



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



In the matter of:)
)
) ISCR Case No. 23-02593
)
Applicant for Security Clearance)

Appearances

For Government: Troy Nussbaum, Esq., Department Counsel
For Applicant: John Cannon, Esq.

07/18/2024

Decision

LOUGHRAN, Edward W., 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 11, 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 19, 2024, and requested a hearing before an administrative judge. The case was assigned to me on May 10, 2024.

The hearing was convened as scheduled on June 27, 2024. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant Exhibit (AE) A, which was admitted without objection.

Findings of Fact

Applicant is a 37-year-old prospective employee of a defense contractor. She will be hired if she receives a security clearance. She served on active duty in the U.S. military from 2005 until she was honorably discharged in 2007. She deployed to Iraq

during her service. She has post-traumatic stress disorder (PTSD) and a 100% disability rating from the Department of Veterans Affairs for which she receives about \$4,100 a month in disability pay. She joined the Reserve after active duty and served until 2009. She earned a bachelor's degree in 2020. and she is in graduate school pursuing a master's degree. She is married but separated after her first two marriages ended in divorce. She has one child. (Tr. at 8, 16-18, 22-25, 52; GE 1, 2)

Applicant married her husband, a U.S. military servicemember (E-4), in 2016. They had a child early in the marriage. She and her husband had both been homeschooled. They decided that they would have two more children, and she would be a stay-at-home mother and homeschool the children. Her VA disability rating was about 70% at the time. They could not pay both of their accumulated debts with that plan. They decided to pay his debts and not pay hers, because he needed a security clearance, but she would not be working, and good credit did not matter to her. (Tr. at 14-16, 34, 53; Applicant's response to SOR; GE 1, 2)

The SOR alleges five delinquent debts totaling about \$31,300. Applicant admitted owing all the debts in her response to the SOR, but she stated that the debts either fell off her credit report because of age or would shortly fall off the report.

Three charged-off debts of \$6,963 (SOR ¶ 1.b); \$6,174 (SOR ¶ 1.d); and \$4,028 (SOR ¶ 1.e) are owed to the same credit union. Applicant stated that she thought one of the debts was for a home equity loan that she remained liable for after her house was short sold in about 2017. The other two credit union debts are from credit cards or loans. (Tr. at 41-43; Applicant's response to SOR; GE 2-4)

The \$11,515 charged-off debt alleged in SOR ¶ 1.c was used to buy reptiles that Applicant planned to breed and sell for a profit. The venture was unsuccessful, and she sold the reptiles for about \$9,000, which was less than she paid for them. She did not use any of the proceeds to pay the debt because at that time, she was still working and paying her debts, and she planned to pay the debt later. She never did. The \$2,638 charged-off debt alleged in SOR ¶ 1.a is a credit card debt. (Tr. at 40, 43-46 Applicant's response to SOR; GE 2-4)

Applicant has not paid any of the SOR debts and does not intend to. She stated that some of the collection companies agreed to settle the debts for as low as 10%, but the debts are past the statute of limitations, and paying or settling any of the debts would restart the seven-year reporting period and harm her credit score. The April 2024 credit report does not list any of the SOR debts. (Tr. at 17-18, 54-57; Applicant's response to SOR; GE 2-4; AE A)

Applicant and her husband separated in about 2023. She anticipates a divorce. He is still on active duty in the military but does not pay child support. She stated that he pays the marital debt that is in his name. She stated that he accused her of being a "gold-digger" who married him for his money (E-4 at the time), and that she "baby-trapped" him even though their child was planned by both of them. She stated that she did not actively pursue him for child support because she did not want to appear to be

the materialistic person he claimed she was. She plans to retain her attorney for the purpose of seeking child support for her child. (Tr. at 16-20, 24-31; Applicant's response to SOR)

Applicant has not incurred any new delinquent debts in about seven years. She has not received financial counseling. She and her husband purchased a new vehicle in about June 2022, financed through a loan of about \$53,600. She did not like the vehicle and in less than a year, she traded it in for a larger vehicle. She stated that she pays about \$800 per month on the auto loan. She stated that if she obtains her security clearance and is hired, she will be able to pay her bills and maintain financial stability. (Tr. at 35-40, 46-48, 51-54; GE 3, 4; AE A)

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 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 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;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has a history of delinquent debts and financial problems. She and her husband chose to have children and for her to be a stay-at-home mother and homeschool the children. Paying both of their accumulated debts would be difficult under that plan, so they decided to pay his debts and not pay hers, because he needed a security clearance, but she would not be working, and good credit did not matter to her. Additionally, as the debts neared the dates when they would fall off her credit report, she decided not to make any efforts to pay them because to do so could have

restarted the seven-year reporting period and hurt her credit score. AG ¶¶ 19(a), 19(b), and 19(c) are applicable.

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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's decision to be a stay-at-home mother is understandable, but it was not beyond her control. At a minimum, she was receiving her VA disability pay. Their decision to sacrifice her finances to help him maintain a security clearance worked for her until they separated, she decided to reenter the workforce, and she realized that a security clearance would also be beneficial to her.

Applicant has not paid any of the SOR debts, and she does not intend to, as she waited for them to age off her credit report. 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. *See, e.g., ADP Case No. 14-02206 at 3 (App. Bd. Oct. 15, 2015) and ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015).* Little mitigation is provided in security clearance cases when an applicant stands on a legal defense such as the statute of limitations. *See e.g., ISCR Case No. 14-01231 at 3 (App. Bd. Feb. 10, 2015).*

The SOR debts are at least seven years old, and Applicant has not accrued any additional debts. Had she been more concerned with paying her legal obligations than maintaining a good credit score, this decision could have gone in her favor.

Applicant did not act responsibly under the circumstances, and she did not make a good-faith effort to pay her debts. Her financial issues are recent. They continue to cast doubt on her current reliability, trustworthiness, and good judgment. The above

mitigating conditions, individually or collectively, are insufficient to eliminate concerns about her finances.

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 have incorporated my comments under Guideline F in my whole-person analysis. I also considered Applicant's honorable military service, her deployment to Iraq, and that she is a 100% disabled veteran. However, 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."

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 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

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.

Edward W. Loughran
Administrative Judge