



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



In the matter of:)
)
) ISCR Case No. 23-02443
)
Applicant for Security Clearance)

Appearances

For Government: Jenny Bayer, Esq., Department Counsel
For Applicant: *Pro se*

08/19/2024

Decision

DORSEY, Benjamin R., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On November 3, 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 November 13, 2023 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on May 14, 2024.

After some delays in scheduling, including Applicant being out of the country, the hearing was convened as scheduled on August 1, 2024. At the hearing, I admitted Government Exhibits (GE) 1 through 5 and Applicant Exhibits (AE) A through E without objection. At Applicant's request, I left the record open until August 15, 2024, for the parties to submit post-hearing documents. Applicant timely submitted AE F though T, which I admitted in evidence without objection. I received a transcript (Tr.) of the hearing on August 8, 2024.

Findings of Fact

Applicant is a 47-year-old employee of a government contractor for whom she has worked since May 2024. She was employed by another government contractor from May 2022 until May 2024. That contractor is still sponsoring her for a clearance and will rehire her to work part time if she successfully gains security clearance eligibility. She was married from 2001 until a divorce in 2007. She has no children. She earned a bachelor's degree in 1998. (Tr. 24, 61-63; GE 1, 2; AE G)

In the SOR, the Government alleged that Applicant has seven delinquent debts totaling approximately \$40,000 (SOR ¶¶ 1.a through 1.g). These delinquencies consist of: credit cards (SOR ¶ 1.a for \$22,043, SOR ¶ 1.c for \$3,539, SOR ¶ 1.d for \$3,285, SOR ¶ 1.e for \$2,976, and SOR ¶ 1.f for \$927); a personal line of credit (SOR ¶ 1.b for \$7,179); and a medical debt (SOR ¶ 1.g for \$621). She became delinquent on these debts between 2021 and 2022. She admitted the SOR allegations with additional comments except for the allegations in SOR ¶ 1.g, which she denied because she did not recognize the debt. Her admissions are adopted as findings of fact. The SOR allegations are established through her admissions and the Government's credit reports. (SOR; Answer; GE 1-5)

Applicant has experienced hardships over the past several years that have contributed to her inability to pay her financial delinquencies. These hardships began with medical issues in 2013 and 2015, when she had problems with her reproductive system, her kidney, and her gastrointestinal system. In June 2017, she had a large tumor surgically removed. These health issues interfered with her ability to work, and the 2017 surgery resulted in about \$25,000 of medical bills that were not covered by her health insurance. She paid about \$8,000 of the medical bills and her parents paid the rest sometime in 2020. In March 2020, because of the COVID-19 pandemic, she was furloughed from her job with a government contractor, rehired eight weeks later, and then laid off just two weeks after her rehire. In February 2022, she broke her shoulder and again incurred significant medical expenses that were not covered by her medical insurance. (Tr. 17-19, 21-26, 63-65; GE 1, 2; AE A, B, Q-T)

Although she worked several jobs to make ends meet, until about June 2022, Applicant claimed she was unable to address her delinquent debts and used credit cards to pay for her daily expenses. In June 2022, the government contractor that is sponsoring her for a security clearance hired her, and she felt financially secure enough to begin addressing her delinquent SOR debts. After a friend whom she trusted recommended him, she hired an individual who claimed to help others get out of debt (Advisor), to help her address her delinquent debts. She signed a year-long contract obligating her to pay the Advisor about \$1,000 total from August 2022 through May 2023. The Advisor also continued to charge her after their contract ended. Unfortunately, she was mistaken about the type of services the Advisor provided. She thought he would try to negotiate payment plans for her debts, but he was solely focused on cleaning up her credit report, partially by disputing debts and asking for debt validation. (Tr. 18-19, 24-26, 55-56, 60-61; GE 1, 2; AE C, G)

In late 2022, the creditor for the debt in SOR ¶ 1.a filed a lawsuit against Applicant to collect that delinquent debt. She hired an attorney to defend her in that lawsuit. Her understanding is that the attorney was to represent her in the lawsuit and negotiate a settlement so that she could make monthly payments to resolve the debt. The retainer agreement between Applicant and the attorney references that Applicant pay a flat fee of \$2,200 for defense of the lawsuit. She made this payment in monthly installments of \$250. The retainer agreement informed her that the litigation could take several years and references the possibility of settling the account, but it provides a preferred goal of having the lawsuit dismissed. In May 2024, the lawsuit was dismissed without prejudice. Applicant was not aware that the lawsuit had been dismissed without prejudice until she received another e-mail from the attorney that same month informing Applicant that the creditor had refiled its lawsuit. When the creditor refiled its lawsuit, she made another payment of \$250 to have this attorney represent her again. As of the date of the hearing, other than knowing that the creditor had refiled the lawsuit, she did not know what the status of settlement negotiations is, nor did she authorize a settlement amount. She has not made any payments on this debt after it became delinquent. After the hearing, the attorney provided an update that there were no new developments in the lawsuit since the creditor refiled it. (Tr. 19-20, 30-31, 34-38; Answer; GE 2-5; AE D, F)

In September 2023, Applicant entered into an agreement with a debt consolidation company (DCC) to settle her consumer debts. She enrolled the debts in SOR ¶¶ 1.b, 1.c, 1.d, and 1.e. Pursuant to their agreement, the DCC negotiates settlement agreements with enrolled creditors. Applicant pays a monthly fee of \$260 into a DCC account that it uses to make payments to creditors with whom it has made a settlement agreement. She has not missed a monthly payment to the DCC after she entered into the agreement with it and has paid a total of \$2,860 as of the hearing date. The DCC has a settlement agreement in place with the creditor in SOR ¶¶ 1.c and 1.e, but no payments have been disbursed pursuant to those agreements. The DCC has not entered into any settlement agreements with any other enrolled creditors, nor has it disbursed any payments. In September 2023, the DCC estimated that Applicant would resolve the enrolled debts through its plan in 48 months and acknowledged that the negotiation process with enrolled creditors could not begin until she met a threshold deposit amount in her DCC account. (Tr. 19-20, 29-30, 38-40, 45, 56, 66-67; Answer; GE 2-5; AE E, N, O, P)

Applicant planned on settling the debt in SOR ¶ 1.f herself with no assistance from the DCC, so she did not enroll that debt. In about September 2023, the creditor sent her a settlement offer to satisfy the debt for \$500, and she planned on settling it for that amount, but she forgot to do so. She ultimately settled the debt after the hearing for \$324. (Tr. 46-47; Answer; GE 2-5; AE E, F)

Applicant does not know the source of the medical debt in SOR ¶ 1.g that originated in July 2019, but she acknowledged that she may owe it. She has not contacted the creditor to attempt to resolve or dispute the debt. She has looked through her mail to attempt to ascertain the source of the debt. (Tr. 51- 53; Answer; GE 2-5)

Applicant has two additional delinquent medical debts listed in the Government's July 2024 credit report for \$506 and \$1,786, respectively. These debts are not listed in

the SOR, and I will not use them for purposes of disqualification. However, I will use them for evidence of mitigation and in my whole-person analysis. She did not know about these two delinquencies until after she received this credit report from the Government about two weeks prior to the hearing. She did not do anything to resolve those debts until after the hearing, when she made monthly payment arrangements on them. She thinks these debts may be from the medical treatment she received for her broken shoulder in 2022. (Tr. 53-55, 64; GE 5; AE B, K, M)

In May 2024, Applicant was hired by her current employer at a significantly higher salary than her other jobs. She is making \$95,000, annually. Beginning in about 2018, she has also worked at another job as a consultant for a company that sells wine. She earned between \$500 and \$800 per month from this job, but only began making that much over the past couple of years. She also started her own pet transport business from which she derives some income. She testified that she earns about \$6,500 per month after taxes. She claimed that she saves about \$2,800 per month, but these savings only started after she received her first paycheck in the middle of May 2024. She used some of her savings to pay off her car, a 2016 small sport utility vehicle that she bought in 2017. She had a bank savings account with a balance of about \$1,200. She claimed that this is the highest balance she has had in this account in years. She had a checking account with about \$3,000 in it. She is now saving her money to pay more money to the DCC and to pay the debt in SOR ¶ 1.a. She has received some financial counseling from the DCC, but there is no evidence of the substance or scope of that counseling. (Tr. 26-33, 60-63; Answer; GE 2)

In 2019, September 2022, and January 2024, Applicant took vacations out of the country. These vacations were largely, if not entirely, paid by either her parents or her employer as a reward for her work performance. (Tr. 58-60; GE 1, 2; AE H, I, L)

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

Applicant had seven delinquent debts totaling about \$40,000. Many of these debts have been delinquent for about two to three years. The above-referenced disqualifying conditions are established.

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.

A meaningful track record of debt reform includes evidence that debts have been paid off or resolved. An applicant is not required to show that every debt in the SOR has been paid, and there is no requirement that a plan provide for payments on all outstanding debts simultaneously. ISCR Case No. 14-00504 at 2 (App. Bd. Aug. 4, 2014). Rather, an applicant is required to demonstrate that he or she has "established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan." There is also no requirement that the first debts paid in furtherance of a reasonable debt plan are the SOR debts. ISCR Case No. 07-06482 at 2 (App. Bd. May 21, 2008). Guideline F mitigation does not require the payment of all the SOR debts. Instead, it requires that Applicant remove trustworthiness and reliability concerns raised by those debts. ISCR Case No. 14-00504 at 3.

Applicant's financial delinquencies resulted from conditions, such as health problems and a loss of employment, that were largely beyond her control. In August 2022, when she found a job that paid her a sufficient income, and before she began the clearance process, Applicant hired the Advisor to resolve her financial delinquencies. She hired an attorney to resolve the largest of her debts. While these two steps were either

unsuccessful or not yet successful, they were reasonable and responsible efforts. She has worked several jobs to try to make ends meet. After she was able to disengage from the Advisor, who drained her settlement funds, she hired the DCC and has paid \$2,860 into an account for it to use to settle her enrolled debts. The DCC has established a settlement agreement on some of those debts.

Applicant has consistently made the monthly payments the DCC requires to create her settlement account. She rehired the same attorney to represent her against the refiled lawsuit and to settle that account. Between 2017 and 2020, she paid off about \$25,000 in medical debt from her 2017 surgery. She made the strategic decision to pay off a non-delinquent, non-SOR debt (her vehicle) to free up more money to devote to her delinquencies. She has received some financial counseling from the DCC, although the substance of that credit counseling is unclear. After the hearing, she satisfied the SOR debt that was not enrolled in the DCC by paying less than the full balance. She made a payment arrangement on the two additional delinquent debts that were reflected in her July 2024 credit report. AG ¶¶ 20(b), 20(c), and 20(d) are applicable.

While some of Applicant's resolution efforts had shortcomings, her track record of debt reform does not have to be perfect. Her debt resolution efforts have been sluggish, but she provided sufficient evidence that she consistently engaged in reasonable and responsible efforts to resolve her debts and is slowly but surely doing so. She has taken significant action to implement her debt resolution plan. She has also shown that she has sufficient financial resources to finish her resolution efforts.

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 have considered the difficult events that negatively impacted Applicant's finances over the years, and I have analyzed her resolution efforts, which were responsible and reasonable. Overall, the record evidence leaves me without questions and doubts about Applicant's eligibility and

suitability for a security clearance. I conclude Applicant mitigated 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:	FOR APPLICANT
Subparagraphs 1.a-1.g:	For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Benjamin R. Dorsey
Administrative Judge