



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 18-01206
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esq. and Kelly Folks, Esq., Department Counsel
For Applicant: *Pro se*

01/04/2019

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 on April 26, 2017. On May 1, 2018, 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 (Exec. Or.) 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), for all adjudicative decisions on or after June 8, 2017.

Applicant answered the SOR on May 30, 2018, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on August 1, 2018,

and the case was assigned to me on September 11, 2018. On September 20, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for October 29, 2018. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or documentary evidence. I kept the record open until November 16, 2018, to enable her to submit documentary evidence. She did not submit any further evidence. DOHA received the transcript (Tr.) on November 6, 2018.

Findings of Fact¹

Applicant is a 44-year-old program analyst employed by a defense contractor since January 2017. She worked as a site manager from January 2005 to January 2013, earning about \$82,000 per year. She was laid off and unemployed from January 2013 to April 2013. (GX 2 at 3.) She worked as an office assistant in a salvage yard from March to June 2014, earning about \$10 per hour. She moved from another state to her current state of domicile in June 2014. She worked as a data analyst from June 2014 to December 2015, earning about \$72,000 per year. She worked as a program manager for a federal contractor from December 2015 to May 2016, earning about \$82,000 per year, and she was laid off when this employer's contract ended. She was unemployed from June 2016 to January 2017, when she began her current employment. Her beginning salary with her current employer was \$52,000, she received a raise to \$55,000 per year about a month before the hearing. (Tr. 28-37.) She was cleared for a public trust position by another government agency in July 2014.

Applicant was enrolled in an online university from April 2007 to January 2012. She received an associate's degree in April 2008 and a bachelor's degree in business management in January 2012. She has about \$175,000 in student loans, which are deferred and not alleged in the SOR. (Tr. 61-62.)

Applicant has never married. She has three children, ages 22, 20, and 15. She testified that she was entitled to child support for her two older children, but that their father was about \$50,000 in arrears, and she has been unable to collect it. She was uncertain whether a court order requiring payment of the arrearage is still in effect. (Tr. 59-60.)

The SOR alleges 22 delinquent debts totaling more than \$57,000. The debts are reflected in credit reports from July 2017 and April 2018, and in court records submitted by Department Counsel. In Applicant's answer to the SOR, she admitted all the allegations. Her admissions in her answer and at the hearing are incorporated in my findings of fact. The evidence concerning the debts alleged in the SOR is summarized below.

¹ Applicant's personal information is extracted from her security clearance application (GX 1) unless otherwise indicated by a parenthetical citation to the record.

SOR ¶ 1.a: unpaid rent placed for collection of \$18,469. Applicant testified that part of this debt was reduced to judgment, alleged in SOR ¶ 1.i, that the judgment was satisfied by garnishment, that she has a payment agreement for \$370 per month on the remainder of the debt, and that the balance has been reduced to about \$6,000. She submitted no documentary evidence to support her testimony. (Tr. 39-40.) The April 2018 credit report reflects that the creditor for this debt is the same as the plaintiff in the judgment alleged in SOR ¶ 1.i. The credit report reflects that this collection account is for attorney's fees and "outstanding balance."

SOR ¶ 1.b: car loan charged off for \$12,785. Applicant voluntarily surrendered her car when she was unable to make the payments. She testified that she contacted the creditor, who offered to settle the debt for about \$8,000, which she could not afford. The debt is not resolved. (Tr. 41.)

SOR ¶ 1.c: telecommunications debt placed for collection of \$1,181. Applicant testified that this debt is for unreturned equipment and that she has disputed the debt and sent the creditor a copy of her receipt for the returned equipment. (Tr. 42.) She did not provide a copy of her receipt for the returned equipment or any other documentation of her dispute.

SOR ¶ 1.d: credit card charged off for \$589. Applicant testified that she does not have a payment plan for this debt, but that she sent two payments to the creditor, one for \$137 and one for \$50. She testified that she had documentation of her payments, but she did not submit anything to support her testimony. (Tr. 43.)

SOR ¶¶ 1.e, 1.f, 1.i, and 1.j: four collection accounts from same creditor, two for \$236 and two for \$118. Applicant admitted these debts in her answer to the SOR, but at the hearing she testified that she was unable to identify them. (Tr. 44.) She testified that she disputed the debts online with the named creditor but did not receive a response. She did not submit any documentation of her dispute. (Tr. 65-66.)

SOR ¶ 1.g: satellite television placed for collection of \$178. Applicant has taken no action to resolve this debt. (Tr. 45.)

SOR ¶ 1.h: collection account for \$150. Applicant testified that this debt was an application fee for a rental property, but that she did not move into the property. She testified that she intended to pay the debt in full by the end of October 2018. (Tr. 46.) She has submitted no evidence of a payment.

SOR ¶ 1.k: utility bill placed for collection of \$114. Applicant testified that she scheduled a payment on this debt but could not afford to make it. (Tr. 47-48.) The debt is not resolved.

SOR ¶ 1.l: judgment for unpaid rent, filed in January 2015 for \$3,566. Applicant testified that this judgment was for part of the debt alleged in SOR ¶ 1.a.

Court records reflect that she was evicted. (GX 5 at 1.) She testified that the judgment was satisfied, but she submitted no documentation to support her testimony. (Tr. 48.)

SOR ¶ 1.m: judgment for unpaid rent, filed in November 2015 for \$4,450. Court records reflect that Applicant was evicted. (GX 5 at 2.) Applicant admitted that the judgment is unsatisfied. (Tr. 51.)

SOR ¶ 1.n: judgment for unpaid rent, filed in January 2017 for \$9,110. Applicant testified that she withheld the rent for an apartment because the landlord was unwilling to make necessary repairs. The court agreed with the landlord and Applicant was evicted. (GX 5 at 3.) She has not contacted the creditor or taken any action to resolve this debt. (Tr. 51-52.)

SOR ¶ 1.o: cable bill referred for collection of \$643. Applicant has not contacted the creditor or attempted to resolve this debt. (Tr. 52-53.)

SOR ¶ 1.p: cellphone bill placed for collection of \$2,133. Applicant has not contacted the creditor or attempted to resolve the debt. (Tr. 54.)

SOR ¶¶ 1.q, 1.r, 1.s, 1.t, and 1.u: medical bills placed for collection of \$831, \$234, \$836, \$297, and \$386. Applicant testified that these medical bills were for her son, who has severe asthma. She testified that she was contacted by a collection agent (but not the collection agents alleged in the SOR) regarding three medical bills, that she made a payment agreement for a total of \$549, and that the debts would be resolved after she makes two more payments. (Tr. 54-58.) She did not provide documentation of payment agreements or payments.

SOR ¶ 1.v: telecommunications bill placed for collection of \$469. Applicant testified that she contacted the creditor about a payment agreement, but the creditor insisted on payment in full. (Tr. 58.) The debt is not resolved.

Applicant's annual salary equates to gross pay of about \$4,580 per month. She provided no information about her about her take-home pay. Her monthly living expenses total about \$1,312 (Tr. 60-61.) She has no savings or retirement accounts. She has never received financial counseling. (Tr. 64.)

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 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. 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." 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. 15-01253 at 3 (App. Bd. Apr.20, 2016).

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.

Analysis

Guideline F, Financial Considerations

The security concern under this guideline 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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person 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 documentary evidence reflects that the debts alleged in SOR ¶¶ 1.a and 1.l are the same debt. 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 at 3 (App. Bd. Sep. 21, 2005) (same debt alleged twice). Accordingly, I will resolve SOR ¶ 1.l in Applicant's favor.

Applicant's admissions and the documentary evidence submitted at the hearing establish the following disqualifying conditions: AG ¶ 19(a) "inability to satisfy debts"; AG ¶ 19(b) "unwillingness to satisfy debts regardless of the ability to do so"; and AG ¶ 19(c) ("a history of not meeting financial obligations").

The following mitigating conditions 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated and is adhering to 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 delinquent debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not fully established. Applicant's unemployment from January to April 2013 and June 2016 to January 2017, and her drastic pay reduction from \$82,000 per year in May 2016 to \$52,000 per year in January 2017 were conditions largely beyond her control. She testified about responsible efforts to resolve her delinquent debts, but she submitted no documentary evidence to support her testimony. When applicants claim to have taken actions to resolve delinquent debts, they are expected to present documentary evidence supporting their claims. See ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016).

AG ¶¶ 20(c) and 20(d) are not established. Applicant presented no documentary evidence of financial counseling, payment agreements, or payments on her delinquent debts.

AG ¶ 20(e) is not established. Applicant claimed that she disputed the telecommunications debt in SOR ¶ 1.c, but she submitted no documentation of the dispute or the basis for it.

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 and applying the adjudicative factors in AG ¶ 2(d).²

² The factors are: (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

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). 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 delinquent debts.

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.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraphs 1.m-1.v:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman
Administrative Judge

changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.