not provide any documentary proof that she paid the amount of the settlement, only that she received an offer to settle it. She did not provide a response to the FORM to show that she paid the settlement amount. (Item 2, Appendix B)

Applicant also provided a document from the collector for the debt in SOR ¶ 1.a. The document is dated August 25, 2023, and it states the total amount due is \$25,052.24. It further states that Applicant authorized a payment agreement on August 24, 2023, through a bank, credit card, or debit card. It provided information if she wished to cancel her payment. The payment plan listed 12 future payments of \$939.45 that would begin on September 1, 2023, and be completed on August 1, 2024. Applicant did not provide any documentary proof that she made any of the monthly payments. She did not provide a response to the FORM to show she made the monthly payments as agreed. (Item 2, Appendix A)

Applicant provided a character letter from a person with whom she works who has known her since January 2020. He described her as sincere, dedicated, honest, loyal to her duties and responsibilities and to her family and country. She is an integral part of the team and has grown in her leadership and communication skills. (Item 2, Appendix C)

I have not considered any derogatory information that was not alleged in the SOR for disqualifying purposes. I may consider it in the application of mitigating conditions and in my whole-person analysis.

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). 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(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." 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. Directive ¶ E3.1.15 states 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.

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

The security concern relating to the guideline 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. 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.

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 handing and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has two delinquent debts totaling approximately \$40,563. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. 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;
- (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.

Applicant experienced financial difficulties when her husband's business was impacted by the global pandemic. She told the government investigator that they sought financial counseling and were advised to pay their smaller debts. In July 2022, she said she had coordinated with the creditor and had an agreed monthly payment plan that would be satisfied in five years. Her answer differs in that she said she began contacting the creditor in 2023 but a monthly payment plan was not agreed upon until late August 2023 after receiving the SOR. There is evidence that Applicant's financial difficulties were

caused by the economic impact of the global pandemic. For the full application of AG ¶ 20(b) she must provide proof that she acted responsibly. She provided documents to show her intentions but did not provide documentation to show that she paid the settlement amount offered for the debt in SOR ¶ 1.b or that she is making monthly payments for the debt in SOR ¶ 1.a. AG ¶ 20(b) is only partially applicable.

In the Government's FORM, it clearly states:

Thus, absent additional documentary evidence, submitted in response to this FORM, that Applicant acted responsibly and in good-faith prior to the SOR to repay her financial obligations and that Applicant has established a meaningful track record of repayment, the evidence submitted supports the ultimate conclusion that it is **not** clearly consistent with the national interest to continue Applicant's eligibility for access to classified information under Directive 5220.6, Guideline F, paragraphs 19(a)(c).

Applicant had an opportunity to provide documentation to show she sent the creditor the settlement amount and is making monthly payments, but she did not respond to the FORM and provide these documents. I do not have evidence that she has made a good-faith effort to pay her creditor. AG ¶ 20(d) does not apply.

There is evidence of financial counseling, but without the required documentation, I cannot find that there are clear indications the problem is being resolved. AG ¶ 20(c) has some application. Her debts are ongoing and at this time unresolved. AG ¶ 20(a) does not apply. There is some evidence of mitigation, but it is insufficient to fully mitigate the security concern.

Applicant requested a determination on the record without a hearing, I had no opportunity to question her about her efforts to repay her delinquent debts, or about the profit she earned when her house was sold, or evaluate her credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). I was unable to ask her why she told the investigator in July 2022 that she had a payment plan with the creditor and then in her answer she said had established a payment plan in August 2023.

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

