



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 14-04840
)	
Applicant for Security Clearance)	

Appearances

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

02/22/2016

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 14, 2013. She submitted a second SCA on January 27, 2014. On June 15, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF acted under Executive Order 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 answered the SOR on July 2, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on September 9, 2015, and the case was assigned to me on October 23, 2015. On October 29, 2015, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was

scheduled for November 17, 2015. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 8 were admitted in evidence without objection. Applicant testified, presented the testimony of one witness, and submitted Applicant's Exhibits (AX) A through D, which were admitted without objection. I kept the record open until December 7, 2015, to enable her to submit additional documentary evidence. She timely submitted AX E through H, which were admitted without objection. (Hearing Exhibit II.)¹ DOHA received the transcript (Tr.) on November 25, 2015.

Findings of Fact²

In her answer to the SOR, Applicant admitted SOR ¶¶ 1.f-1.k, 1.r, 1.s, 1.aa, 1.dd, and 1.hh. She denied SOR ¶¶ 1.e, 1.l-1.o, 1.t-1.z, 1.cc, 1.ee, and 1.gg. She did not admit or deny SOR ¶¶ 1.a-1.d, 1.p, and 1.q, stating that she was unable to identify the creditors. She did not admit or deny SOR ¶ 1.ii, alleging a Chapter 13 bankruptcy, stating she filed the bankruptcy to gain time in resolving a delinquent mortgage loan, with no intent to go beyond the initial filing. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 54-year-old assistant facility security officer employed by a defense contractor since January 2013. She was employed by another government agency as an executive secretary from July 1998 to October 2004. She was employed by a defense contractor as an executive assistant from October 2004 to March 2006 and by another defense contractor as an industrial security analyst from March 2006 to April 2012, when her job was abolished, and she was laid off. She was unemployed from April 2012 until she was hired for her current job. In her current job, she earns about 22% less than her previous job. (AX A.)

While employed by another government agency, Applicant received a security clearance in 1998 and eligibility for access to sensitive compartmented information (SCI) in February 2002. (Tr. 8.) She received a security clearance and SCI eligibility from the DOD in April 2010. In June 2013, she self-reported that she had financial problems due to major surgery and a period of unemployment, triggering her most recent SCA and the current investigation. (AX A.)

Applicant married in September 1979 and divorced in November 1983. She remarried in December 1983 and divorced in February 2004. She married her current spouse in April 2007. She has an adult daughter from her second marriage.

In June 2013, Applicant submitted an SCA, in which she disclosed the debts alleged in SOR ¶¶ 1.e and 1.x-1.hh. Her June 2013 credit bureau report (CBR) reflected a Chapter 13 bankruptcy petition filed in April 2013 and dismissed in May 2013. It also

¹ Hearing Exhibit I is the "discovery" letter from Department Counsel, providing Applicant copies of the documents to be submitted during the hearing.

² Unless otherwise indicated by parenthetical citations to the record, Applicant's personal information is extracted from her two SCAs dated January 27, 2014 (GX 1) and June 14, 2013 (GX 2).

reflected the delinquent debts alleged in SOR ¶¶ 1.e, 1.g, 1.h, 1.k-1.m, 1.o, 1.r, 1.s, 1.u, and 1.v. (GX 7.) When the SOR was issued in June 2015, her February 2014 CBR reflected the delinquent medical debts alleged in SOR ¶¶ 1.p and 1.q. (GX 6.) Her most recent CBR from January 2015 reflected the delinquent debts alleged in SOR ¶¶ 1.a-1.d. (GX 5.) The SOR alleges 34 debts totaling about \$275,000.

Applicant purchased her home in May 2004. Her monthly payments on this property were about \$1,200 per month. She purchased a rental property in 2006 or 2007, which is near her primary residence. Her monthly payments on the rental property were about \$1,110 per month. In September 2011, she purchased a vacant lot in another state, where she parks her recreational vehicle (RV) while on vacation. There is no loan or mortgage on the RV lot. (Tr. 44.)

