



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



In the matter of:)
)
)
) ISCR Case No. 18-02689
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

04/23/2019

Decision

LYNCH, Noreen A., 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 January 9, 2018. On November 20, 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 adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

Applicant timely answered the SOR 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) on January 17, 2019. Applicant received the FORM on January 25, 2019. The Government's evidence, included in the FORM and identified as

Items 1 through 6, is admitted without objection. Applicant did not respond to the FORM. The case was assigned to me on April 4, 2019. Based on my review of the documentary evidence, I find that Applicant has not mitigated the financial concerns.

Findings of Fact

Applicant is a 52-year-old employee for a federal contractor, but currently on medical disability leave. She is separated from her husband who she married in 2001, and she has one adult child. (Item 2) There is no information in the record concerning her education. She has held a security clearance at least since 2015. She has been employed with her current employer since January 2017. (Item 3)

Financial

The SOR alleges in 1.a-1.r, 18 delinquent accounts including student loans totaling \$80,000, medical collection or charged-off accounts, and consumer accounts for a grand total of approximately \$92,510. (Item 1) Applicant admitted debts listed on the SOR with the exception of SOR 1.c-1.i, 1.k, 1.m 1.m, and 1.n and provided explanations. She also denied one account (1.o) that had been paid, and enclosed a receipt as proof of payment. (Items 1, 2) Her credit reports confirm the remaining delinquent debts. (Items 5, 6)

Applicant attributes her delinquent debts to her separation and the process of a divorce. She noted that she has bad credit as a result of her husband not paying bills that he promised to pay. She referred to a 2015 DOHA decision that granted her a clearance and showed that she was unemployed due to illness and medical bills. (Item 2) Applicant at that time had debt of about \$22,000. She also claimed identity theft. In her answer to the SOR, Applicant explained that she has paid medical expenses which were \$8,078 in 2015 and are now \$1,837. She further explained that she is on medical disability. (Item 2) In her answer to the SOR, she denied all other accounts either because she needed to investigate them or she had disputed them. She intended to pay all debts.

During the 2018 investigative interview, Applicant stated that she believed her student loans were in deferment. As to the other alleged debts, she stated that she did not know the origin of the accounts, but she would investigate them. She stated that she would obtain her credit report. (Item 2) The majority of these debts were not included in the 2015 DOHA decision.

Applicant did not respond to the FORM, nor did she present any documentary evidence of a plan to resolve debts. As to debts that were disputed, she presented no documentation or further explanation of her efforts. A December 2018 memorandum to a credit bureau was submitted but did not refer to a specific account in dispute.

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. 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.

Analysis

Guideline F (Financial Considerations)

The 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. 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

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).

Applicant's admissions, corroborated by her credit reports, and failure to pay her delinquent debts or set up any payment plans raise two disqualifying conditions under this guideline: AG ¶ 19(a) (“inability to satisfy debts”); and AG ¶ 19(c) (“a history of not meeting financial obligations”).

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

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 debt.

The Government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Applicant has an extensive history of financial difficulties for which she did not provide any documentation of efforts to resolve her debts.

Applicant meets none of the mitigating conditions for financial considerations. She has not clearly documented any efforts to resolve debts (with the exception of 1.o). Applicant did not document that she acted responsibly after some events that were beyond her control happened. She stated she would investigate her credit reports after the subject interview but she did not document any efforts that she may have made to resolve them. Applicant has no financial or credit counseling, and there is no evidence any of the disputed debts were resolved in her favor. Her lack of effort does not demonstrate a track record. Furthermore, Applicant presented no "whole-person" evidence to mitigate the security concerns raised by her inaction on the debts. Accordingly, I conclude Guideline F against Applicant.

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(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.

Applicant is separated and was unemployed for medical reasons. Circumstances beyond her control adversely affected her finances, but she has not acted reasonably and responsibly to address her delinquent debts. She took no action to address her student loans and other accounts.

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

Conclusion

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

Noreen A. Lynch
Administrative Judge