



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



In the matter of:)	
)	
)	ISCR Case No. 23-01308
)	
Applicant for Security Clearance)	

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: *Pro se*

08/27/2024

Decision

RICCIARDELLO, Carol G., 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

On September 6, 2023, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on November 18, 2023, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s file of relevant material (FORM), and Applicant received it on April 5, 2024. She was afforded an opportunity to file objections and submit material in refutation,

extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 2 through 10. (Item 1 is the SOR) Applicant did not provide a response to the FORM; did not object to the Government's evidence; and did not submit documents. The Government evidence is admitted. The case was assigned to me on August 5, 2024.

Findings of Fact

Applicant admits the SOR allegations in ¶¶ 1.c, 1.f, 1.g, 1.h and 1.i. She denies the SOR allegations in ¶¶ 1.a, 1.b, 1.d, and 1.e. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 54 years old. She earned an associate's degree 1996, a bachelor's degree in 1999, and a master's degree in 2010. She never married. She has two grown children. In her October 2022 security clearance application (SCA) she reported her employment history. She disclosed that from 1989 to 2001 and 2011 to 2020 she worked as a contractor for the federal government. From 2005 to the present, she also has been self-employed with one business, and from 2015 to the present she has been also self-employed with a second business. She reported being employed from November 2011 to the present by a non-federal company. She explained that she has worked on various government contracts for the federal government over the past 20 years and before then she was a full-time federal employee. She is currently employed as an independent contractor for a company sponsoring her for security clearance. (Item 3)

The SOR alleges that in October 2012, Applicant filed Chapter 7 bankruptcy and had her debts discharged in February 2013 (SOR ¶ 1.i); that in July 2017 she filed Chapter 13 bankruptcy, and it was dismissed in May 2018 for failure to make payment plans (SOR ¶ 1.h); and that in May 2019, she filed Chapter 13 bankruptcy and it was dismissed in September 2020 for failure to make payment plans (SOR ¶ 1.g). The SOR also alleges delinquent debts totaling approximately \$22,528 for various consumer debts (SOR ¶¶ 1.a through 1.f). The debts are corroborated by Applicant's admissions to the SOR, statements made to a government investigator, bankruptcy documents, and credit reports from September 2023, December 2022, and January 2022. (Items 2 through 10)

Applicant attributed her 2012 Chapter 7 bankruptcy filing and subsequent discharge to a bad economy in 2008 that reduced her contract work and being a single mother. She fell behind on her bills and filed for bankruptcy. In her March 2023 statement to a government investigator, she explained she filed for Chapter 7 bankruptcy due to lack of income after she went back to college to obtain a master's degree. (Items 2, 4)

Applicant filed Chapter 13 bankruptcy in July 2017. She explained in her SOR answer that she filed bankruptcy due to a decrease in her monthly workload and her monthly expenses increased. Specifically, she said the interest rate on her home mortgage increased, and she began to struggle financially. She filed bankruptcy to save her home. She explained she made the \$214 monthly payments but there was a miscommunication with her attorney and the bankruptcy was dismissed in May 2018. She

then filed Chapter 13 bankruptcy in May 2019 because she was still unable to pay her debts. She was to make \$360 monthly payments. She told the government investigator she made these payments until the COVID pandemic decreased her work, and she could not afford them. The bankruptcy was dismissed in September 2020 for failure to make the required monthly payments. Applicant told the investigator that in February 2023, she reached out to a credit repair law firm that would go over her credit report and dispute debts she did not owe. She did not provide evidence that she hired the firm and is working towards resolving any disputed debts. (Items 2, 4)

Applicant disclosed on her October 2022 SCA the 2012 Chapter 7 bankruptcy and she wrote that all of her debts were discharged except her student loans. She disclosed her 2017 Chapter 13 bankruptcy and checked the box "yes" regarding if her debts were discharged. She stated, "I believe things are still in the process of being finalized. I went to court on 1/26/2018." In response to the question, "In the last (7) seven years, have you filed any additional petitions under any chapter of the bankruptcy code," she responded "no." She did not report her May 2019 Chapter 13 bankruptcy or that her 2017 bankruptcy was not discharged but rather dismissed. She did not report any delinquent debts under Section 26. (Item 3)

Applicant reported to the government investigator that the debt in SOR ¶ 1.a (\$827) was with a cell phone company. She told the investigator she disputed this debt because she lost her cell phone and had to get a replacement, and she did not feel she should have to pay for the lost phone and the replacement phone. She did not want to pay the debt, but if she had to, it would be her lowest priority. In her SOR answer, she said she disputed the debt because she believed she was overcharged for a service she no longer received. She said when she lost her cell phone, she replaced it with an old phone she owned and that she did not have a charge with the company for that phone. She had plans to resolve the problem with the company but then the company was sold. She said she was still disputing the debt. In her SOR answer she said she was disputing the debt, and she had contracted with a credit repair law firm to handle it. She provided no supporting documentation. The debt is not resolved. (Items 2, 4)

Applicant denied owing the debt in SOR ¶ 1.b (\$3,579). She told the government investigator she thought the balance owed on his account was too high because it exceeded her credit limit. In her SOR answer, she said she was disputing the debt and she had contracted with a credit repair law firm to handle it, but she had to pause her agreement with the firm until she started working again. She provided no supporting documentation. The debt is not resolved. (Items 2, 4)

Applicant admitted she owed the debt to a credit card account in SOR ¶ 1.c (\$1,489). She told the government investigator that she was current on her payments for this account until she filed bankruptcy and included it in her plan. She said she would pay the debt when she is able but was unable at that time. In her SOR answer, she said that she had not made arrangements to resolve the debt. She said the credit repair law firm was to handle it but she was unable to pay them because her work had slowed. The debt is unresolved. (Items 2, 4)

Applicant denied the debt in SOR ¶ 1.d (\$10,312). She told the government investigator that she disputed this debt because she believes the balance is too high, and she does not think she should have to pay it. She said the debt is reported as charged off, and she has no plans on paying it. In her SOR answer, she said she agrees the account belongs to her and it was for a vehicle she purchased in 2012. It was included in her 2017 Chapter 13 bankruptcy, and she had questions about how some of her payments were applied. She said it is no longer on her credit report and the balance owed was incorrect. She did not provide documentary evidence to show her efforts to resolve the debt or dispute it. It is unresolved. (Items 2, 4)

Applicant denied the debt in SOR ¶ 1.e (\$5,712) for a collection account. She told the government investigator that she is disputing this account and did not believe she owed the balance because her credit limit was less than the balance. In her SOR answer she said she did not know why she had three accounts with the same creditor and was unfamiliar with this account. She said it was removed from her credit report. She did not provide any documentary evidence to support her claims. It is unresolved. (Items 2, 4)

Applicant admitted the debt in SOR ¶ 1.f (\$609) was delinquent. She told the government investigator that she was responsible for his debt and it was at the top of her priorities to pay it when she is able. In her SOR answer, she said her ex-boyfriend was supposed to pay it and did not. The account was in her name, and she understood she was responsible to pay it. She said she needed time to get her finances back in order now that her work has increased. She did not provide evidence of her attempt to resolve this debt. It is unresolved. (Items 2, 4)

In her SOR answer, Applicant stated that she “pays her bills for the most part on time or at least they get paid when the funds are available to pay the bills.” She further stated, “I just had a few financial obligations that became overwhelming for me at a time or two.” She said she could not be blackmailed or coerced or placed under duress due to her financial hardships. She said, “I plan to pay the accounts that are outstanding such as [SOR ¶¶ 1.a, 1.c, and 1.f].” (Item 2)

Any derogatory information that was not alleged in the SOR will not be considered for disqualifying purposes. It may be considered when applying mitigating conditions and in a whole-person analysis.

Policies

When evaluating an applicant’s suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). 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(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." 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 avoided drawing 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. Directive ¶ E3.1.15 states 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 as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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 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. 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.

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

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

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

Applicant had her delinquent debts discharged in Chapter 7 bankruptcy in 2013. She filed Chapter 13 bankruptcy in July 2017 and again in May 2019. Both were dismissed for failing to make the required monthly payments. Applicant has numerous delinquent debts that she has not paid. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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 has a long history of financial problems. After having her debts discharged in bankruptcy in 2013, she again accumulated delinquent debts. She filed Chapter 13 bankruptcy twice, both were dismissed for failing to make the required monthly payments. Applicant did not provide evidence that she has resolved any of the alleged debts in the SOR. Her debts are recent and ongoing. There is no evidence she has taken financial counseling beyond likely the mandatory counseling when filing for bankruptcy. She disputes certain debts but failed to provide any documented proof to substantiate the basis of her dispute or attempts to resolve them. She has not provided evidence of a good-faith effort to resolve any of the debts. AG ¶¶ 20(a), 20(c), 20(d), and 20(e) do not apply.

Applicant indicated her financial problems were due to the 2008 economic downturn, underemployment, lack of contract work which decreased her income, and the COVID pandemic. In Applicant's 2023 interview with a government investigator, she said that she went back to school in 2010 and did not earn any income. This was a choice and not beyond her control. Because of her lack of income, she filed Chapter 7 bankruptcy in 2012 and her debts were discharged in 2013. Her underemployment and reduced work due to the pandemic were beyond her control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. There is scant evidence that she has made efforts to resolve her delinquent debts. Because Applicant requested a determination on the record without a hearing, I had no opportunity to question her about her past and current financial status or evaluate her credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). AG ¶ 20(b) has minimal application.

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 the 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.

Applicant is responsible for presenting evidence in mitigation. She failed to meet her burden of persuasion. If there is any doubt concerning personnel being considered for national security eligibility, I am required to resolve that doubt in favor of the national security. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns raised under Guideline F, financial considerations.

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.i:	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 Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge