



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



In the matter of:)	
)	
)	ISCR Case No. 22-02094
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

04/29/2024

Decision

MURPHY, Braden M., Administrative Judge:

Applicant incurred medical expenses she was not able to pay during periods of unemployment and without insurance. She also incurred other significant expenses she could not afford to pay. Some of Applicant’s debts were due to circumstances beyond her control but she also incurred expenses beyond her means. She has yet to put in place a responsible good-faith repayment plan towards any of her debts. She did not provide sufficient evidence to mitigate the resulting security concerns under Guideline F (financial considerations). Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on April 12, 2021, in connection with her employment in the defense industry. On November 7, 2022, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. The SOR was issued under Executive Order 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 Security Executive Agent Directive

(SEAD) 4, *National Security Adjudicative Guidelines* (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on December 16, 2022 (Answer) and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on January 22, 2024. On January 31, 2024, following consultation with the parties, DOHA issued a notice scheduling a video-teleconference hearing on February 29, 2024.

The hearing convened as scheduled. Department Counsel offered Government's Exhibits (GE) 1 through 9. Applicant testified and offered Applicant's Exhibit (AE) A. All exhibits were admitted without objection. At the end of the hearing, I held the record open to provide Applicant the opportunity to submit additional information.

On March 22, 2024, Applicant sent an e-mail (AE B), along with four letters of reference (combined as AE C). All of her post-hearing exhibits were admitted without objection. The record closed on April 2, 2024. DOHA received the hearing transcript (Tr.) on March 11, 2024.

Findings of Fact

In Applicant's answer to the SOR, she admitted the debts at SOR ¶¶ 1.a-1.o and 1.v and denied the debts at SOR ¶¶ 1.p-1.u, all with brief explanations. Her admissions are accepted as findings of fact. Additional findings follow.

Applicant is 31 years old. She has a high school diploma and some college credits. From 2016 until early 2018, she worked as a teacher's assistant at a local public school. From March 2018 to December 2018, she worked for a trucking company, but she lost her job when the company closed. She was then unemployed until August 2019. She was then briefly employed at another job but was terminated in November 2019 for excessive absences. She was then unemployed again for about eight months until starting her current job at a naval shipyard in September 2020. Applicant earns \$18.20 an hour which equates to about \$1,075 every two weeks, or \$2,150 a month. She explained that a clearance will allow her to travel for work and earn more money. GE 1; Tr. 21-24, 27-28)

After losing her job with the trucking company in late 2018, Applicant moved out of her apartment and moved in with her father. She was living with her father when she submitted her SCA, GE 1. She and her wife married in May 2020 and moved in together. She began having medical problems and required surgery, which caused her to miss work for three months, in 2022. She did not have sufficient insurance. She was in such financial distress that her father had to help her with expenses. He co-signed for a car so she could get to work. Six months before the hearing, Applicant's wife also left her and moved out, leaving her with bills to pay. (Tr. 21-26, 32, 34, 58-59, 64)

Applicant disclosed numerous debts on her SCA, including federal student loans, a car loan, and other consumer credit debts. (GE 1) She provided more information about

her debts and finances in responding to DOHA Interrogatories in December 2021 and August 2022. (GE 2, GE 3) The debts in the SOR are found on credit reports dated May 2021, May 2022, and May 2023. (GE 4-GE 6)

SOR ¶¶ 1.a (\$6,645) and 1.b (\$3,706) are federal student loans that Applicant took out to finance her education. They became delinquent and were assigned for collection in 2017. (GE 5, GE 6) Federal student loans were placed in forbearance status by the Department of Education (DOE) during the COVID pandemic and Applicant's accounts are no longer past due. (GE 4, GE 9) Applicant said she recently received a letter from DOE regarding a new "income contingent" payment schedule, but she has not received information on next steps. However, she acknowledged that she remains responsible for them. (Tr. 29-31) These debts are unresolved but they are also no longer past due.

SOR ¶ 1.c (\$2,153) is a debt placed for collection for past-due rent. (GE 4, GE 5) Applicant said she lived at this apartment before she was married. She lost her job in late 2018 when her employer, a trucking company, went out of business. The landlord issued an eviction notice. She moved in with her father. After this job loss, she was unemployed for eight months, until her current job, which she began in September 2020. She received a settlement offer of \$1,000 for the debt. She plans to address it with her tax refund. (Tr. 39-40, 46-48, 51; AE B)

SOR ¶¶ 1.d through 1.k, 1.m, and 1.p through 1.u are all past-due medical debts. The amounts owed total about \$17,224. (GE 4, GE 5, GE 6) Applicant testified that her medical debts have been "piling up." They are largely due to various chronic medical conditions that have required hospitalization, treatment, and surgery. She incurred most of these expenses when she did not have insurance or was unemployed. She currently has medical insurance through her job. As to the medical debts in the SOR that she denied, Applicant said that, after some research, she could not verify that the debts were hers. She has not yet entered into payment plans for any of the medical debts. (Tr. 26-27, 38, 48-52, 55-57, 61)

SOR ¶ 1.l (\$76) is an energy account placed for collection. This debt is unpaid, though Applicant plans on addressing it soon, with help from her father. (GE 4, GE 5, GE 6, GE 9; Tr. 33-34, 52)

SOR ¶ 1.n (\$42) is an account placed for collection. This debt is unpaid, though Applicant plans on addressing it soon, with help from her father. (GE 4, GE 5, GE 6; Tr. 33-34, 52)

SOR ¶ 1.o (\$10,200) is an account regarding a repossessed vehicle. (GE 4, GE 5) This is the first car that Applicant's father co-signed for, as noted above. The amount alleged is what is owed after the car was sold at auction. She set up a payment plan in December 2021 at \$120 a month starting in February 2022. She made one or two payments under this plan. The debt later went to a judgment against Applicant and she now owes about \$16,913. (GE 7) Applicant intends to pay this account with her father's help, since he co-signed the loan with her. (Tr. 35-37, 51-55) The debt is unresolved.

SOR ¶ 1.v (\$461) is a judgment filed against Applicant in 2018 by a money lender. Applicant took out this loan to help pay bills. It remains unpaid. (GE 8; Tr. 57-58)

In November 2023, Applicant purchased a \$27,000 auto, with a loan co-signed by her father. In February 2024, Applicant was in an accident that left her car at a total loss, valued at about \$17,600. (AE A) The account is listed as having a balance of about \$27,000 on a recent credit report, which would mean that she is responsible for the remaining balance of about \$10,000. (GE 9; Tr. 58-60)

Applicant now lives by herself. She pays \$700 in rent. She was out sick from work for three months in 2022 after surgery. She was paid short-term disability of about \$225 a week. (Tr. 41-45) Applicant has pursued credit counseling informally but did not have anything in place at the time of the hearing. After the hearing, she scheduled an appointment with a credit counselor that was to occur a few weeks later, in April 2024. (Tr. 60, 62-63; AE B)

After the hearing, Applicant submitted several reference letters from friends and colleagues, some of whom have known her for many years. They all attested to her responsibility, integrity, reliability, leadership and problem-solving skills, initiative kindness, and ability to work with others. She is also very involved in her community as a volunteer. They recommend her for clearance eligibility without reservation. (AE C)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative 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(a), the entire process is a conscientious scrutiny of several 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 access to classified information 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. 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 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.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for financial considerations is set out, in relevant part, 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. . . .

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. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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 incurred medical expenses due to surgery and medical treatments, much of which were not covered by insurance. She also has other debts and delinquencies, such as past-due rent, a repossession, and federal student loans. AG ¶¶ 19(a) and 19(c) apply.

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 incurred significant medical debts, due to medical conditions requiring treatment and surgery. In many cases, her expenses were not covered by insurance. She had to miss work, which led her fall behind on other payments. She also experienced job losses and an eviction. Also, her wife moved out about six months before her hearing, leaving her with more bills to pay. These circumstances were beyond her control. AG ¶ 20(b) therefore has some application.

However, Applicant also incurred expenses she could not afford. She incurred federal student loans, which became delinquent several years ago. They are no longer delinquent, but they remain unresolved. She turned to her father for help in purchasing a car, but she fell behind on payments and the car was repossessed. With his help, she also purchased a second car, in late 2023. That car was totaled in a February 2024 accident. While not alleged in the SOR, Applicant likely remains responsible for the \$10,000 of that loan that was not covered by insurance. Further, even though her financial problems are partially attributable to circumstances beyond her control, Applicant still has a requirement to address her debts responsibly through good-faith efforts to engage with her creditors and to initiate a track record of reasonable repayment plans. She has not done so, even as to the smallest debts in the SOR. She is pursuing credit counseling but it has not taken effect. Further, her debts and overall financial situation are not under control. Her debts are ongoing and continue to cast doubt over her current judgment, trustworthiness, and reliability. No mitigating conditions fully apply to mitigate financial conditions 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 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(a), 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 under all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Applicant is well-regarded at work and in her personal life. Nevertheless, she did not provide sufficient evidence to mitigate the security concern shown by her delinquent debts. This is not to say she will not be able to establish her eligibility at a future date. But she needs to establish a reasonable plan for addressing her debts and take some concrete steps putting that plan into place. Overall, the record evidence leaves me with questions and doubts as to her eligibility for a security clearance.

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.v:	Against Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge