



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



In the matter of:)
)
 [NAME REDACTED]) ISCR Case No. 15-03463
)
 Applicant for Security Clearance)

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

03/20/2017

Decision

BORGSTROM, Eric H., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On February 6, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant 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) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on March 29, 2016, and she elected to have the case decided on the written record in lieu of a hearing. On April 22, 2016, the Government submitted its file of relevant material (FORM) and provided a complete copy to Applicant. Applicant received the FORM on May 6, 2016. She was afforded an opportunity to respond to the FORM within 30 days of its receipt and to file objections

and submit material to refute, extenuate, or mitigate the security concerns. Applicant responded to the FORM on June 2, 2016. The case was assigned to me on January 25, 2017.

Procedural Issues

In the FORM, Department Counsel references FORM Items 1-6.¹ FORM Item 3 is an unauthenticated summary of a June 4, 2013 interview with a government investigator. In the FORM, Department Counsel advised Applicant that she could object to FORM Item 3 and it would not be admitted, or that she could make corrections, additions, deletions, and update the document to make it accurate. Applicant was informed that her failure to respond to the FORM or to raise any objections could be constituted as a waiver, and the evidence would be considered by me. Applicant responded to the FORM, and she raised no objections. Given Department Counsel's advisement and Applicant's education and work experience, I find her waiver to be knowing and intelligent.² Therefore, FORM Items 2-6 are admitted into evidence as Government Exhibits 2-6, without objection.

In her FORM response, Applicant included a cover letter, an updated response to the SOR, two May 2016 credit reports, bankruptcy records, and two student loan account statements. I admitted these seven exhibits into evidence as Applicant Exhibits (AE) A-G, without objection.

Findings of Fact

The SOR alleges one bankruptcy filing (SOR ¶ 1.a.), two delinquent mortgage loans (SOR ¶¶ 1.b. and 1.c.), three delinquent student loan accounts (SOR ¶¶ 1.e., 1.f., and 1.i.), and several other delinquent accounts (SOR ¶¶ 1.d, 1.g., 1.h., 1.j., 1.k., 1.l., 1.m., and 1.n.). Applicant admitted the allegations in SOR ¶¶ 1.a.-1.f., 1.h., 1.j., and 1.k., and she denied the five remaining allegations. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 44 years old. She has been employed full time by a NATO support agency since October 2005. She attended college from May to December 2006, and she has been attending undergraduate-level classes intermittently since August 2008. She was married in September 2004, and she separated from her husband in December 2011. She has three children – ages 16, 17, and 25.³

¹ FORM Item 1 consists of the Statement of Reasons and Applicant's Answer, which are pleadings and are entered into the administrative record.

² See ISCR Case No. 15-05252 at 3 (App. Bd. Apr. 13, 2016) (Applicant's waiver of the authentication element must be knowing and intelligent.). See ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016) ("Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive.")

³ GE 2.

In January 2004, Applicant filed a Chapter 13 bankruptcy petition (SOR ¶ 1.a.). In October 2006, the bankruptcy was discharged. She provided no explanation for or circumstances leading to her bankruptcy filing.⁴

The SOR alleges two delinquent loans attached to real property interests (SOR ¶¶ 1.b. and 1.c.). SOR ¶ 1.b. is a loan on a time-share property that has been delinquent since February 2009 in the approximate amount of \$1,819. The foreclosure process has started on this account, with the total balance due of \$17,675. Although she claimed that her estranged husband has agreed to resolve this account, Applicant herself has taken no steps to resolve or repay this delinquent account, and there is no documentary evidence to corroborate her claim.⁵

In January 2008, Applicant opened a mortgage loan account (SOR ¶ 1.c.) in the approximate amount of \$356,000. This account has been delinquent since May 2009 and was past due in the approximate amount of \$125,231 as of March 2015. In her response to the SOR, Applicant admitted that this property was foreclosed upon in 2010. She attributed her financial difficulties, in part, to her spouse's out-of-state military posting and having to support two households. She argues that the absence of this accounts on her May 2016 credit reports demonstrates that she bears no further liability on this defaulted account; however, this reliance is misplaced. The absence of a debt on a credit report is not equivalent to resolution or payment of the debt.⁶ She has provided no documentation from the mortgage lender demonstrating that she bears no further liability on this account, and there is no evidence of any steps taken by her to resolve this delinquent mortgage loan account.⁷

The SOR alleges three delinquent student loan accounts (SOR ¶¶ 1.e., 1.f., and 1.i.). Applicant admitted the debts alleged in SOR ¶¶ 1.e. and 1.f., and she denied the debt alleged in SOR ¶ 1.i. In her FORM response, she provided documentation showing the account balances for SOR ¶¶ 1.e. and 1.f as \$3,642 and \$2,506, respectively. In fact, the statement includes late fees in the outstanding balance. Applicant's May 2016 credit reports list an October 2015 payment on these loans, but there is no evidence of other payments.⁸

As to SOR ¶ 1.i., the credit reports show a student loan account opened in March 2001 and placed for collection in the amount of \$646. Although Applicant disputed this

⁴ GE 6.

⁵ GE 3; GE 5; Response to SOR; Response to FORM.

⁶ See ISCR Case No. 02-14950 at 4 (App. Bd. May 15, 2003) ("The removal of those debts from his credit report does not make them disappear as if they never existed or preclude the Judge from considering other record evidence that shows those debts exist. The security significance of Applicant's financial history doesn't turn on whether Applicant's debts could or could not be legally listed on a credit report after the passage of seven years.").

⁷ GE 2; GE 3; GE 5; Response to SOR; Response to FORM.

