



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 23-00229
)
Applicant for Security Clearance)

Appearances

For Government: Cassie L. Ford, Esq., Department Counsel
For Applicant: *Pro se*

07/30/2024

Decision

MASON, Paul J., Administrative Judge:

Applicant’s evidence in mitigation does not satisfactorily rebut the continuing security concerns raised by the guideline for financial considerations. Eligibility for security clearance access is denied.

Statement of the Case

On June 7, 2017, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for a position with a defense contractor. On March 2, 2022, she submitted a second e-QIP. On February 14, 2018, September 27, 2022, and October 7, 2022, she provided personal subject interviews (PSIs) to an investigator from the Office of Personnel Management (OPM). The Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Facility (CAS) could not make the affirmative findings required to continue a security clearance, and issued to Applicant a Statement of Reasons (SOR), dated March 29, 2023, detailing security concerns raised by the guideline for 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.

Applicant provided an undated answer to the SOR. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 12, 2024, for a hearing on April 10, 2024. The hearing was held by Teams video teleconference as scheduled. I entered the Government's eight exhibits (GE) 1-8. GE 6, which was admitted into evidence over Applicant's objection, will be discussed in Rulings on Evidence below. On May 14, 2024, Applicant submitted ten post-hearing exhibits (AE) 1a through 1j, with a two-page table of contents (AE 1) identifying each attached exhibit. On May 28, 2024, Department Counsel indicated the Government had no objections to the exhibits being admitted into evidence. DOHA received the transcript (Tr.) on April 19, 2024. The record closed on May 28, 2024.

Rulings on Evidence

At pages 15 to 20 of the hearing transcript, rulings were made on the admissibility of the Government exhibits. In Applicant's first reply to whether GE 6 (February 14, 2018 PSI) should be admitted into evidence, she responded "I don't know how relevant the objection is, so no. No, I don't." Her response prompted me to ask whether the ambiguity of her response implied that she really did have an objection. She responded that she did have an objection. Department Counsel replied that the exhibit be entered into evidence as a business record. I overruled Applicant's objection but recommended that during her testimony she address the portions of the exhibit that she disagreed with. (Tr. 18-19) During the hearing, she did not address her purported disagreements with GE 6. Applicant had no objection to her September 27, 2022 PSI. (GE 7)

Findings of Fact

There are eight delinquent accounts alleged in the March 2023 SOR. Each listed creditor has a corresponding account number identifying the account. The origin of the account and account numbers are posted in an applicant's credit bureau report (CBR). The account numbers are a core set of numbers that at least partly correspond to the account numbers listed in the SOR and CBR, and appear throughout the life of the account. Additional numbers may sometimes be added to the core numbers or appear in place of the core numbers, particularly when the account is sold to a collection agency or firm, but the core numbers of the account always remain the same. (See GE 8 at 10, GE 8 at 4). All the listed accounts in the SOR are credit-card or loan accounts. The total amount of debt is \$108,350. The debts became delinquent between August 2011 and June 2022. Though Applicant denied all listed delinquent debts, the denial was based on her claimed inability to track the unauthorized use of her credit cards and other credit instruments that were taken during a theft of her credit cards and computer from her rental car in January 2020. See AE 1i. The Government CBRs confirm the debt delinquencies. (GE 3, 4, 5, 8)

Applicant is 46 years old. She has been living with her boyfriend since September 2013. She has no children. She received a bachelor's degree in May 2002. After obtaining a certification in December 2003, she got her master's degree in July 2004, and her PhD in May 2021. (GE 1 at 12-14; GE 2 at 12)

Since April 2017, Applicant has been employed as a senior cybersecurity engineer by a defense contractor. She has been employed concurrently as an information risk analyst since November 2020. She served twice as an adjunct college professor from January 2017 to January 2019, and January 2016 to December 2016. (GE 2 at 13-21; Tr. 31)

