



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



In the matter of:)	
)	
)	ISCR Case No. 23-01613
)	
Applicant for Security Clearance)	

Appearances

For Government: Sakeena Farhath, Esq., Department Counsel
For Applicant: *Pro se*

08/22/2024

Decision

BENSON, Pamela C., Administrative Judge:

Applicant failed to demonstrate that she has acted responsibly to address and resolve her financial delinquencies. She did not provide sufficient evidence to mitigate the financial considerations security concerns. National security eligibility for access to classified information is denied.

History of the Case

Applicant submitted a security clearance application (SCA) on November 11, 2022. (Item 3) On December 1, 2023, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudication Services (CAS) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations). (Item 1) The DCSA CAS acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines implemented by the DOD on June 8, 2017. On December 20, 2023, Applicant provided an answer to the SOR, and requested a decision based upon the administrative record (Answer). (Item 2)

A copy of the file of relevant material (FORM), dated February 20, 2024, was provided to Applicant. Department Counsel attached as evidence to the FORM Items 1 through 8. Applicant received the FORM on March 14, 2024, and she was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. She timely responded to the FORM and provided six exhibits labeled as Applicant Exhibit (AE) A through F. On June 24, 2024, the case was assigned to me. Neither party objected to the proffered exhibits, and I admitted into evidence the Government's FORM Items 1 through 8, and AE A through F.

Findings of Fact

Applicant is 65 years old. She has been married and divorced on four occasions. She has two adult children. She received certification in electronics technology in 1983. In May 2002, she earned an associate degree. Applicant was hired by a contractor in approximately September 2022 and assigned to work for a large DOD contractor. In May 2023, the large DOD contractor offered her employment. Her job title is acceptance technician, and she requires a DOD security clearance to fulfill specific employment duties. (Item 3)

Applicant listed some adverse credit on her November 2022 SCA, as required. She listed, "I began working on 09/20/2022. I am working on paying all of my (credit) cards down." In April 2023, Applicant responded to an interrogatory. She included a personal financial statement, which showed her monthly net income was \$5,512. After paying her monthly expenses and debts totaling \$3,346, she was left with a monthly net remainder of \$2,166. The interrogatory listed 15 delinquent debts and asked Applicant if she had paid, was in the process of paying, or made arrangements to pay the listed past-due accounts. She responded that she had not taken any action to resolve any of the 15 listed delinquent debts. (Item 3, Item 4)

In May 2023, Applicant submitted correspondence to explain how she got into financial difficulties and to provide details about her financial obligations. In 2018, she left employment to retire. Her retirement income was just enough to live on, but then she suffered a medical issue in November 2020. This unexpected incident caused her to fall behind with her creditors. In April of 2022, she applied to start receiving her Social Security benefits. Those benefits were just enough to pay for her home, utilities, and groceries. She did not have extra funds to pay her creditors. In June 2022, she started working for a food delivery service, but that income was insignificant. She returned to working full-time for a contractor in September 2022, and she was assigned to work for a large DOD contractor. The DOD contractor eventually offered her full-time employment in May 2023. She also provided a chart of the 15 delinquent debts listed in her interrogatory. Applicant listed the debts in order starting with the smallest amount (\$95) to the largest amount (\$8,668). She stated that it was her intention to start paying the smallest debt before she would try to resolve the next debt on her chart. (Item 2; Item 7)

The December 2023 SOR alleges that Applicant is responsible for 19 accounts placed into collections, charged off, or delinquent in the total amount of \$41,014. In her Answer, Applicant admitted all 19 allegations (SOR ¶¶ 1.a through 1.s). She provided

paperwork from a debt resolution company that she joined after receipt of the SOR. She stated that 15 of the 19 SOR debts were included in the debt relief program. She is working independently to resolve the remaining four SOR debts not included in the debt relief program. (SOR ¶¶ 1.i, 1.q, 1.r, and 1.s) The debt relief paperwork estimated that Applicant would make bi-weekly payments of about \$212 for the duration of the program. There was no evidence that Applicant made any payments to the debt relief program. (Item 2; Item 4; Item 5; Item 6; Item 7)

After Applicant had received the FORM, she provided documentation that showed she initially sought debt relief in 2015. The consumer debt relief company she hired then disputed her adverse financial accounts to have them removed from her credit report. The delinquent debts that remained were then to be paid based on a bi-weekly fee schedule. There were no certified receipts in the paperwork to show that Applicant had in fact made any payments to this company, which was a different company from the debt relief company she is currently using. Applicant also provided schedules of the delinquent debts with estimated payments and settlements, but she did not provide documentation, correspondence from creditors, or receipts of actual payments and/or settlements. (AE B)

Applicant also provided documentation from another debt relief company dating back to 2018. This paperwork showed that her debts, totaling \$21,276, were to be resolved by negotiated settlement amounts totaling \$14,226, which was a debt resolution of about 33%. Applicant did not provide documentation, correspondence from creditors, or receipts of actual payments and/or settlements. (AE F)

The SOR accounts are supported by Applicant's admissions and credit reports in the record. (Item 2; Item 4; Item 5; Item 6; Item 7)

SOR ¶ 1.a alleges a charged-off account in the amount of \$8,668. Applicant failed to provide sufficient evidence to show that she paid, is currently paying, or that she has settled this delinquent account. This debt remains unresolved.

SOR ¶ 1.b alleges a delinquent account that was placed for collection in the amount of \$4,933. There is insufficient evidence in the file to show that she paid, is currently paying, or that she has settled this delinquent account. This debt remains unresolved.

SOR ¶ 1.c alleges a charged-off account in the amount of \$4,513. There is insufficient evidence in the file to show that she paid, is currently paying, or that she has settled this delinquent account. This debt remains unresolved.

SOR ¶ 1.d alleges a delinquent account that was placed for collection in the amount of \$2,933. There is insufficient evidence in the file to show that she paid, is currently paying, or that she has settled this delinquent account. This debt remains unresolved.

SOR ¶ 1.e alleges a charged-off account in the amount of \$1,816. There is insufficient evidence in the file to show that she paid, is currently paying, or that she has settled this delinquent account. This debt remains unresolved.

SOR ¶ 1.f alleges a charged-off account in the amount of \$1,713. There is insufficient evidence in the file to show that she paid, is currently paying, or that she has settled this delinquent account. This debt remains unresolved.

SOR ¶ 1.g alleges a delinquent account that was placed for collection in the amount of \$1,546. There is insufficient evidence in the file to show that she paid, is currently paying, or that she has settled this delinquent account. This debt remains unresolved.

SOR ¶ 1.h alleges a delinquent account that was placed for collection in the amount of \$1,184. There is insufficient evidence in the file to show that she paid, is currently paying, or that she has settled this delinquent account. This debt remains unresolved.

SOR ¶ 1.i alleges a charged-off account in the amount of \$1,093. There is insufficient evidence in the file to show that she paid, is currently paying, or that she has settled this delinquent account. This debt remains unresolved.

SOR ¶ 1.j alleges a delinquent account that was placed for collection in the amount of \$887. There is insufficient evidence in the file to show that she paid, is currently paying, or that she has settled this delinquent account. This debt remains unresolved.

SOR ¶ 1.k alleges a delinquent account that was placed for collection in the amount of \$784. There is insufficient evidence in the file to show that she paid, is currently paying, or that she has settled this delinquent account. This debt remains unresolved.

SOR ¶ 1.l alleges a charged-off account in the amount of \$738. There is insufficient evidence in the file to show that she paid, is currently paying, or that she has settled this delinquent account. This debt remains unresolved.

SOR ¶ 1.m alleges a delinquent account that was placed for collection in the amount of \$657. There is insufficient evidence in the file to show that she paid, is currently paying, or that she has settled this delinquent account. This debt remains unresolved.

SOR ¶ 1.n alleges a delinquent account that was placed for collection in the amount of \$626. There is insufficient evidence in the file to show that she paid, is currently paying, or that she has settled this delinquent account. This debt remains unresolved.

SOR ¶ 1.o alleges a charged-off account in the amount of \$604. There is insufficient evidence in the file to show that she paid, is currently paying, or that she has settled this delinquent account. This debt remains unresolved.

SOR ¶ 1.p alleges a delinquent account that was placed for collection in the amount of \$175. There is insufficient evidence in the file to show that she paid, is currently paying, or that she has settled this delinquent account. This debt remains unresolved.

SOR ¶ 1.q alleges a delinquent account in the amount of \$7,339, the deficiency balance due on a vehicle that was repossessed. There is insufficient evidence in the file to show that she paid, is currently paying, or that she has settled this delinquent account. This debt remains unresolved.

SOR ¶ 1.r alleges an account past due in the amount of \$447, with a total balance of \$1,691. There is insufficient evidence in the file to show that she paid, is currently paying, or that she has settled this delinquent account. This debt remains unresolved.

SOR ¶ 1.s alleges an account past due in the amount of \$358, with a total balance of \$1,350. There is insufficient evidence in the file to show that she paid, is currently paying, or that she has settled this delinquent account. This debt remains unresolved.

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 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 concern under Guideline F (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

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

The record evidence of Applicant's delinquent debts and his admissions establish the following disqualifying conditions under AG ¶ 19:

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

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

- (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 or provides evidence or actions to resolve the issue.

Applicant bears the burden of production and persuasion in mitigation. An applicant is not held to a standard of perfection in his or her debt-resolution efforts or required to be debt-free. "Rather, all that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan." ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017). See, e.g., ISCR Case No. 13-00987 at 3, n. 5 (App. Bd. Aug. 14, 2014).

Given the facts, it is clear that Applicant promised to start paying down her credit cards in her November 2022 SCA. In April 2023, she responded to a financial interrogatory and stated that she had not paid, was not in the process of paying, and had not made arrangements to pay any of the 15 delinquent debts listed therein. She also provided a personal financial statement that showed she had sufficient income, over \$2,000 at the end of the month, that she did not use to pay her financial obligations. It was not until after she received the SOR in December 2023 that she enrolled into a consumer debt relief program.

It is well-established that the timing of debt payments is a relevant consideration in evaluating whether an applicant has acted in a reasonable and responsible manner in addressing financial problems. For example, to receive full credit under Mitigating Condition 20(d), an applicant must initiate and adhere "to a good faith effort to repay overdue creditors or otherwise resolve debts." Directive, Encl. 2, App. A ¶20(d). The Appeal Board has consistently held that a "good-faith effort" generally requires that an applicant has established a meaningful financial track record of payments, to include evidence of actual debt reduction. See, e.g., ISCR Case 05-01920 at 5 (App. Bd. Mar. 1,

2007). Promises of future repayment are not a substitute for a history of payment. See, e.g., ISCR Case No. 14-04565 at 2 (App. Bd. Sep. 18, 2015).

None of the mitigating conditions can be applied here. Applicant attributed her financial delinquencies to loss of income, insufficient income, and an unexpected medical setback. Notwithstanding the events that affected her finances, Applicant must demonstrate that she acted responsibly under the circumstances. She did not provide sufficient information to mitigate the financial concerns in this case. She did not submit any certified receipts or correspondence from the creditors to validate her claim that she had paid, was currently paying, or had settled any of the 19 delinquent accounts alleged in the SOR. She has a long history of financial problems followed by the engagement of different consumer debt relief companies. Overall, I find that Applicant has not demonstrated that she acted responsibly to address her financial delinquencies, or that her finances are currently under control. Applicant did not provide sufficient evidence to mitigate the financial considerations security concern.

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.

Access to classified and protected information requires faithful adherence to the rules and regulations governing such activity. A person who fails to address security concerns, even after having been placed on notice that his or her access or security clearance is in jeopardy, may lack the willingness to follow rules and regulations when his or her personal interests are at stake.

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 conclude Applicant has not met her burden of proof and persuasion, and she failed to mitigate the financial considerations security concerns or establish her eligibility for a security clearance.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraphs 1.a – 1.s: 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 security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Pamela C. Benson
DOHA Administrative Judge