



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 18-00237

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel

For Applicant: *Pro se*

10/03/2018

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 February 1, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) 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 March 5, 2018, 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 4, 2018. 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 1 through 6. Applicant did not submit a response to the FORM or object to the Government's documents. Items 1 through 6 are admitted into evidence. The case was assigned to me on June 29, 2018.

Findings of Fact

Applicant admitted the SOR allegations in ¶¶ 1.g and 1.h. She denied the SOR allegations in ¶¶ 1.a through 1.f and 1.i through 1.n. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 47 years old. She earned an associate's degree in 2000. Applicant enlisted in the military in October 1990 and was honorably discharged in November 1991 due to hardship. She remained in the inactive reserves until October 1992.¹

Applicant married in July 2006 and divorced in January 2008. She remarried in April 2008, and at the time she completed her electronic Questionnaire for Investigation Processing (e-QIP) in July 2016, she was waiting for her divorce from her second husband to be finalized. She has a 27-year-old child. She also has children ages seven and six years old from her second marriage.²

Applicant has been employed by her present employer, a federal contractor, since July 2013. She was a stay-at-home mother from March 2012 to July 2013. She worked for a federal contractor from January 2011 to March 2012. She was unemployed from March 2010 to January 2011. Applicant did not provide information about the cause of her financial problems other than stating during her September 2017 background interview with a Government investigator that she is a single mother and was unemployed for different periods. The debts alleged in the SOR are supported by Applicant's admissions and credit reports from September 2017 and December 2017.³

In her e-QIP, Applicant did not disclose any financial problems or delinquencies. During her background interview, she told the Government investigator that she was currently seeking credit counseling from a nonprofit organization to help her consolidate her debts and make a budget. She disclosed that she defaulted on her student loans, and estimated the amount owed to be about \$20,000, but she was not certain. She opened the student loan account in 2000, and it became delinquent in approximately 2015, because she was unemployed and a single mother. She said that loan payments were being garnished from her pay. She provided a December 2017 pay stub that shows \$247 is garnished from her pay every two weeks. It also shows a total of \$6,200 was paid in 2017. SOR ¶ 1.b alleges a defaulted student loan account for \$4,263. The account was transferred to a collection company. It appears this is a different account than the one for

¹ Items 3, 4.

² Item 3.

³ Items 2, 3, 4, 5, 6.

which Applicant's pay is being garnished. Her credit reports from September 2017 and December 2017 show there are three student loans. The one alleged in SOR ¶ 1.b is listed as past due and in collection. The other two are Government unsecured guaranteed loans and the accounts were closed and transferred. Applicant did not provide documentary evidence that she is taking action on the loan alleged in SOR ¶ 1.b or that this loan was consolidated with the other.⁴

In Applicant's answer to the SOR, she denied the debt in ¶ 1.a (\$9,946) stating "The dollar amount owed on this entry is larger than the actual amount owed."⁵ She said she was disputing the debt. She said the amount owed was \$3,455, but the creditor added "heavy additional fees; in which some may be illegal."⁶ She further stated she was obtaining an attorney to "fight these charges. Once the determination is settled, I will make payments on the agreed upon amount."⁷ Applicant did not provide any documentary evidence to support her actions to dispute the account or to show she has hired an attorney to do it. She did not respond to the FORM and provide an update on any actions she may have taken.⁸ This debt is not resolved.

Applicant was confronted during her background interview with the medical debts alleged in SOR ¶ 1.d (\$654-medical), ¶ 1.e (\$451-medical); ¶ 1.f (\$407-medical); ¶ 1.m (\$210-medical); and ¶ 1.n (\$153-medical). She denied being aware of any of the debts. In her Answer to the SOR, she denied these debts stating she was unsure "what this amount is owed for."⁹ They are all listed on either her September 2017 or December 2017 credit reports, or both. Some are several years old. Applicant did not provide any information about her efforts to contact her medical providers or creditors to resolve the debts, or efforts she made to dispute the individual debts.¹⁰ They are unresolved.

Applicant denied the debt alleged in SOR ¶ 1.c (collection account-\$656) stating she was unsure of what this debt was. Applicant did not provide any information about her efforts to contact the collection creditor to determine the original creditor or efforts to resolve or dispute the debt.¹¹ It is unresolved.

⁴ Items 2, 3, 4, 5, 6. I have not considered any derogatory information that was not alleged in the SOR for disqualifying purposes. I may consider this information when making a credibility determination, in applying the mitigating conditions, and in a whole-person analysis.

⁵ Item 2.

⁶ Item 2.

⁷ Item 2.

⁸ Items 2, 6.

⁹ Item 2.

¹⁰ Items 2, 4, 5, 6.

¹¹ Item 2.