⁸ AE C; AE D; AE F; AE G.

account, the May 2016 credit reports she submitted also list this delinquent account. She has provided no documentation showing a reasonable dispute concerning this alleged account.⁹

The SOR alleges one medical collection account (SOR ¶ 1.g.) and seven delinquent consumer accounts (SOR ¶¶ 1.d., 1.h., 1.j., 1.k., 1.l., 1.m., and 1.n.). Applicant's credit reports establish these eight delinquent debts:

SOR ¶	Creditor	Balance	Date of Delinquency	Evidence
1.d.	Credit Card	\$4,264	7/2008	GE 4; GE 5
1.g.	Medical collection	\$900	1/2013	GE 5; AE C
1.h.	Utility or Cable	\$832	2/2013	GE 5; AE C
1.j.	Collection account	\$53	5/2008	GE 5
1.k.	Utility or Cable	\$367	11/2009	GE 4
1.l.	Credit account	\$424	1/2009	GE 4
1.m.	Credit account	\$227	1/2010	GE 4
1.n.	Collection account	\$37	1/2013	GE 4

Applicant's claim that the account in SOR ¶ 1.d. was included in her 2004 bankruptcy is without merit, because this account was opened after the bankruptcy was discharged. Although she claimed that the accounts in SOR ¶¶ 1.h. and 1.k. will be included in a debt-consolidation program, there is no documentary evidence showing that Applicant has actually enrolled in such a program and has begun payments on these debts. In her FORM response, she claimed to have paid the debt in SOR ¶ 1.j. in 2014; yet her 2015 credit report lists this account as unpaid.¹⁰ There is no evidence of any payments on these eight delinquent accounts. Applicant attested to favorable work performance; however, she did not provide any corroborating evidence.¹¹

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

⁹ GE 4; GE 5; AE C; AE D.

¹⁰ GE 5.

¹¹ GE 2; Response to FORM; AE C; AE D.

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 access to classified information will be resolved in favor of 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 or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal 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 or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant's 13 delinquent debts total approximately \$140,964. She filed bankruptcy in 2004, and the dischargeable debts were discharged in 2006. Accordingly, the evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

The Government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a) and 19(c), thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.¹² 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated 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.

There is no documentary evidence showing any payments on the 13 alleged accounts beyond one student loan payment in October 2015. Her marital separation continues, requiring the maintenance of two households. Most importantly, there is no evidence that she is making debt repayments. Applicant's financial struggles date from before her 2004 bankruptcy and are ongoing. AG ¶ 20(a) does not apply.

The application of AG ¶ 20(b) requires both that (1) Applicant's financial indebtedness resulted from circumstances beyond his control and (2) Applicant acted responsibly under the circumstances.¹³ Applicant has provided no circumstances or

¹² Directive ¶ E3.1.15. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005) (An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.).

¹³ See ISCR Case No. 07-09304 at 4 (App. Bd. Oct. 6, 2008).

explanation as to the cause of her 2004 bankruptcy. She has attributed her mortgage loan foreclosure and financial difficulties to her husband's geographical separation and their marital separation, requiring the maintenance of two households. Because these circumstances hindered her ability to address her delinquent debts, they constitute circumstances beyond one's control in the context of AG ¶ 20(b).

AG ¶ 20(b) also requires that an applicant act responsibly under the circumstances.¹⁴ Although Applicant referenced a debt-consolidation program, she has provided no evidence of debt repayments or steps taken to resolve her financial delinquencies beyond one student loan payment in October 2015. Even if Applicant bears no further liability on her mortgage loan foreclosure and her student loans are current or in forbearance, she has taken no steps to resolve the remaining delinquent debts. There is insufficient evidence to conclude that Applicant acted responsibly to address her delinquent debts or to develop and implement a reasonable debt repayment plan. Therefore, AG ¶ 20(b) does not apply.

There is no record evidence of credit counseling or of a monthly budget to conclude that there are clear indications that Applicant's financial problems are under control. Rather, the absence of evidence of payments or other steps to resolve the alleged delinquent debts undercuts such a conclusion. Therefore, AG ¶ 20(c) does not apply.

The concept of good faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation."¹⁵ There is no evidence of any payments on the delinquent debts beyond the single student loan payment. As discussed above, there is insufficient evidence of good-faith payments or other steps taken to resolve the alleged delinquent debts. AG ¶ 20(d) does not apply.

To the extent Applicant disputes the debts in SOR ¶¶ 1.c., 1.d., 1.i., 1.l., 1.m., and 1.n., she has not demonstrated a reasonable basis to dispute the legitimacy of these debts. As discussed above, these debts were all included on her credit reports, and Applicant has provided no documentation to support her disputes. AG ¶ 20(e) does not apply.

Applicant's 13 delinquent debts have remained delinquent for several years, with evidence of only one student loan payment. There is no evidence of affirmative steps by Applicant to address, resolve, or repay these debts. Furthermore, she has not demonstrated that she can maintain her current monthly financial obligations. Absent

¹⁴ See ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009) ("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.").

¹⁵ See ISCR Case No. 08-12184 at 10 (App. Bd. Jan. 7, 2010) (Good-faith effort to resolve debts must be evidenced by a meaningful track record of repayment).

evidence of debt repayment and financial responsibility, I find that financial considerations concerns remain.

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(a):

(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(c) in this whole-person analysis.

Circumstances beyond Applicant's control – her marital separation and her husband out-of-state military assignment – contributed to her financial delinquencies. Nonetheless, she bears the burden to demonstrate that she acted financially responsibly under the circumstances. There is no evidence of good-faith efforts to repay or resolve these debts or evidence that she meets her current financial obligations. As a result, the totality of the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate 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:	AGAINST APPLICANT
Subparagraphs 1.a.-1.n.:	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 interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Eric H. Borgstrom
Administrative Judge