



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



In the matter of:

Appearances

For Government: Tovah A. Minster, Esq., Department Counsel
For Applicant: *Pro se*

02/28/2025

Decision

DORSEY, Benjamin R., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. The personal conduct security concerns were not established. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on September 30, 2022. On April 25, 2024, the Department of Defense (DOD) Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (financial considerations) and Guideline E (personal conduct). Applicant responded to the SOR (Answer) on June 2, 2024, and requested a hearing before an administrative judge. The case was assigned to me on December 5, 2024.

The hearing was convened as scheduled on February 13, 2025. At the hearing, I admitted Government Exhibits (GE) 1 through 5, and Applicant Exhibits (AE) A and B, without objection. I offered Applicant the option of leaving the record open for her to submit post-hearing documents, but she affirmatively waived that offer. I received a transcript (Tr.) of the hearing on February 21, 2025. (Tr. 53, 74)

Findings of Fact

Applicant is 47-years old. She and her husband own a trucking company (Company A), which they began operating in 2019. Company A subcontracts with another government contractor to haul freight for the U.S. Government. She earned a high school diploma in 1995 and took two years of college courses without earning a degree. She obtained a commercial driver's license (CDL) in 2019. She has been married since about 2013. She has two adult children, ages 29 and 22. She also has two adult stepchildren, ages 25 and 21. One of her children, both of her stepchildren, and her three-year-old grandson reside with her, and she and her husband support them financially. She held an interim security clearance from about 2022 until she received the SOR. She claimed that she also held a clearance years ago when she worked for Housing and Urban Development (HUD). (Tr. 20-29, 58-59; GE 1, 2; AE A)

In the SOR, the Government alleged that Applicant has 19 delinquent accounts totaling approximately \$39,000. These delinquent accounts consist of the following: a retail installment contract for a repossessed vehicle (SOR ¶ 1.a); accounts for medical services (SOR ¶¶ 1.b through 1.i and 1.k); unrecognized accounts (SOR ¶¶ 1.j, 1.n, 1.o, 1.r, and 1.s); credit cards (SOR ¶¶ 1.l and 1.m); and payday loans (SOR ¶¶ 1.p and 1.q). She admitted the SOR allegations except for those in SOR ¶¶ 1.j and 1.k, which she denied. Her admissions are adopted as findings of fact. The SOR allegations are established through her admissions and the Government's 2022 and 2023 credit reports. (SOR; Answer; GE 4, 5; AE A)

The car loan in the amount of \$16,941 listed in SOR ¶ 1.a has not been resolved. In 2018, Applicant co-signed this contract to help her daughter purchase an automobile. She and her daughter stayed current on the account for about nine or ten months, but then, after Applicant had medical issues, neither could afford to continue to make the payments. In about April 2019, she voluntarily returned the vehicle, and it was sold at auction. After the car was sold at auction, she contacted the creditor to make payment arrangements, and made a couple of payments, but she stopped because she could no longer afford to make them. (Tr. 20-22, 31-35; Answer; GE 2-5; AE A)

The delinquent medical debts listed in SOR ¶¶ 1.b through 1.i and 1.k in the amount of about \$17,270 have not been resolved. Applicant incurred these debts from about May 2017 until April 2018, when she had a chronic illness involving her gallbladder. She claimed that she had medical insurance through her employer, but the hospital billed her directly instead of billing the insurance company. She claimed that she paid a \$4,000 deductible and then paid her required co-payments. She also claimed that she contacted the hospital and her insurance company over the course of a few months, but her insurance provider did not provide coverage. She provided no documentation in relation to these accounts, her insurance coverage, or any dispute she had regarding her insurance company's alleged failure to provide coverage. She no longer attempted to resolve these medical accounts on her own after 2019. She has not contacted an attorney to help her resolve the issue. She testified that she did not know that hiring an attorney was a possibility. (Tr. 20-22, 35-41, 64-70; Answer; GE 2-5; AE A)

Applicant testified that she did not recognize the debts listed in SOR ¶¶ 1.j, 1.n, 1.o, 1.r, and 1.s, totaling about \$2,727. She claimed she was disputing the debt in SOR ¶ 1.j in the amount of \$917. In the Answer, she admitted the debts in SOR ¶¶ 1.n, 1.o, 1.r, and 1.s, and claimed she incurred those debts when she was ill and had every intention of paying them. She did not explain the inconsistency between the Answer and her testimony. She also provided inconsistent information regarding the status of these accounts, and whether she recognized them, in her October 2023 responses to DCSA interrogatories (Interrogatory Response), when she claimed that she was making payments on some of them. She testified the debts listed in SOR ¶¶ 1.n and 1.o are duplicate accounts, but these accounts have different account numbers on the Government's credit reports. She did not provide any documentation regarding these debts, including her attempts to resolve them or dispute them. (Tr. 20-22, 41-42, 44-45, 48-49; Answer; GE 2-5; AE A)

The delinquent credit cards listed in SOR ¶¶ 1.l and 1.m for a combined total of about \$1,300 have not been resolved. She opened these credit cards between 2017 and 2019, and she became delinquent on them in about 2021 or 2022. The Government's credit reports reflect activity dates of October 2022 and September 2022 for these accounts, respectively. She provided no documentary evidence regarding the status of these accounts or any resolution attempts. She claimed that she tried to make a payment arrangement on the accounts shortly after she became delinquent, but she could not afford the payments that the creditor required. (Tr. 20-22, 42-44; Answer; GE 2-5; AE A)

The delinquent payday loans listed in SOR ¶¶ 1.p and 1.q in the combined amount of \$585 have not been resolved. She opened these accounts by borrowing about \$1,000 in about 2015. She claimed that she timely made nine of the twelve required monthly payments, but stopped because she could no longer afford them. She claimed that she may have paid the account listed in SOR ¶ 1.q, but she provided no documentation to support her claim. (Tr. 20-22, 45-48; Answer; GE 2-5; AE A)

In 2019 or 2020, Applicant hired a credit-repair company (Company B) to help her clean up her credit report and help her resolve her debts. She paid Company B about \$29 per month for about nine or ten months, but it did not help her negotiate payment arrangements, resolve her insurance company's alleged failure to provide coverage for her medical expenses, or help her resolve any of the other SOR debts. She hired another debt resolution company (Company C) in about 2022, that she believed would provide the same services as Company B. She paid Company C \$125 over two months, but then stopped using their services because she believed Company C was "giving her the runaround." She provided no documentation regarding either of these companies' services or their efforts to resolve her debts. (Tr. 20-22, 41, 49-53, 68-70; Answer; GE 2, 4, 5; AE A)

While it is not alleged in the SOR, Applicant has not voluntarily filed her federal income tax returns, as required, since the 2011 tax year. She testified that the IRS filed substitute income tax returns on her behalf for tax years 2012 through 2019, but neither she nor the IRS has filed her federal income tax returns for tax years 2020 through 2023. She claimed that her certified public accountant (CPA) has been working on filing those

late income tax returns for her. She could not provide a reason why she has not filed her income tax returns. Despite being required to do so, she did not list her failure to file these federal income tax returns in the SCA or during her security interview. I will not use unalleged conduct for disqualification purposes. I will consider that information for purposes of mitigation, in my whole-person analysis, and for other appropriate purposes. (Tr. 59-61, 71-72; GE 1, 2; AE A)

Applicant claimed that her financial difficulties arose for several reasons. She was unemployed from November 2014 until 2015 and from 2020 until 2021 because of the COVID-19 pandemic. She had her gallbladder issues in 2017 and 2018. Her father-in-law passed away in February 2022, so they paid \$3,100 per month for 24-hour care for her mother-in-law from February 2022 until she passed away in November 2023. Company A has been unable to haul freight for the DOD after she lost her interim security clearance in April 2024, and they rely on that contract as Company A's main source of income. She claimed that she and her husband earned about \$15,000 per month between 2022 and April 2024. Her husband was recently in the hospital for about ten days after being diagnosed with congestive heart failure. She anticipated that he will be able to start working again soon, and that they may be able to haul freight for sources other than the DOD. She claimed that they are current on all of their other financial obligations besides those listed in the SOR. (Tr. 20-22, 27-31, 53-59, 70-73; GE 3; AE A)

Applicant and her husband financially support three of their adult children and a grandson. She claims that she was not taught financial literacy as a young adult. She acknowledged that money is extremely tight. She testified that her stepfather recently passed away, they cannot afford to bury or cremate his body, so it remains in the morgue. Her mother is also ill, and they provide her with some financial assistance. As part of the Interrogatory Response, Applicant completed a personal financial statement. In this personal financial statement, she disclosed that she has a monthly deficit of \$300. (Tr. 20-22, 27-31, 53-59, 70-73; GE 3; AE A)

Despite being required to divulge information regarding her delinquent financial accounts in the SCA, Applicant failed to do so. She did not volunteer this information until she was confronted by the investigator during her January 2023 security interview (SI). She claimed that she did not divulge these delinquent debts because she believed that she was required to report debts that were delinquent as of the date she completed the SCA. She did not believe that the questions in the SCA required her to report her older delinquent debts. She testified that she believed that she was current on her financial obligations at that time because the accounts on which she was delinquent were older. During the SI, she told the investigator that she was unaware that she had so many delinquent accounts because she did not review her credit report. There is no evidence that she has undergone financial counseling. (Tr. 53, 62-64; Answer; GE 1-5)

Applicant provided character-reference letters in which her longtime friends and colleagues wrote that she is diligent, loyal, hardworking, ethical, kind, dependable, honest, and trustworthy. Some witnessed her handle sensitive information with discretion. They described her as someone who gives to others and wrote that she regularly

volunteers her time. They believe she should retain her security clearance eligibility. (Tr. 18-19, 20-22; AE B)

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
- (b) a history of not meeting financial obligations.

Applicant had 19 delinquent accounts totaling about \$39,000. Many of these debts became delinquent in 2018, and all have been delinquent for several years. The above 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;
- (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.

None of the mitigating factors apply. Applicant has not provided any documents to substantiate her resolution efforts or to substantiate the basis of any of her disputes concerning her debts. It is reasonable to expect Applicant to present documentation about the resolution of specific debts. See, e.g., ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 16, 2016). Applicant's financial issues are recent. Her financial issues with respect to these debts are recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)).

Applicant has not established a track record of financial stability and has not provided sufficient evidence that she will do so in the foreseeable future. The causes of Applicant's financial issues were largely beyond her control (with the exception of not filing her federal income tax returns, which she did not prove were caused by reasons beyond her control). However, her lack of follow through in attempting to address her debts means that she has not provided sufficient evidence that she acted responsibly or in good faith with respect to her debts. This lack of follow through with her efforts to dispute her medical debts or unrecognized debts, along with her lack of documents to substantiate her dispute means that she has provided insufficient evidence of her efforts to resolve the issue.

Applicant did not provide a reasonable explanation for her failure to voluntarily file her federal income tax returns for over a decade. These failures provide additional evidence that she has not mitigated the financial considerations security concerns.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during the national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications,

award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

In a vacuum, Applicant's explanation that she did not report her financial delinquencies on the SCA because they were old debts strains credulity. However, I observed her while she testified and found her to be credible. I also note her character evidence, which references her honesty. I will give her the benefit of the doubt and find that the omission was not deliberate. AG ¶ 16 does not apply and Guideline E is not established.

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 Guidelines F and E in my whole-person analysis and have considered her positive character evidence. While I sympathize with her situation and her consistent misfortune, overall, her financial instability and tax issues that have persisted over a significant time leave me with questions and doubts about her eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns. The Guideline E security concerns were not established.

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.s:

Against Applicant

Paragraph 2, Guideline E:

FOR APPLICANT

Subparagraph 2.a:

For Applicant

Conclusion

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.

/s/

Benjamin R. Dorsey
Administrative Judge