



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



In the matter of:)
)
) ISCR Case No. 23-01187
)
Applicant for Security Clearance)

Appearances

For Government: John C. Lynch, Esq., Department Counsel
For Applicant: *Pro Se*

05/22/2024

Decision

MASON, Paul J., Administrative Judge

Applicant's evidence in mitigation is insufficient to overcome the disqualifying evidence under the guideline for financial considerations. Eligibility for security clearance access is denied.

Statement of the Case

On September 21, 2022, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to apply for a security clearance required for a position with a defense contractor. On January 6, 2023, and January 13, 2023, she provided a personal subject interview (PSI) to an investigator from the Office of Personnel Management (OPM). The Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudication Services (CAS) could not make the affirmative findings required to continue a security clearance, and issued to Applicant a Statement of Reasons (SOR), dated July 25, 2023, citing security concerns raised by financial considerations (Guideline F). The action was taken under Executive Order (E.O.) 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 (AG) effective in the DOD on June 8, 2017.

Applicant provided her answer to the SOR on August 31, 2023. She admitted all allegations. She decided to have her case decided on the written record in lieu of a hearing. On January 23, 2024, the Government sent a copy of its File of Relevant Material (FORM), the Government's evidence in support of the allegations in the SOR, to Applicant. The FORM contains 11 items of evidence in support of the SOR. Applicant received the FORM on February 5, 2024. Her response to the FORM was due by March 6, 2024. The Defense Office of Hearings and Appeals (DOHA) received no response. I was assigned the case on May 3, 2024.

Rulings on Procedure

On page two of the FORM, Department Counsel advised Applicant that she could either file objections, furnish explanations, or submit additional material to clarify the information contained in the January 6 and January 13, 2023 PSIs (Item 10) or some other evidence included in the FORM. Also, she was advised that she could object to both PSIs because they lacked authentication by a Government witness, and the exhibit(s) would not be admitted into evidence. As no response was received by DOHA, the PSI and the other ten items in the FORM are entered into the record in their entirety.

On January 19, 2024, Department Counsel sought to amend the SOR in two locations. Those amendments, or corrections as described by Department Counsel, are dated January 19, 2024, and, marked on the original SOR. (Item 1) First, the correct past-due amount charged off by the SOR ¶ 1.1 creditor is \$5,916, not the original amount listed, which was the high credit amount. Second, Department Counsel moved to withdraw allegations SOR ¶¶ 1.w and 1.y because Applicant paid both debts before the SOR was issued. See Item 10 at 9 and 11. Pursuant to E3.1.17. of DOD Directive 5220.6, the Government's amendment requests are hereby granted.

Findings of Fact

The first two allegations in the SOR (SOR ¶¶ 1.a and 1.b) indicate that Applicant did not file Federal and state tax returns for tax years 2020 and 2021. On August 21, 2023, she provided documentation showing that she filed the missing Federal and state returns following the issuance of the SOR. The next 20 allegations are commercial and medical debts. The commercial and medical debts became delinquent between March 2017 and October 2022. There are four Government credit bureau reports (CBRs, Items 4 through 7) dated July 2022, October 2022, July 2023, and January 2024, confirming that Applicant owes the listed debts which total \$26,833.

Applicant is 36 years old and has been divorced since December 2021. She has two daughters from this marriage. Their ages are 14 and 12. She received her high school diploma in June 2005, and attended college for a brief period. From May 2018 to the present, she has been working as a refueler for a defense contractor. She has also worked a second job at an amusement park since April 2016. From May 2011 to April 2016, she was employed as a sales coordinator. She was self-employed for a period and also was a cashier. From March 2008 to June 2009, she was unemployed. (Item 3 at 9-27)

SOR ¶¶ 1.a, 1.b - Applicant filed the missing tax returns on August 21, 2023. (Item 2 at 6-8) The two allegations are resolved in Applicant's favor even though the returns were not filed until after the SOR was issued.

SOR ¶ 1.c -This is an account for renters insurance that Applicant forgot to pay. She stated in her January 2023 PSI that she intended to pay the debt as soon as she could. No documentation was presented to support her claims. The account has not been resolved.

SOR ¶¶ 1.d, 1.q, 1.r, 1.s, 1.t, 1.u, and 1.v -These are delinquent medical bills that Applicant forgot about after her marital separation in 2019. These accounts became delinquent between March 2018 and September 2021. (Item 4 at 5-6; Item 5 at 3) She planned to meet with her former husband and have him pay the children's medical debts as required under the divorce decree. (Item 10 at 5) These accounts have not been resolved.

SOR ¶ 1.e -In August 2020, Applicant purchased a motorcycle. She started to become late on payments in September 2021. She ultimately stopped making payments because she considered paying the rent and utilities were more important. (Item 10 at 2-3)

SOR ¶¶ 1.f, 1.g, and 1.h - Applicant opened these credit-card accounts between 2017 and 2019. The CBRs show that the accounts became delinquent in 2021. See Item 6 at 4. The collection agency sent an account statement to Applicant on August 9, 2023, showing that in July and August 2023, she made five payments totaling \$136 to the collection agency holding all three delinquent debts, but still owes a balance of \$2,113. (Item 2 at 9) The accounts have not been resolved.

SOR ¶ 1.i - Applicant opened a line of credit with this bank in 2019. Her last payment was in March 2021. (Item 4 at 10; Item 10 at 5: The account is unresolved.

SOR ¶ 1.j -This account became delinquent In October 2020. Applicant could not identify this account, but recalled that she had two accounts belonging to this creditor in her life. She stated in her January 2023 PSI that she did not see the account in her credit report, and would investigate. (Item 4 at 4; Item 10 at 7) The account is not paid.

SOR 1.k - This is a credit-card account that Applicant opened in 2019. The account became delinquent in October 2022. (Item 5 at 4) This account is unresolved.

SOR ¶ 1.l - This car loan account was opened in May 2019. By the end of 2020, Applicant was having trouble making the \$500 monthly payments and eventually stopped. The account became delinquent in August 2022. When she did not respond to notices by the dealer of what her intentions were in handling the debt, the dealer repossessed the car. (Item 5 at 2; Item 10 at 2) The debt is still outstanding.

SOR ¶ 1.m - Applicant opened a personal loan in August 2020. The account became delinquent in December 2021. (Item 5 at 9; Item 6 at 7) The account has not been paid or settled.

SOR ¶ 1. n - This is a credit-card account that Applicant opened in 2020 when she moved into her current residence. She could not recall when she made her last payment on the account. The account, which became delinquent in January 2022, has not been paid.

SOR ¶ 1.o - This is a credit-card account that Applicant opened in September 2017. Her last payment on the account was in March 2021. (Item 10 at 3) The account has not been resolved.

SOR ¶ 1.p - This is a credit-card account that Applicant opened in December 2019. The account became delinquent in April 2021. (Item 5 at 8; Item 10 at 3) The debt has not been paid.

Applicant conceded that her knowledge -of financial responsibility is not what it should be. As an example, she believed that once an account was transferred for collection, it was removed from her credit report, and she no longer was responsible for the account. (Item 10 at 3) She admitted receiving notices in the mail from the listed creditors and collection agencies. She planned to pay the smaller delinquent bills within the next two months of her January 2023 PSI. She intended to ask her employer for financial help because she realized that she was not living within her means. She also wanted to contact a credit counselor and attend financial counseling to help her organize and monitor her finances. She recognized a need for a certified public accountant (CPA) to keep up-to-date on her Federal and state taxes. (Item 10 at 5, 8) she provided no independent evidence to substantiate her stated intentions.

After her separation in 2019 and divorce in 2021, Applicant was less concerned about her financial obligations, partially because of low self-esteem. In the summer of 2021, Applicant began paying more attention to her mental health.

In January 2023, Applicant made a \$65 payment to a collection agency of a pet hospital, bringing her account balance to zero. (SOR ¶ 1.w, Item 10 at 11) On the same day, she made a \$76 payment to a creditor that was mentioned in her January 2023 PSI. (SOR ¶ 1.x, Item 10 at 9) These two debts were withdrawn from the SOR because Applicant paid the debts before the issuance of the SOR.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines are not strict rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with common sense and the general factors of 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(d) 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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

Analysis

Guideline F, Financial Considerations

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.

AG ¶ 19. Conditions that could raise a security concern and may be disqualifying include:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay Federal, state, or local income tax as required.

A person's handling of their financial affairs is a probative barometer of how they will handle security rules and regulations. If they do not manage their financial obligations in a responsible manner, they may adopt the same attitude toward security rules and regulations they choose not to follow. See 11-05365 at 3 (App. Bd. May 1, 2012) Adverse evidence from credit reports can usually meet the Government's obligation of proving delinquent debts. See, e.g., ISCR Case No. 14-02403 at 3 (App. Bd. Aug. 18, 2015); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) Applicant admitted that she did not file her Federal and state tax returns for tax years 2020 and 2021. The Government credit reports establish that she began accumulating delinquent debt in March 2017. By October 2022, she had incurred 20 delinquent debts totaling \$26,833. She opened new accounts when she had delinquent accounts. AG ¶¶ 19(a) and 19(c) apply. Applicant's failure to file Federal and state tax returns for tax years 2020 and 2021 (SOR ¶¶ 1.a and 1.b) is disqualifying conduct within AG ¶ 19(f).

AG ¶ 20. Conditions that could mitigate security concerns include:

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶ 20 (a) does not apply since Applicant still owes about \$28,056, after subtracting \$277 in payments that she made to two listed creditors and one unlisted creditor. The large amount of her remaining debt continues to cast doubt on her reliability, trustworthiness, and judgment.

Applicant receives no mitigation under the first prong of AG ¶ 20(b), "conditions that resulted in the financial problems were largely beyond the person's control," because she has been continuously employed since at least 2011. She receives some mitigation under the second prong of the condition "by acting responsibly under the circumstances," based on two of the four payments she made to the SOR ¶¶ 1.f, 1.g, and 1.h collection agency, and two payments to the SOR 1.w and 1.x creditors before she received the SOR. However, she made no additional payments to any of the listed creditors after August 2023. Accordingly, the mitigation she receives under the second prong of the condition is insufficient to find for her under AG ¶ 20(b).

The lack of financial counseling or evidence of a written budget renders the first and second prongs of AG ¶ 20(c) inapplicable. Although Applicant has a part-time job in addition to her full-time employment, she has not explained what she has done with the extra money she receives from the job. Declaring an intention to seek counseling with a financial counseling association, or requesting help from her employer or a CPA, carries no weight in mitigation unless followed by actions directed at those objectives. Together with her payments to two collection agencies before receiving the SOR, she also receives some mitigation under AG ¶ 20(g) for filing her 2020 and 2021 tax returns in August 2023, even though the action was taken after she received the SOR.

The applicability of AG ¶ 20(d) is limited to Applicant's payments to three collection agencies in January, July, and August 2023.

I have examined the evidence under the specific guidelines in the context of the nine general factors of the whole-person concept 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 access to classified information must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant has not furnished sufficient evidence to establish that her delinquent debts are being resolved or under control. In Guideline F cases, the DOHA Appeal Board has repeatedly held that, to establish her case in mitigation, an applicant must present a "meaningful track record" of debt repayments that result in debt reduction. *See, e.g.*, ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007) While an applicant is not required to show that every debt listed in the SOR is paid, the applicant must show that she has a plan for debt resolution and has taken significant action (actual payment of debts) to implement the plan. *See, e.g.*, ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006) From the record presented, Applicant's action in paying three creditors and filing Federal and state tax returns for 2020 and 2021 does not overcome the disqualifying evidence under the guideline for 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.c-1.v:	Against Applicant
Subparagraphs 1.a and 1b:	For Applicant
Subparagraphs 1.w, 1.x:	Withdrawn

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge