



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



In the matter of:)
)
) ISCR Case No. 17-03962
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*
03/27/2019

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

History of the Case

Applicant submitted a security clearance application (SCA) on February 23, 2017. On January 24, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F, Financial Considerations. Applicant answered the SOR on March 5, 2018 (Answer), and requested a decision on the record without a hearing.

On March 29, 2018, a complete copy of the File of Relevant Material (FORM), containing seven Items, was mailed to Applicant. The FORM notified Applicant that she had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of her receipt of the FORM. Applicant did not respond to the FORM, and Items 1 through 7 are admitted into evidence without objection. The case was assigned to me on July 30, 2018.

Findings of Fact

Applicant is 59 years old. She was married to her first husband from 1983 until they divorced in 1993. She was married to her second husband from 1993 until they divorced in 2016. She has three adult children from her first marriage and one adult daughter from her second marriage. Applicant attended some college and has worked as an accounting clerk for her current employer since February 2017. This is her first security clearance application.

Applicant's financial problems began during her second marriage. Her ex-husband was abusive and he gambled. They separated in 2012, and their divorce was finalized in 2016. The financial stresses of raising her children and helping her mother contributed to her financial difficulties. Additionally, Applicant was unemployed for approximately three weeks in 2015, and from April 2009 until March 2010. (Item 1; Item 3 at 9-10, 14)

The SOR alleged five delinquent debts, totaling almost \$26,000 and a 2017 Chapter 13 bankruptcy filing. In Applicant's Answer, she claimed she was making payments toward two debts, was in negotiations for two debts, and claimed one debt belonged to her ex-husband. Additionally, she claimed she was making payments toward the Chapter 13 bankruptcy. At some point, she obtained a part-time job to help her repay her delinquent debts. (Item 1)

SOR ¶ 1.a. Applicant failed to pay a \$1,190 property tax bill for her home. In her March 2018 Answer to the SOR, she claimed she was paying \$50 per month toward this debt. She did not provide proof of payments, nor did she indicate when she started making payments, or how many payments she had made. (Item 1; Item 6 at 22)

SOR ¶ 1.b. In 2014, Applicant purchased a home directly from the owner for \$89,000. She fell behind on her \$810 monthly payments, and in approximately March 2017, she stopped making all payments per the recommendation of an attorney. Applicant was advised to stop making payments to force a strategic foreclosure and a subsequent loan modification. She is currently delinquent in the amount of \$14,618. In her Answer, she claimed she was making monthly payments of \$1,700. She did not provide proof of payments, nor did she indicate when she started making payments, or how many payments she has made. This debt was included in the Chapter 13 bankruptcy filing. (Item 1; Item 3 at 12, 19; Item 6 at 22; Item 7 at 11-15)

SOR ¶ 1.c. This \$349 medical account became delinquent in 2014. In her Answer, Applicant claimed she was negotiating a payment with the creditor. (Item 1; Item 3 at 12; Item 4 at 3; Item 5 at 2)

SOR ¶ 1.d. This is an \$8,656 balance on a car loan for a vehicle that was repossessed. In her Answer, Applicant claimed that she is negotiating with her ex-husband regarding this debt. She co-signed for the vehicle loan in 2007, but her ex-husband was the primary user, and he stopped making payments in 2012. Applicant told the government investigator that her husband was assigned this debt in their divorce.

However, this debt is not listed or addressed in their May 2016 divorce decree. (Item 1; Item 3 at 13, 15; Item 4 at 5; Item 6 at 26; Item 7)

SOR ¶ 1.e. This \$1,157 credit card account became delinquent in 2011. In her Answer, Applicant claimed she was negotiating a payment with the creditor. (Item 1; Item 4 at 11; Item 5 at 5)

SOR ¶ 1.f. Applicant filed for Chapter 13 bankruptcy protection in September 2017. Her liabilities totaled almost \$175,000, and her assets totaled over \$121,000. According to the filing, her ex-husband owed her \$1,800 for back child support. In her Answer, she claimed she was in a payment plan with the court, but did not provide a status for the filing or proof of payments. (Item 1; Item 5 at 1; Item 6; Item 7 at 17)

Applicant's most recent credit bureau report (CBR) shows that in March 2018, she was three months behind on two student loan accounts. The delinquent amount totaled \$478, and the total outstanding balance owed was \$20,832. (Item 5 at 4)

Policies

"[N]o one has a 'right' to a security clearance."¹ 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."² 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."³

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.

¹ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

² *Egan* at 527.

³ Executive Order (EO) 10865 § 2.

Adverse 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.”⁴ Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Security Executive Agent have established for issuing national security eligibility.

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.⁵ “Substantial evidence” is “more than a scintilla but less than a preponderance.”⁶ The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.⁷ Once the Government establishes a disqualifying condition, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.⁸ An applicant has the burden of proving a potential mitigating condition, and the burden of disproving it never shifts to the Government.⁹

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”¹⁰ “[S]ecurity clearance determinations should err, if they must, on the side of denials.”¹¹

Analysis

Guideline F: Financial Considerations

The security concern under Guideline F 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

⁴ EO 10865 § 7.

⁵ Directive ¶ E3.1.14.

⁶ See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

⁷ See, e.g. ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

⁸ Directive ¶ E3.1.15.

⁹ ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

¹⁰ ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); Directive ¶ E3.1.15.

¹¹ *Egan*, 484 U.S. at 531; see also AG ¶ 2(b).

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 record evidence establishes two disqualifying conditions under this guideline: AG ¶ 19(a) (inability to satisfy debts) and AG ¶ 19(c) (a history of not meeting financial obligations).

AG ¶ 20 describes conditions that could mitigate security concerns. 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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant experienced personal issues that contributed to her financial delinquencies; however, she did not establish that she acted responsibly to address the alleged unpaid debts. Applicant filed for Chapter 13 bankruptcy protection in September 2017 to address and repay her obligations; however, she failed to provide proof of payments toward the bankruptcy. Additionally, her most recent CBR shows that she is three months behind on her student loan payments, demonstrating that her financial situation is an ongoing issue. Her debts remain unresolved, and they are significant.

Applicant did not provide proof of any payments toward her delinquent debts in her Answer. She did not provide a Response to the FORM, despite earlier claims that she was making payments toward the bankruptcy and some of her debts. Applicant's debts remain a recent and ongoing issue, nor did they become and remain delinquent under such circumstances that they are unlikely to recur, and they continue to cast doubt on her current reliability, trustworthiness, and good judgment. Mitigation under AG ¶ 20(a), 20(b), and 20(d) was not established.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security

must be an overall common sense judgment based upon careful consideration of the following guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under the guidelines at issue in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under this guideline, and evaluating all the evidence in the context of the whole person, Applicant has not mitigated the financial security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.f:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is denied.

CAROLINE E. HEINTZELMAN
Administrative Judge