The SOR alleged unpaid judgments in ¶¶ 1.i (\$1,990), 1.j (\$815), and 1.k (\$1,534). Applicant stated in her Answer to the SOR that she believes the judgment in ¶ 1.i is a fee associated with the debt in ¶ 1.a that she is disputing. She stated that she “settled” the judgments in ¶¶ 1.j and 1.k in 2017, and she no longer owes them. On Applicant’s September 2017 credit report, it shows that Applicant satisfied four different judgments to the same creditor as that in SOR ¶ 1.j. There were three remaining judgments that are not satisfied and they are alleged in SOR ¶¶ 1.i, 1.j, and 1.k. During her background interview, she told the investigator when she was confronted with the unpaid judgments alleged in the SOR that she recalled receiving many judgments and satisfying some of them, but did not recall the details. She was working with a nonprofit agency to help her consolidate her judgments that are owed to the same creditor and satisfy them. She said these judgments related to late fees owed for rent. She told the investigator that she did not know when she would be able to satisfy her debts. Applicant did not provide evidence that the judgments are satisfied or particulars on a plan to resolve them. She did not provide documents to show these are the same judgments she satisfied. The judgments alleged are unresolved.¹²

Applicant provided a document to show that she began making automatic payments (\$108) to a collection company in March 2017. She showed four payments were made from March through June 2017. In her background interview, she stated she had a debt for a loan she obtained in April 2015 for \$700. She was unable to make the payments, and the amount owed increased to \$949 and went to collections. She said she began making monthly payments of \$108 and resolved the debt in August 2017. A review of Applicant’s credit reports indicates that the debts in SOR ¶¶ 1.g and 1.i are the same debt. Her September 2017 credit report shows the account was in collection and delinquent for \$949. Her December 2017 credit report shows the account was charged off and transferred. I am unable to determine if the account has been settled and completely paid, even though it appears Applicant made at least four payments. She did not provide updated information in response to her FORM. The debt is not resolved.¹³

Applicant admitted the debt in SOR ¶ 1.h (\$268) and stated in her Answer that her “current credit counselor asked me not to pay this account yet as I would be over the budget set to keep my housing.”¹⁴ The debt is unresolved.

Applicant mentioned during her background interview that she had a budget. She did not provide an updated budget to reflect her current finances. It is unknown if Applicant receives child support. No other information regarding Applicant’s finances were provided. In her Answer, Applicant provided a certificate of achievement for her outstanding performance and dedication.¹⁵

¹² Items 2, 4, 5, 6.

¹³ Items 2, 4, 5, 6.

¹⁴ Item 2.

¹⁵ Item 2. The certificate was not dated, but there is handwriting on it that says 2017.

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.¹⁶

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 has numerous debts, judgments, and a student loan that have been delinquent for several years. Applicant is unable to satisfy her debts. 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:

¹⁶ See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

(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 history of not meeting her financial obligations. She has numerous delinquent debts and judgments. She attributes her financial problems to periods of unemployment and being a single mother. Applicant has been employed steadily since 2013. Her debts are unpaid and therefore recent. There is insufficient evidence to conclude that her behavior is unlikely to recur. Applicant's failure to pay her financial obligations casts doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant's unemployment and status as a single mother are conditions that are beyond her control. Applicant has been employed steadily since 2013. It is unknown if she receives child support. It appears Applicant is working with a nonprofit organization to help her budget her finances. This is a responsible way to begin to address her finances. However, Applicant provided limited information regarding how long she has been working with the organization, what plans have been developed for her to pay her delinquent debts, and a copy of her current budget and finances. Without additional information, AG ¶ 20(b) only partially applies.

There is some evidence Applicant has received financial counseling. Without additional specific evidence, I am unable to conclude there are clear indications that her financial problems are being resolved or under control. One of Applicant's student loans is being paid through garnishment, but this loan is not alleged. Applicant did not provide evidence that her student loans were consolidated, so I am unable to conclude the education loan in SOR ¶ 1.b is being paid. The debts alleged in SOR ¶¶ 1.g and 1.i are

the same. Applicant said the debt was settled through monthly payments, but only provided documents to show four payments and no proof that the debt has been resolved. I find for her for SOR ¶ 1.g because it is a duplicate. AG ¶ 20(c) has minimal application and AG ¶ 20(d) does not apply.

Applicant disputes many of the debts in the SOR, stating she does not know what the debts are for; she paid them; or her credit counselor told her not to pay a debt. Applicant was made aware of many of the debts during her background interview. She did not provide sufficient evidence that she has a reasonable basis to dispute the legitimacy of the delinquent debts. She did not provide evidence that she contacted the creditors to learn the specifics about each debt that she disputes. She did not provide documentation to substantiate the basis of her dispute or evidence of her action to resolve the issue. AG ¶ 20(e) does not apply.

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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 47 years old. She has delinquent debts that she is unable to satisfy. She has been working with a nonprofit organization to help her with her finances, but provided minimal evidence to substantiate actions she may have taken to resolve her delinquent debts. The state of her current finances is unknown. Applicant did not provide evidence of a reliable financial track record. At this juncture, she has not met her burden of persuasion. 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 arising 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.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h-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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge