



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



In the matter of:)
)
) ISCR Case No. 23-02347
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

05/31/2024

Decision

Dorsey, Benjamin R., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On December 27, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on January 3, 2024, and requested a decision based on the written record in lieu of a hearing.

The Government submitted its written case on February 8, 2024. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was advised that she had 30 days from the date of receipt to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on February 15, 2022, and she did not submit a response. The case was assigned to me on May 15, 2024. The Government exhibits included in the FORM, marked as Items 1-8, are admitted in evidence without objection.

Findings of Fact

Applicant is 42 years old. As of November 2021, she has had a job offer from a government contractor that is conditional upon her obtaining a security clearance. She is currently unemployed. She earned a graduate equivalency degree (GED) in 1997 and has attended college but has not earned an undergraduate degree. She has been married to her second husband since 2015, after a divorce from her first husband in 2013. She has five children, ages 16, 13, 9, 7, and 6. She also has four stepchildren, ages 24, 18, and two that are 15. (Items 2, 3)

In the SOR, the Government alleged Applicant's 16 delinquent debts totaling approximately \$62,000 (SOR ¶¶ 1.a through 1.p). These delinquent accounts consist of car loans (SOR ¶¶ 1.a and 1.p), accounts with wireless service providers (SOR ¶¶ 1.b, 1.c, and 1.e), a public utilities account (SOR ¶ 1.d), dental services (SOR ¶ 1.f), credit cards (SOR ¶¶ 1.g, 1.h, 1.i, and 1.n), an insurance premium (SOR ¶ 1.j), residential leases (SOR ¶¶ 1.k and 1.o), college tuition (SOR ¶ 1.l), and a gym membership (SOR ¶ 1.m). She admitted the SOR allegations with additional comments, except for the allegations in SOR ¶¶ 1.d and 1.f, which she denied. Her admissions are adopted as findings of fact. The SOR allegations are established through her admissions and the Government's 2021, 2023, and 2024 credit reports. (Items 1-7)

The SOR debts became delinquent beginning in about 2018 when Applicant's chronic health issues caused her to be unable to work regularly. She had periods of unemployment that were sometimes caused by health problems and the COVID-19 pandemic, but her most recent period of unemployment was caused by her quitting a job after a month of working there to accept the conditional offer from her prospective employer. Her husband also had health problems beginning in 2014, that kept him from working regularly until recently. In July 2023, she submitted a personal financial statement that reflected that she and her husband had about \$45 left over after paying their expenses each month, and they had about \$25 in their bank savings account. (Items 1-7)

In about December 2023, Applicant resolved the debt in SOR ¶ 1.d by making a payment that brought the account current. She claimed that the dental bill listed in SOR ¶ 1.f should have been fully covered by her medical insurance, but she provided no documentary evidence to support that assertion. She provided paperwork from an online case management system concerning the judgment in SOR ¶ 1.o, but this paperwork indicated the existence of a judgment and the filing of a garnishment to collect on the judgment. This paperwork did not provide evidence of the resolution of the judgment. (Item 1)

During her January 2022 and April 2022 security interviews, Applicant told the DOD investigator that, in 2021, she hired a debt consolidation company and a company that disputes debts to help her resolve most of the SOR delinquencies. She claimed that she will make payments of between \$500 and \$1,000 per month to the debt consolidation company. She acknowledged that she has yet to begin to make these payments and that she will likely have to wait until she begins work with her sponsoring

employer to begin her payments. Except for the debt in SOR ¶ 1.d, she has not provided sufficient evidence that her SOR debts are resolved or being resolved. She did not respond to the FORM, so more recent information about her finances is not available. (Items 2-4)

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 within DOD 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.

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 has numerous delinquent debts, many of which are several years old. The above disqualifying conditions are established.

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.

As Applicant has resolved the debt in SOR ¶ 1.d by bringing that account current through a payment, I find in her favor with respect to that allegation.

Applicant's other financial delinquencies are ongoing and therefore recent. She has not provided evidence that she has resolved more than one of her SOR debts, and she has not provided evidence that she will be able to do so in the foreseeable future. I do not find that her financial issues are unlikely to recur. AG ¶ 20(a) does not apply.

Applicant's delinquencies were largely caused by her and her husband's health issues, unemployment, and the COVID-19 pandemic. These circumstances were largely beyond her control. However, her current unemployment is the result of her quitting her job. She provided insufficient evidence to show this job loss was beyond her control. Regardless, for AG ¶ 20(b) to apply, she must also show that she acted responsibly under the circumstances. Hiring a debt consolidation company was a step in the right direction, but it has been almost three years and she has not made a payment to it to resolve her debts. She also has not sufficiently explained why she quit a job in late 2021 after working there for a month. Her given reason that she quit to accept a conditional offer for another job at which she cannot work, while she was already behind on some of her SOR debts, fails to show responsible behavior. AG ¶ 20(b) has minimal application. The lack of resolution of all but one of her SOR debts also means that AG ¶ 20(d) does not apply.

Applicant claimed that the debt for dental services in SOR ¶ 1.f should have been fully covered by her insurance and she therefore does not owe it. While her claim of insurance coverage is a reasonable basis to dispute that the debt is owed, she has not provided any documents to support her claim that insurance should have covered the debt. It is reasonable to expect Applicant to present documentation about the resolution of specific debts. See, e.g., ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 16, 2016). She also has not provided any evidence of actions she has taken to resolve her dispute. AG ¶ 20(e) does not apply.

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 Guideline F in my whole-person analysis. I am sympathetic to the health struggles that Applicant and her husband have endured. However, I must follow the Directive to determine security clearance eligibility, and I must resolve any doubts in favor of national security.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concern.

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.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e-1.p:	Against Applicant

Conclusion

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

Benjamin R. Dorsey
Administrative Judge