In her March 2022 security clearance application, Applicant identified several of the delinquent debts listed in the SOR. Those debts are ¶¶ 1.a, 1.b, 1.c 1.d, and 1.g. She noted a dispute with a department store (not alleged in the SOR) for a delinquent account from 2011, which she believed was no longer enforceable because it was removed from her credit report. (GE 1 at 40-41; GE 7 at 7-8) She noted a wage garnishment (not alleged in the SOR) stemming from a landlord-tenant debt that began in 2011 or 2012 which she believed was not her responsibility. Even though she considered the debt the result of an identification theft, she paid a judgment for the debt in March 2022 ,because she did not want to jeopardize her security clearance. (GE 1 at 42; GE 2 at 36-39) Applicant's unalleged conduct will not be considered an independent basis to deny or revoke a security clearance. However, it may be considered in assessing credibility, to decide the applicability of an adjudicative guideline, or to consider whether an applicant has established successful rehabilitation. I have evaluated Applicant's 2011 department store debt and garnishment for the aforementioned purposes. Regarding the delinquent debts she listed in her March 2022 e-QIP that also appear in the SOR, she noted that she was "currently on a budgeted pay schedule to pay balances and settle outstanding debts." (GE 2 at 38-39)

According to her October 2022 PSI, Applicant's credit cards and computer were stolen from her rental car in January 2020. (GE 7 at 2; Tr. 38-42; AE 1i). After noticing that unauthorized purchases were made on her credit-card accounts, she tried to freeze the accounts. Then, the COVID-19 (COVID) pandemic struck the nation in March 2020 and caused medical and economic paralysis. In April or May 2020, she was unable to obtain assistance from the credit-card companies to resolve her credit card issues. In June or July 2020, the creditors for SOR ¶¶ 1.a, 1.b, 1.c, 1.d. 1.e, and 1.h began investigations into her credit card issues. The investigations were delayed, then reopened later in the summer of 2020. (GE 7 at 2)

Applicant also indicated in her October 2022 PSI that her partner was laid off in early 2020 after the onset of COVID, but she noted in her testimony that his employment was actually reduced by COVID because he could not go outside to perform his work. (GE 7 at 2; Tr. 36) She believed that he then worked for a taxi company until the summer of 2020, when he resumed his original employment. Applicant received COVID monetary rental assistance of \$3,000 for one month. In the fall of 2020, she was falling behind on her credit-card payments, and in late 2020 or

early 2021, she stopped making regular payments on some listed accounts. Her credit card purchases rose because she was using her credit cards for everyday purchases and rent. She withdrew from her retirement savings to assist in paying the bills. From late 2020 to early 2021, she had her credit cards frozen and reissued. She indicated that she had been in contact with the creditors to negotiate settlements, but none of the creditors had responded to her with negotiated settlements through the mail, her preferred method of settling the credit-card accounts, because she refused to answer phone calls from phone numbers that she did not recognize. She was not making payments to any of the creditors at the time of the October 2022 PSI. Though given the opportunity to provide additional information to the OPM investigator about her disputes with the credit accounts and the CBR, Applicant did not provide any additional documentation during or after the October 2022 PSI. (GE 7 at 2, 9; Tr. 36-38)

SOR ¶ 1.a – This was a credit card-account opened in June 2018. The first major delinquency on the account was on February 20, 2021. As posted in the SOR, the charge-off amount was \$9,001. After receiving the requested documentation which showed what charges belonged to her, she settled the account in September 2023. She indicated that she would contact the creditor and obtain a payment history. She added that she made a one-time payment under a settlement agreement. Applicant subsequently testified that her explanatory responses to SOR ¶ 1.a actually applied to SOR ¶ 1.b, and her responses to SOR ¶ 1.b explained her position concerning SOR ¶ 1.a. (GE 5 at 6; GE 8 at 10; Tr. 46-49, 51-52)

Regarding SOR ¶ 1.a, Applicant filed a complaint with a federal consumer protection agency on April 14, 2024 (four days after the hearing), claiming that she filed a request for validation of the debt from the collection company in March 2024, and the agency did not respond to her within 30 days. She surmised that the account was fraudulently created during an identity theft investigation and should no longer be pursued by the original creditor. The SOR ¶ 1.a account was opened in June 2018, two years before the June 2020 fraud investigation. (See GE 8 at 10) On April 29, 2024, the collection agency who purchased the account, indicated that they terminated collection attempts and requested the credit bureaus remove the account from credit reports. (AE 1: AE 1a) There is no way to assign much weight to the last page of this exhibit (moved to this location from AE 1i) because there is insufficient indicia of identity, such as an account number or a delinquent account amount, to conclude that the exhibit represents additional evidence that the Applicant is not liable for the SOR ¶ 1.a account. (AE 1a) In addition, the collection agency's April 29, 2024 debt response does not indicate that she was not responsible for the account. Collection efforts were probably terminated for other business reasons that the collection agency did not discuss in their response. Nonetheless, the debt is resolved in Applicant's favor. I note that the debt increased in amount by approximately \$1,678 dollars between June 2018 and March 2024. (See GE 8 at 6; GE 8 at 10)

SOR ¶ 1.b – The full account number for this account is, and is posted in AG 3 at 4. This account was a line of credit that became delinquent in June 2020. Applicant

used the line for minor purchases and car rentals. The account and all the other listed accounts became delinquent because of the theft that occurred in January 2020. As noted under SOR ¶ 1.a, Applicant conceded that she had mixed up her documentation for SOR ¶¶ 1.a and 1.b. She indicated that she would organize the documentation for each account. (GE 8 at 10; Tr. 49-52)

Included in her post-hearing exhibits, there is a letter from a collection agency indicating that the SOR ¶ 1.b account was satisfied on September 7, 2023. The last four digits in that letter match the full account number that is posted in GE 3 at 4, GE 4 at 3, SOR ¶ 1.b, and AE 1b. The account is resolved.

SOR ¶ 1.c – This was a line of credit that Applicant used as a safeguard for car payments or making payments to reduce other accounts. Another purpose of the line of credit was to ensure that she had sufficient funds to pay her student loan. The account became delinquent in August 2020. She surmised that her line of credit information was removed from her computer during the robbery of her computer and other credit cards in January 2020. When Applicant tried to negotiate a settlement, the creditor cancelled the debt and sent her a federal form 1099-C, indicating that the debt was cancelled and she had to include the delinquent amount as a part of her taxable income. Applicant indicated that she had documentation of the 1099-C though none was provided at the hearing. (GE 8 at 9; Tr 53-54)

Included in her post-hearing documentation is a 1099-C form indicating that the SOR ¶ 1.c account was cancelled by the creditor, obligating her to include the delinquent amount as a part of her taxable income. Although she did not indicate in her testimony that she had reported the debt as federal taxable income, I assume that she did. (Tr. 53-54, 64; AE 1c) The account is resolved.

SOR ¶ 1.d – This flexible spending credit-card account was opened in December 2018 and became delinquent in September 2020. Applicant testified that because she had not received information from the creditor, she was unable to provide information regarding the account. In her post-hearing documentation, she indicated that she had not acted on the debt but intended to resolve the account in July or August 2024. (GE 4 at 2; GE 5 at 7; GE 8 at 4; Tr. 54; AE 1) This account is not resolved.

SOR ¶ 1.e – This credit-card account was opened in January 2014 and became delinquent in January 2024. On March 26, 2024, the account posted a zero balance. The second page of Applicant's documentation posts the last four digits of the complete account number. Applicant settled this account on January 11, 2024. (GE 3 at 4; GE 4 at 4; GE 8 at 8; AE 1d; Tr. 55-56) This account is resolved.

SOR ¶ 1.f – This computer store credit-card account was opened in May 2016, and became delinquent in June 2022. Applicant testified the account was in litigation with the next court date on May 14, 2024. She claimed that her post-hearing documentation indicated that the case would be settled on May 15, 2024, as set forth in

the journal entry. The journal entry, which shows a collection agency appearing as plaintiff, states that the case was scheduled for trial on May 15, 2024. (GE 8 at 8; Tr. 56-57; AE 1f) This account is not resolved.

SOR ¶ 1.g – This credit-card account was opened in April 2019. Applicant testified that she had not addressed the account. She confirmed that position in her post-hearing documentation as she was trying to live within her means and not stretch her budget. She estimated the account would be satisfied in July or August 2024. (GE 4 at 3; GE 8 at 10; (Tr. 57; AE 1) This account is not resolved.

SOR 1.h – This credit-card account was opened in August 2010, and became delinquent in August 2011. Applicant believes that she paid the debt and the debt was removed from her credit report. (GE 3 at 3; Tr. 30, 57-58) In her October 2022 PSI, she stated that she had this credit-card account a long time ago and it was cancelled. (GE 7 at 8) Based on her claim that the debt is no longer enforceable because it is time-barred and no longer appears in her credit report, Applicant appears to be relying on a statute of limitations to support her claim that she is no longer responsible for this delinquent debt. However, her reliance on the statute of limitations does not represent a good-faith effort to pay or settle delinquent debts. This debt has not been resolved. The total amount of unpaid delinquent debt in the SOR is \$53,259.

