



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



In the matter of:)
)
) ISCR Case No. 23-01055
)
Applicant for Security Clearance)

Appearances

For Government: Daniel O’Reilly, Esq., Department Counsel
For Applicant: *Pro se*

07/15/2024

Decision

OLMOS, Bryan J., 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

Applicant submitted a security clearance application (SCA) on October 26, 2022. On June 6, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F. The DOD issued the SOR under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4 (SEAD 4), *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR on June 21, 2023, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The

case was assigned to me on April 15, 2024. On May 9, 2024, DOHA issued a notice scheduling the hearing for June 7, 2024.

I convened the hearing as scheduled. Department Counsel offered into evidence Government Exhibits (GX) 1-4. Applicant testified and offered into evidence Applicant Exhibits (AX) A-B. All exhibits were admitted without objection. I held the record open to allow both parties the opportunity to submit additional documents. Applicant submitted AX C-D which were admitted without objection. DOHA received the hearing transcript (Tr.) on June 17, 2024. The record closed on June 21, 2024.

Findings of Fact

In her Answer to the SOR, Applicant admitted SOR allegations ¶¶ 1.a, 1.b, 1.d, 1.f and 1.g. She denied SOR allegations 1.c and 1.e and provided explanations. Her admissions are incorporated into my findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 32 years old. She divorced her first husband in May 2017 and married her current husband in October 2020. She has one teenage child and three teenage stepchildren. She completed an associate degree in 2012 and has been with her current employer as a long-haul truck driver since November 2023. She has not previously held a security clearance. (GX 1-2; Tr. 22-25)

In 2016, Applicant made a career change from retail employment, obtained a Class B commercial driver's license (CDL) and began working seasonally for a city government in State A. She hoped that the work would manifest into full-time employment. However, that never occurred and in March 2019, she moved to State B to be closer to family. She continued to struggle to find steady employment in State B, particularly while taking on primary childcare responsibilities for her own child and her soon-to-be husband's three children. (GX 1-2; Tr. 37-40)

Applicant's husband is a truck driver and holds a Class A CDL. By 2020, Applicant was assisting her husband with the paperwork necessary for his work. In June 2020, they started their own transportation company and leased two trucks. Applicant cashed out a small pension from her city government work and used personal funds to help start the business. Her husband drove one truck and they planned to hire another driver to run the second truck. (GX 1-2; Tr. 40-48)

For the first year, the business ran well. Applicant "did everything but drive" and took online training on how to manage the financial books. (Tr. 42) At its strongest, she estimated that the business earned about \$10,000 to \$15,000 per month after expenses. However, the business was never able to establish steady clients and there were significant fluctuations in income. (GX 2; Tr. 26-32, 45-48)

Entering 2022, Applicant and her husband began experiencing several business setbacks. These included increased slowdowns related to the pandemic, mechanical issues with the trucks and difficulty in keeping a second driver. Applicant began taking out personal loans and lines of credit to maintain the business. Ultimately, the business ceased operations in the summer of 2022. (GX 1-2; Tr. 28-35)

In June 2022, Applicant was hired as a trainee with a transportation company under the premise that she would earn her Class A CDL and then work for the company. However, after she obtained her CDL, the company was unable to provide her a consistently working truck and she left that employment in September 2022. In October 2022, she started with another transportation company, but the work remained inconsistent and at best, she was able to bring home \$2,000 a month. She left that company in October 2023. (GX 1-2; Tr. 35-40, 50-54)

In November 2023, Applicant began working with her husband for her current, sponsoring employer. She is receiving full-time work and described being on the road with her husband for about ten weeks at a time. She estimated that after expenses, they are currently earning about \$4,300 a month. (GX 2; Tr. 34-35, 65-70)

Applicant stated since the failure of their business, she has taken several steps to reduce her expenses and try to resolve her ongoing financial delinquencies. In order to be on the road for weeks at a time, she sent all four children from her home to live with other family members, although she is still providing \$500 to \$800 a month in financial support. She and her husband cancelled their apartment lease and tried living in the truck. However, they were unable to maintain that lifestyle and recently began renting another apartment. (GX 2; Tr. 65 -84)

In August 2022, Applicant hired a law firm to consolidate her debt. She claimed that, over the last two years, she met with them four to five times and issued several payments. However, she could not specify the services provided by the firm. She provided two letters from the firm, dated February 2023 and June 2024, that were identical in content and stated the firm had been retained by Applicant to “assist in resolving her financial situation” and assist with “debt resolution.” (AX A-B) Neither letter detailed any actions that the firm had taken for Applicant. (GX 2; AX A-C; Tr. 35-37, 58-64)

In her October 2022 SCA, Applicant disclosed she was experiencing financial hardship. She provided details of her delinquent accounts during her February 2023 interview with a DOD investigator. The evidence concerning the specific SOR allegations is summarized below. (GX 1-2)

SOR ¶ 1.a (\$28,477) is a vehicle loan that was charged off. Applicant admitted this debt and stated that, in August 2021, she took a loan of about \$86,000 to purchase a larger vehicle to transport her family. Following missed payments, it was involuntarily repossessed in November 2022. She expressed regret in purchasing the vehicle, but believed that her finances were better at the time. She stated the law firm was negotiating

with the creditor to resolve this debt but did not provide any documentation specific to this debt. The debt was listed as charged off in her November 2022 and June 2024 credit reports. This debt is unresolved. (GX 2-4; Tr. 67-68; 94-95)

SOR ¶¶ 1.b (\$1,299), 1.d (\$808) and 1.g (\$234) are accounts in collection with the same creditor. Applicant admitted these debts and stated these were payday loans she took to keep the trucking business running. Applicant believed she made some payments toward these loans but did not provide any details or supporting documentation. These accounts were listed in her November 2022 credit report, but are no longer listed in her June 2024 credit report. These debts are unresolved. (GX 2-4; Tr. 68-72)

SOR ¶ 1.c (\$990) is a delinquent credit card account that was charged off. Applicant denied this debt, but later recognized the creditor and stated she used this credit card for business expenses. She claimed she spoke with the creditor and made a payment prior to the hearing. However, she did not provide any supporting documentation. The debt is listed as charged off in her November 2022 and June 2024 credit reports. This debt is unresolved. (GX 2-4; Tr. 12, 71-73)

SOR ¶ 1.e (\$624) is a collection account related to Applicant's membership in an athletic club. She denied this debt and claimed she previously cancelled the membership and paid the balance. She did not provide any documentation concerning her correspondence with the creditor or payment toward the debt. The debt was listed as a collection in her November 2022 credit report and has since been listed as charged off in her June 2024 credit report. This debt is unresolved. (GX 2-4; Tr. 13, 74-75)

SOR ¶ 1.f (\$317) is a collection account originating from a utility company. Applicant admitted this debt and stated it was a final bill she received following the termination of a lease. She stated she was negotiating with the collection agency to pay the debt. Following the hearing, she provided documentation reflecting the debt was paid in June 2024. This debt is resolved. (GX 2-4; AX D; Tr. 75-76)

In addition to the delinquent accounts alleged in the SOR, Applicant's June 2024 credit report showed several new delinquent debts totaling about \$17,800. Applicant recognized these debts and claimed they were either directly related to her failed trucking business or the financial difficulties that followed. (GX 4; Tr. 78-89)

Applicant testified that, since she started with her current employer, her income has been more consistent and her financial situation is improving. She described keeping a budget, particularly to manage expenses related to the children, and had some remaining funds at the end of every month. She also testified that she would seek clarification from the law firm as to what services they were providing to resolve her delinquent accounts, which she did not submit in the record. (Tr. 81-98)

Policies

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

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 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(a), 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 not drawn 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 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.

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. . . .

The financial security concern is broader than the possibility that an individual might knowingly compromise classified information 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. ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012)

The adjudicative guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable:

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

Applicant's admissions and the evidence reflect that she has incurred multiple delinquent accounts over that last several years. The above disqualifying conditions are established.

Once delinquent debt is established, an applicant has the burden of presenting evidence to refute, explain, extenuate, or mitigate the security concerns arising from those debts. ISCR 20-03146 at 3 (App. Bd. June 6, 2022). The fact that a debt no longer appears on a credit report does not establish any meaningful, independent evidence as to the disposition of the debt. ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 15, 2015).

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;

(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;

(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;

Applicant began experiencing financial difficulties in 2021 and 2022 as she struggled to maintain the family trucking business. These were unusual circumstances and largely beyond her control. Following the business failure, she tried lowering her expenditures, looking for new employment and hiring a law firm to address her delinquent accounts.

However, in the two years that followed the business failure, Applicant has only established that she paid and resolved one of the SOR alleged debts, ¶ 1.f. Although she hired a law firm to conduct "debt resolution" for her, she was unable to provide any details of what services they were providing on her behalf. There is no indication that the firm is contesting any debts, negotiating the resolution of any debts or establishing any payment plans. She did not receive any financial counseling from them.

Further, Applicant's June 2024 credit report reflects that she continues to experience new delinquent accounts. She claimed these additional accounts were largely a continuation of the financial difficulties that followed the failure of her business. While these debts were not alleged in the SOR, they undercut assertions of mitigation as her financial issues remain recent and ongoing. She has not established that her financial problems are being resolved or are under control. None of the mitigating conditions are applicable to SOR ¶¶ 1.a through 1.d and 1.g.

With regard to SOR ¶ 1.e, Applicant stated that she continues to dispute this debt as it relates to a fee that occurred after she cancelled a membership. Her claim may be valid, but she has not provided documentation to substantiate the basis of the dispute or provided sufficient evidence of actions taken to resolve the issue in order for mitigation to be applicable under AG ¶ 20(e).

Applicant has resolved the debt associated with SOR ¶ 1.f. That allegation is mitigated under AG ¶ 20(d).

Applicant continues to experience financial difficulties. Although her current employment has provided consistent work and increased income, she has not yet established a track record of debt resolution to mitigate the ongoing financial 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 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.

Leading up to and through the business failure in 2022, Applicant experienced an extended period of financial difficulties. Although she took some steps to resolve her delinquent accounts, she continues to experience new delinquent accounts and has not yet established a sufficient track record of responsible action to mitigate the financial considerations security concerns.

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.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant

Conclusion

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

Bryan J. Olmos
Administrative Judge