In the fall of 2011, Applicant learned that she had a major medical problem that required surgery within 60 days. She also learned that while she was on disability, she would be required to pay COBRA³ premiums of more than \$1,000 per month, instead of the \$70 per pay period she had been paying. She testified that she could not afford the increased premiums, and she underwent the surgery uninsured. (Tr. 48-49.)

Applicant was out of work on disability for seven weeks. In April 2012, within 30 days after Applicant returned to work, she was laid off. She was earning about \$86,000 per year until she was laid off. She received unemployment compensation of about \$386 per week while unemployed. She used her savings and her retirement funds to make the payments on her primary residence, but by the end of 2012 she was three months behind.

When Applicant was laid off, she owed about \$64,481 on a home-equity line of credit (HELOC). The debt was incurred when she and her husband refurbished their 100-year-old home with a new roof, siding, rain gutters and doors. The account was sent to collection in July 2012, when she was 150 days past due on her payments. (GX 7 at 14.) She testified that she tendered a payment, but it was returned. She was advised by the holder of the first mortgage on their home to stop paying the HELOC debt because of the possibility that the first mortgage would be foreclosed. (Tr. 63-64.) In August 2012, the HELOC was charged off for \$64,481. (GX 5 at 2.) She took no further action to resolve it.

In August 2013, Applicant applied for a modification of the loan on her primary residence. Her lender recommended that she stop making payments while they processed her application. Her loan modification was approved in February 2014. She was required to pay interest only, in the amount of \$358 per month from April 2014 to March 2016. (AX G.) She is now making monthly payments of \$792, which include the escrow for taxes and insurance. (GX 3 at 4; AX B.)

³ The acronym stands for the Consolidated Omnibus Budget Reconciliation Act of 1985, which created the program.

Applicant also fell behind on the payments on her rental property after her tenants moved out without notice. She applied for a loan modification, but before she received a decision on her application, she was notified that foreclosure had been initiated. Based on advice from the loan officer and her attorney, she filed a Chapter 13 bankruptcy petition to avoid or delay foreclosure. She avoided foreclosure, and her loan was modified in May 2013 to provide for payments of \$1,031 per month, including taxes and insurance. (Tr. 59; AX F.) She now pays \$916 per month. (GX 3 at 3; AX C; AX F.)

Applicant's bankruptcy petition was dismissed in May 2013, because she did not timely file the required documents. She testified that she never intended to complete the Chapter 13 bankruptcy, but she filed the petition solely to stop the foreclosure proceedings. (Tr. 51-52; GX 4.)

In July 2015, Applicant's tenant in the rental property had to move out because of a fire in the building. (Tr. 54-55.) A new renter moved in in December 2015. Applicant's loss of rental income was covered by insurance. (Tr. 55; AX E.)

When Applicant answered the SOR, she neither denied nor admitted the medical debts alleged in SOR ¶¶ 1.a-1.d, 1.p, and 1.q. At the hearing, she testified that these debts did not match her records. When Applicant submitted her SCA in June 2013, she disclosed the delinquent medical bills alleged in SOR ¶ 1.x-1.z and 1.cc-1.hh. In her answer to the SOR, she admitted the delinquent medical bills alleged in SOR ¶¶ 1.aa, 1.dd, and 1.hh; and she denied the medical bills alleged in SOR ¶¶ 1.t, 1.w-1.z, 1.cc, 1.ee, 1.ff, and 1.gg. She testified that she and the insurance company disagreed on the amount of her payments on several of her medical bills, but she did not attempt to resolve the disagreements. (Tr. 95-96.)

Applicant denied the \$8 medical debt alleged in SOR ¶ 1.w. It is not reflected in the credit reports admitted in evidence and was not discussed during her personal subject interviews in August 2013. (GX 4.)

Six of the 15 medical debts alleged in the SOR are for less than \$100 (including the \$8 debt alleged in SOR ¶ 1.w). Applicant testified that she did not contact any medical creditors because she believed that medical debts more than three years old are uncollectible. (Tr. 70.) Based on her experience and her husband's experience with medical collections, she knew that the medical provider would not accept payment on a charged-off debt because any payments received would be taxable income, and the small amounts of the payments do not justify the accounting required to legally accept them. (Tr. 103-05.)

Applicant testified that the \$137 debt for cable service alleged in SOR ¶ 1.e arose when she terminated her service but the cable provider continued to bill her. She disagreed with the debt but did not submit any documentation of her efforts to dispute it. (Tr. 71.)

In her answer to the SOR, Applicant admitted the credit-card debts alleged in SOR ¶¶ 1.f-1.j, 1.s, and 1.dd. She testified that she attempted to make payments on the debts, but the creditors would not accept payments because of her pending bankruptcy. After they returned her payments, she had no further oral or written communications with them. She did not notify her creditors that the bankruptcy petition was dismissed. (Tr. 72-74, 88, 92.)

In her answer to the SOR, Applicant admitted the \$12,051 credit-card debt alleged in SOR ¶ 1.k. She testified that her debt to this creditor was less than the amount alleged, but she had not contacted the creditor about it. (Tr. 78.)

In her answer to the SOR, Applicant denied the \$917 debt alleged in SOR ¶ 1.l. She testified she had only one account with this creditor, which is alleged in SOR ¶ 1.dd. (Tr. 79.) The debt in SOR ¶ 1.l is a collection account for the same original creditor as alleged in SOR ¶ 1.dd. The debt in SOR ¶ 1.dd is for \$18,185, with payments past due for 120 days but not yet referred for collection. The debt in SOR ¶ 1.l does not appear to be included in SOR ¶ 1.dd.

In her answer to the SOR, Applicant admitted the \$3,453 debt alleged in SOR ¶ 1.r and the \$1,709 debt alleged in SOR ¶ 1.s. The creditor is the same for both debts, and they appear to be duplicates. Applicant testified that the debt was incurred for a kitchen remodeling, but that she stopped receiving bills after she filed her bankruptcy petition. She did not notify the creditor that her bankruptcy petition was dismissed. As of the date of the hearing, she had not contacted the creditor. (Tr. 80-82.)

Applicant denied the debt alleged in SOR ¶ 1.n, an account that was past due for \$481, with a balance of \$37,175. She testified that the debt was incurred to purchase a recreational vehicle and that her payments are current. She presented documentary evidence that she is paying \$456 monthly on this debt and her payments are current. (Tr. 84-86; AX D; AX H.)

Applicant denied the debt alleged in SOR ¶ 1.u. She testified that she has only one account with this creditor, even though separate account numbers for this creditor are alleged in SOR ¶¶ 1.j, 1.k, and 1.u. She has not contacted the creditor, attempted to make payments, or disputed any of the accounts with this creditor. (Tr. 90.)

Applicant denied the debt alleged in SOR ¶ 1.v. The creditor is a collection agency for a home improvement company. (GX 7 at 8.) She testified that she has not tried to contact the creditor. (Tr. 90.)

Applicant disclosed the credit-card debt alleged in SOR ¶ 1.bb in her SCA, but at the hearing she testified that she did not remember having a credit card from this creditor. (Tr. 94.)

Applicant admitted the \$11,149 debt for home improvements alleged in SOR ¶ 1.hh. She testified that this creditor stopped accepting payments after she filed her bankruptcy petition. (Tr. 96.) She made no further attempts to resolve the debt.

Applicant testified that she was unaware of the information in her credit report when she submitted her SCA. She thought she was required to pay for a credit report, and “we don’t pay for anything right now that’s not what we consider absolutely necessary.” She testified she was unaware that she was entitled to a free credit report once a year. (Tr. 71, 78-79.)

Applicant was required to receive financial counseling online when she applied for the loan modifications on her primary residence and her rental property. She did not complete the financial counseling required by the bankruptcy court. (Tr. 101-02.)

During Applicant’s personal subject interview in August 2013, she told the investigator that her monthly net income, including her income from the rental property, is about \$5,212. Her living expenses are about \$1,178, and her debt payments (two mortgage loans and the RV loan) are about \$2,765, leaving a net monthly remainder of about \$1,269. (GX 4 at 6.) However, at the hearing she testified that she has “very little” discretionary funds after paying her monthly bills: “Maybe a couple hundred dollars.” (Tr. 97.) At the time of the hearing, she had about \$2,500 in her checking account. Her husband has about \$12,000 in a savings account, in which he deposits his disability pay. Applicant testified that she is a joint owner of the savings account so that she can pay her husband’s burial expenses. (Tr. 98-99.)

Applicant’s supervisor for the past three and a half years testified that she is very conscientious and works well with her teammates. He regards her as “an exemplary employee and a person of good character.” (Tr. 34-35.)

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An

administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

The concern under this guideline 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.

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

The debts alleged in SOR ¶¶ 1.r and 1.s involve the same creditor, and they appear to be duplicates. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). Accordingly, I will resolve SOR ¶ 1.s in Applicant's favor.

The evidence reflects that Applicant resolved her delinquent mortgage loan on the rental property (SOR ¶ 1.o), the mortgage loan on her primary residence (not alleged in the SOR), and the loan on her RV (SOR ¶ 1.n). She denied the \$8 debt alleged in SOR ¶ 1.w, and there is no evidence in the record establishing it. Accordingly, I have resolved SOR ¶¶ 1.n, 1.o, and 1.w in her favor, in addition to the duplicate debt in SOR ¶ 1.s, discussed above. However, the remaining debts alleged in the SOR are unresolved. The remaining unresolved debts establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations").

The following mitigating conditions under this guideline are potentially applicable:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

AG ¶ 20(a) is not established. Applicant's debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not fully established. Applicant encountered multiple conditions largely beyond her control: her husband's disability, her medical problems, and her loss of employment. Her loss of rental income after a house fire did not substantially contribute to her financial problems, because it was covered by insurance. Applicant acted responsibly regarding the loan on her RV and the two mortgage loans on her primary residence and her rental property. She receives some credit for tendering payments that were rejected on the debts in SOR ¶¶ 1.f-1.j, 1.d, and 1.dd. However, she did not inform her creditors that her bankruptcy petition had been dismissed. She took no action to resolve the HELOC debt, relying on the fact that it was charged off. She took no action on her medical debts after returning to the workforce. Instead, she relied on the passage of time to make them uncollectible.

AG ¶ 20(c) is not fully established. Applicant received financial counseling in connection with her mortgage loan modifications, but her financial situation is not under control.

AG ¶ 20(d) is established for the home mortgage loan in SOR ¶ 1.o and the recreational vehicle loan in SOR ¶ 1.n. It is not established for the remaining debts. "Good faith" within the meaning of this mitigating condition means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). "[R]eliance upon the non-collectibility of a debt does not constitute a good-faith effort to resolve that debt within the meaning of the Directive." ISCR Case No. 07-06841 at 4. Bd. Dec. 19, 2008).

AG ¶ 20(e) is not established. Applicant testified that she disagreed with several debts alleged in the SOR, but she presented no documentation of disputes filed with the original creditors or the collection agencies.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant has worked in support of national defense for many years and held a security clearance for most of her career. She was living a comfortable life until she encountered unexpected and serious medical problems, uninsured medical expenses, and loss of employment. She self-reported her financial problems and disclosed many of her delinquent debts in her June 2013 SCA. She was candid and sincere at the hearing. She is highly regarded by her supervisor.

On the other hand, her lack of attention to her credit reports, her failure to maintain contact with her consumer-debt creditors and medical creditors, her lack of prompt action to resolve her debts after returning to the workplace, and her reliance on the passage of time to make her medical debts uncollectible are inconsistent with the behavior expected of an applicant of her age, employment experience, and familiarity with the security clearance process. After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by her financial problems. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with the national interest to continue her eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.a-1.m:	Against Applicant
Subparagraphs 1.n-1.o:	For Applicant
Subparagraphs 1.p-1.r:	Against Applicant

Subparagraph 1.s:	For Applicant
Subparagraphs 1.t-1.v:	Against Applicant
Subparagraph 1.w:	For Applicant
Subparagraphs 1.x-1.hh:	Against Applicant
Subparagraph 1.ii:	For Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman
Administrative Judge