



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



In the matter of:)	
)	
)	ISCR Case No. 24-00521
)	
Applicant for Security Clearance)	

Appearances

For Government: William H. Miller, Esq., Department Counsel
For Applicant: *Pro se*

03/04/2025

Decision

BENSON, Pamela C., Administrative Judge:

Applicant has not provided sufficient evidence to establish that she has acted responsibly to address and resolve her financial delinquencies in a timely manner and when she had the financial means to do so. Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On April 2, 2024, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudication Services (CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations). 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.

In Applicant's April 10, 2024 response to the SOR (Answer), she admitted three allegations (SOR ¶¶ 1.a, 1.b and 1.h), and she denied the remaining five allegations (SOR ¶¶ 1.c through 1.g). She did not provide additional documentation with her Answer. She requested a hearing before an administrative judge. The case was assigned to me on

September 12, 2024. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 26, 2024, setting the hearing for November 6, 2024. The Microsoft Teams video-teleconference hearing was held as scheduled.

During the hearing, Department Counsel offered Government Exhibits (GE) 1 through 9, and Hearing Exhibits (HE) 1 and 2. Applicant testified but did not offer any documents. The proffered exhibits were admitted into evidence without objection. I held the record open for two weeks in the event either party wanted to supplement the record with additional documentation. Applicant timely submitted four documents I labeled as Applicant Exhibits (AE) A through D, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on November 13, 2024, and the record closed on November 20, 2024.

Evidentiary Issue

Department Counsel requested that a typo in SOR ¶ 1.a be amended to reflect the correct name of the creditor by removing an extra “c” in the name. Applicant did not object and the first “c” in the creditor’s name was deleted. (Tr. 9-10)

Findings of Fact

Applicant is 34 years old. In 2014 she graduated with a licensed practical nurse (LPN) certificate. She married in 2013, and she separated from her husband in January 2018. She testified during the hearing that they are still separated and not yet divorced, and her last contact with him occurred in about 2020. She does not have any children. She lives in her grandmother’s house. She does not pay rent, but she does pay annual taxes for the house of about \$400. Applicant’s mother is disabled, and she has a sister, age 17, still attending high school. She helps take care of her mother and sister, who live in a separate household, and she provides financial support of about \$600 per month. She admitted that she is paid \$300 a week for helping take care of her mother. Since November 2021, she has worked for a DOD contractor as a call center representative giving tech support to the U.S. Department of Veterans Affairs (VA). She estimated that her annual salary at this employment is approximately \$40,000. (GE 1, 2; Tr. 10-11, 21-27, 52)

Financial Considerations

Applicant attributes her financial troubles to the separation from her spouse in 2018, and periods of unemployment and underemployment.

SOR ¶ 1.a alleges that Applicant is indebted to a creditor in the amount of \$37,492, for unpaid medical services. This account was referred for collection. She admitted this debt in her Answer. Applicant testified that she was involved in a car accident approximately eight years ago and she was required to undergo emergency gall bladder surgery. Later during the hearing, Applicant stated that she actually needed gall bladder surgery after her husband had beat her during a domestic incident. She was afraid to tell

anyone about his history of abuse. They did not have medical insurance at the time to cover the cost of surgery. She admitted that she has not communicated with the creditor to discuss this delinquent account or arrange a payment plan. She did not list this significant delinquent debt on her March 2023 security clearance application because she forgot about it. This debt has not been paid and remains unresolved. (GE 2, 3, 8; Tr. 27-29, 54)

SOR ¶ 1.b alleges that Applicant is indebted to a creditor in the amount of \$776, for unpaid medical services. This account was referred for collection. She admitted this debt in her Answer. Applicant explained that this charge was for her ambulance transportation to another medical facility that could perform the gall bladder surgery after the car accident. This debt has not been paid and remains unresolved. (GE 8; Tr. 29-30)

A medical debt from the same creditor as alleged in SOR ¶ 1.b, in the amount of \$4,865, which was placed for collection, was not included in the SOR. In an interrogatory Applicant received in September 2023, she was specifically asked for the current status of this debt, and she listed that she was making payments on this delinquent account. The October 2024 credit bureau report (CBR) in the record showed the amount had not changed for the past year. Applicant admitted during the hearing she had not made any payments on this account as listed in her interrogatory response. (GE 3, 7, 9; Tr. 30-33)

Applicant is indebted to a gas utility service in the amount of \$279 for a charged-off account. (SOR ¶ 1.c) Applicant stated that she called this creditor and was told this account had been included in her bankruptcy. She was unable to obtain documentation from the creditor to show that the debt was resolved despite the dismissal of all three of her bankruptcy cases, as listed below. As such, I find this debt remains unresolved and unpaid. (GE 7; Tr. 33-34)

The next three SOR allegations involve Chapter 13 bankruptcy filings that were denied by Applicant in her Answer. Applicant and her husband filed for Chapter 13 bankruptcy in about August 2016 to help them manage their marital debt. The bankruptcy case was dismissed in about January 2017. (SOR ¶ 1.f) Applicant and her husband again filed for Chapter 13 bankruptcy in January 2017. The bankruptcy case was dismissed in about February 2018. (SOR ¶ 1.e) Applicant and her husband filed for Chapter 13 bankruptcy a third time in about April 2018. The bankruptcy case was dismissed in about October 2020. (SOR ¶ 1.d) (Tr. 34-37, 49-50; GE 4, 5, 6)

Applicant explained that she just signed the paperwork, and her husband did not inform her that he had filed multiple bankruptcies, and that is why she denied these allegations. She and her husband were both held responsible for the payments to the bankruptcy trustee. She said her portion of the payments were taken out of her paycheck. When the payments stopped in late 2020, she called to find out why and was informed that the most recent bankruptcy case had been dismissed due to nonpayment. She did not contact the bankruptcy trustee or her husband to resolve the Chapter 13 bankruptcy nonpayment problem. She admitted that she completed the required financial counseling on each occasion a bankruptcy case was filed. (Tr. 34-37, 49-50; GE 4, 5, 6)

SOR ¶ 1.g alleges that Applicant is indebted to the federal government for delinquent taxes in the amount of \$651.45 for tax year 2019. Applicant denied this allegation in her Answer. She submitted a document that showed that as of September 2024, a balance remained in the amount of \$9.99 for tax year 2019. This tax debt is almost completely paid. She admitted that she does not voluntarily pay her back taxes, but the taxes are paid after the government intercepts any of her tax refunds and applies the money to her unpaid tax balance. (AE C; GE 3; Tr. 37-38, 56)

SOR ¶ 1.h alleges that Applicant failed to file a state income tax return for tax year 2018. She admitted this in her Answer, and during the hearing she also acknowledged that she had not filed a 2018 federal income tax return, which was not alleged in the SOR. She had not filed her 2018 income tax returns because she could not afford to pay the back taxes at the time. She intends to file both state and federal 2018 income tax returns in the near future. (Tr. 13, 38-39)

Applicant admitted that she owed about \$1,700 for a Jeep that was repossessed after she and her husband filed for bankruptcy. This information was not alleged in the SOR. She stated that she is working with the creditor and hopes to be able to settle this debt for \$700. (Tr. 46-47)

Applicant submitted a personal financial statement (PFS) while the record was held open. The document showed that her monthly net income was \$4,264, which also included her salary for the home care service she provides to her mother. After deducting approximately \$1,941 for her monthly expenses, to include the \$600 of monthly financial support Applicant provides to her mother and sister, and the monthly payments for two personal loans, she is left with a net remainder of about \$2,323. During the hearing Applicant stated that her monthly car payment was \$605, which is supported by the most recent October 2024 CBR. I did not see this car payment listed on her PFS. After deducting her monthly car payment of \$605, Applicant's monthly net remainder is approximately \$1,718. The PFS showed that she is not making payments on any of her delinquent SOR debts. (AE A)

Any adverse information not alleged in the SOR will not be considered for disqualification purposes but may be considered in evaluating application of mitigating conditions and in applying the whole-person concept. See, e.g., ISCR Case No. 15-07369 at 3 (App. Bd. Aug. 16, 2017).

Policies

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;
- (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 annual Federal, state, or local income tax as required.

The CBRs in the record confirming the three SOR debts totaling \$38,547, the bankruptcy documents, and Applicant's admissions support the application of AG ¶¶ 19(a), 19(c) and 19(f).

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. 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 has 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.

Applicant bears the burdens of production and persuasion in mitigation. An applicant is not held to a standard of perfection in her debt-resolution efforts or required

to be debt-free. “Rather, all that is required is than 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).

Applicant attributes her financial troubles to the separation from her spouse in 2018, and periods of unemployment and underemployment, which were conditions beyond her control. There is no evidence of any debt-resolution efforts from November 2021, when she started working for her current employer, to date, or even after the SOR was issued in April 2024, which put her on notice of the government’s concerns. All three delinquent accounts remain unpaid and unresolved, despite her net monthly remainder of over \$1,000, as listed on her PFS. The absence of reasonable efforts undertaken by her to resolve these long-standing financial delinquencies causes security concerns.

Under AG ¶ 20(b), Applicant must establish circumstances largely beyond her control *and* that she acted responsibly under the circumstances. Notwithstanding the financial hardship due to her separation, unemployment, and underemployment, Applicant has not established that she acted responsibly to address and resolve her delinquent accounts, despite being employed for over the past three years. She has not provided documentation of communications with her creditors to arrange payment plans or show what efforts were undertaken to resolve the three outstanding accounts. She has a long history of filing for Chapter 13 bankruptcy protection, but then the cases were later dismissed due to nonpayment to the bankruptcy trustee. She has not yet filed her state and federal 2018 income tax returns. Her back taxes have not been paid voluntarily by her, but due to the government’s interception of her tax refunds. I am unable to find that her current financial situation is under control or that additional financial problems will not develop in the future. None of the financial mitigating conditions fully apply. Applicant did not mitigate the financial considerations security concerns.

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 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 and the factors in AG ¶ 2(d) in this whole-person analysis.

I am unable to reach a positive conclusion pertaining to Applicant's eligibility for a security clearance. Applicant has shown little voluntary efforts to address her delinquent debts despite having the financial means to do so. Considering the lack of evidence regarding her good-faith efforts to responsibly resolve these accounts and file her 2018 income tax returns, her financial history raises unmitigated questions about her reliability, trustworthiness, and ability to protect classified information.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards establishing a track record of financial responsibility, and a better record of behavior consistent with her obligations, she may well be able to demonstrate persuasive evidence of her security clearance worthiness.

I have carefully applied the law, as set forth in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. Applicant failed to mitigate 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. through 1.h.:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, I conclude that it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Pamela C. Benson
Administrative Judge