Applicant earns about \$9,000 a month from her two jobs. She has about \$27,800 in a combined checking and savings account. After she pays monthly expenses, including a student loan, she and her partner have a \$3,500 monthly remainder that is transferred to savings. Applicant is accumulating her monthly remainders for future settlements with the listed accounts that are still delinquent. She testified that she uses a budget, which she was willing to provide to the administrative judge. Applicant has made the following changes in managing her finances: (1) all her accounts have alerts to keep her apprised of the accounts' status; (2) she uses a budget; and she has periodic discussions with her financial advisor and tax consultant since 2021. However, she has never used financial counseling or debt consolidation services. (GE 7 at 8; Tr. 59-67) No budget was provided in her post-hearing exhibits.

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; and

- (c) a history of not meeting financial obligations.

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 credit reports (GE 3, 4, 5, and 8) establish that Applicant has a history of not addressing financial obligations between 2011 and June 2022. AG ¶¶ 19(a) and 19(c) apply.

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) receives limited application to Applicant's resolution of the SOR ¶¶ 1.a, 1.b, 1.c, and 1.e accounts totaling \$55,091. On the other hand, she still owes approximately \$53,259 to four listed creditors. These ongoing delinquent debts raise residual doubts about her judgment and trustworthiness. She has provided insufficient or no documentary evidence of steps she has taken to resolve these four accounts. Her financial profile of earnings versus expenses, and her monthly remainder, suggests that she has more money available to address her delinquent debts but has not done so.

Applicant receives limited mitigation under AG ¶ 20(b) based on the theft of her credit cards and computer from her rental car in January 2020, the health crisis caused by COVID in March 2020, resulting in delays in the investigation of her accounts by the credit-card creditors, coupled with the freezing of those accounts, and her partner's reduced income from early 2020 to the summer of 2020. However, Applicant has been continuously employed since 2017. She found a second job in November 2020 to increase her income. The record indicates that she could have begun to address her accounts by late 2021, clearly before September 2023. See SOR ¶¶ 1.b and 1.c. In sum, the mitigation due Applicant for unanticipated events outside her control is undercut by her delay in being more proactive in addressing the delinquent debts before September 2023.

The lack of documented evidence of financial counseling or a written budget reduces the applicability of the first and second prongs of AG ¶ 20(c). While Applicant has resolved four delinquent debts, four debts are still not being resolved or under control. AG ¶ 20(d) applies to Applicant's resolution of SOR ¶¶ 1.a, 1.b, 1.c, and 1.e, but

does not apply to SOR ¶¶ 1.d, 1.f, 1.g, and 1.h because she still owes \$53,259. General statements of an expectation to pay off delinquent accounts in the future do not replace documentary evidence of a pay off or a sustained track record of payments to resolve debts. See ISCR Case No. 17-04110 (App. Bd. Sep. 26, 2019)

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.

Applicant has been living with her partner since 2013. She has been employed by a defense contractor for the last seven years and has been employed at a second job since November 2020.

Applicant has not furnished sufficient evidence to establish that all her delinquent debts are being resolved or under control. Assuming that she is relying on a limitations statute to avoid responsibility for the SOR ¶ 1.h account, the debt is still significant for security clearance purposes. See ISCR Case No. 15-02326 at 3 (App. Bd. Oct. 14, 2016) Relying on the statute of limitations does not constitute a good-faith effort to eliminate financial debts. See ISCR Case No. 15-01208 at 3 (App. Bd. Aug. 26, 2016) In Guideline F cases, the DOHA Appeal Board has repeatedly held that, to establish a 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) From the record presented, Applicant has resolved four accounts, but still has four accounts to address. She has known about these delinquent accounts since late 2000 or early 2001, when she stopped making payments on some of her

credit-card accounts, while increasing her use of credit cards for daily purchases and rent. The theft in January 2020, the COVID pandemic in March 2020, resulting in a delay in having her credit instruments frozen, and causing her partner to have his work hours reduced, were events beyond her control, leading to her accrual of delinquent debt. However, she did not take documented action on the debt delinquencies until more than one and a half years later in September 2023. Though she may not have been in a financial condition to pay off or settle the debts in early 2021, she should have provided documented letters or emails to her creditors of negotiated settlement efforts, or advising them of her financial plight, particularly after she declared in March 2022 that she was in a budgeted pay schedule to pay balances or settle delinquent debts. After a full review of the entire record from an overall common-sense point of view, Applicant's ongoing financial problems have not been fully mitigated.

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.b, 1.c, 1.e: For Applicant

Subparagraphs 1.d, 1.f, 1.g, 1.h: 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