



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 [REDACTED]) ISCR Case No. 19-00990
)
 Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*
12/17/2019

Decision

MARINE, Gina L., 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 January 14, 2019. On June 14, 2019, 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 (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) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on August 7, 2019, and requested a decision on the written record without a hearing. On October 2, 2019, the Government sent Applicant a complete copy of its written case, a file of relevant material (FORM), including documents identified as Items 1 through 7. She was given an opportunity to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation to the Government's evidence. She received the FORM on October 16, 2019, and timely submitted her response on or about October 25, 2019, to

which the Government did not object. Items 1 and 2 are the pleadings in the case. I admitted Items 3 through 7 into evidence. Applicant's SOR Answer and FORM response included several documents that I admitted into evidence as Applicant Exhibits (AE) A through D. The case was assigned to me on November 5, 2019.

Procedural Matters

I extracted the below findings of facts from Applicant's SOR Answer (Item 2), her January 2019 SCA (Item 3), and summaries of security clearance interviews conducted between December 2017 and February 2018 (SI) (Item 5).¹ Item 5 was not authenticated as required by Directive ¶ E3.1.20. However, I conclude that Applicant waived any objection to Item 5. The Government included in the FORM a notice advising Applicant of her right to object to the admissibility of Item 5 on the ground that it was not authenticated. Applicant was also notified that if she did not raise any objection to Item 5 in her response to the FORM, or if she did not respond to the FORM, she could be considered to have waived any such objection, and that Item 5 could be considered as evidence in her case. Applicant received the FORM, including a copy of Item 5, but neither responded to the FORM nor otherwise objected to Item 5.

Findings of Fact

Applicant, age 34, is unmarried with one minor child. She earned her high school diploma in 2003. She has been employed by a defense contractor since April 2019. She was previously granted security clearances; by the DOD in 2010, and by an unspecified agency in 2018.

Between 2011 and 2018, Applicant incurred the 11 delinquent debts alleged in the SOR, which totaled \$43,417. In her SOR answer, Applicant admitted all but one \$515 medical account (SOR ¶ 1.k), of which she claimed to have no knowledge. That debt was not only confirmed by a 2017 credit report, but she previously acknowledged it as a hospital bill incurred in 2010 when she did not have the funds to pay it. (Items 4, 6; Item 5 at 7)

Applicant attributed her debts primarily to extended periods of unemployment including: 1) June 2018 through April 2019; 2) September 2014 through June 2015; and 3) February 2010 through June 2011. She also extended her credit on behalf of persons who did not pay the creditors as they had agreed, which resulted in the debts alleged in SOR ¶¶ 1.b, 1.f, 1.g, and 1.h. (Items 2, 3, 5)

Applicant asserted that she made monthly payments of \$200 toward resolving the debt alleged in SOR ¶ 1.e, beginning on a date not specified in the record until she became unemployed in June 2018. However, she did not provide any corroborating

¹ The record evidence suggests that Applicant completed another SCA prior to the one generated in January 2019. However, the earlier SCA was not included in the record. The SOR is based on concerns raised by the January 2019 SCA. Thus, the earlier SCA not being included in the record did not affect either the relative positions of the parties or my decision. Nevertheless, I mention it to avoid any confusion in the record.

evidence. Her credit reports reflected a reduction of merely \$98 in the balance owed between March 2017 and January 2019. (Item 3 at 50; Item 4 at 4; Item 6 at 4)

In June 2019, Applicant engaged the services of a company to assist her with “getting some derogatory/frivolous items removed from her credit file.” Those services cost her \$88 per month. However, the record does not specify how much, if any, of that monthly fee is being used to repay her creditors. Nor did Applicant specify whether she received financial counseling, either from the company or otherwise. (Item 2; AE A, C)

After an investigation by one of the credit bureau agencies in August 2019, the debts alleged in SOR ¶ 1.b and SOR ¶ 1.j were removed from Applicant’s credit report. Conversely, the agency affirmed the validity of the debts alleged in SOR ¶¶ 1.a and 1.c. Applicant proffered no bases for disputing of any of these four debts. (AE C at 3, 4)

The debt alleged in SOR ¶ 1.b was a loan for a car originally owned by Applicant. She gave the car to a friend who agreed to assume responsibility for repaying the loan. When the friend could no longer afford the loan payments, the car was repossessed. The debt alleged in SOR ¶ 1.j was the final bill generated when Applicant cancelled her cable service. The debt alleged in SOR ¶ 1.a was a loan for a car Applicant owned. The car was repossessed after she defaulted on the loan due to unemployment. Without providing any corroborating evidence, she asserted that any balance owed on the loan was resolved after the creditor resold the car. The debt alleged in SOR ¶ 1.c was a car loan that she cosigned for another individual. When that individual defaulted on the loan, the car was repossessed. (AE C at 3; Item 2 at 1-2; Item 5 at 6, 8; Item 3 at 46-47, 50-51)

In June 2019, Applicant paid \$186 towards the debt alleged in SOR ¶ 1.i. As of August 2019, the remaining balance was \$437. In September 2019, she arranged to resume monthly payments of \$100 to resolve the debt alleged in SOR ¶ 1.d. She did not, however, provide evidence that any payments were actually made. Since about August 2019, she has been making bi-monthly payments via an involuntary wage garnishment (20% of her paycheck) to satisfy a June 2018 judgment granted in favor of the creditor alleged in SOR ¶ 1.e. As of September 2019, she owed a remaining balance of \$922. (AE B, C, D; GE 7; Item 2 at 4)

The record did not specify Applicant’s relevant income and expense prior to August 2019. In August 2019, she reported a monthly net remainder of \$1,295. However, that number did not include unspecified expenses for her “daughter’s needs,” which she asserted renders her salary insufficient to address her debts. Recognizing the security concern raised by her debts, she began seeking part-time employment. Her part-time job search efforts had been unsuccessful as of October 2019. (Item 2 at 3-4; FORM response)

Applicant’s debt resolution plan includes making unspecified payments on the 22nd day of each month to the creditors of her admitted debts, one by one, until they are fully resolved. Her plan requires her to maintain her full-time employment and to supplement her income with a part-time job. She believes this approach is the best way

to ensure that she remains able to meet her ongoing living expenses. The plan is on hold, in part, because of the garnishment and, in part, because her creditors have asked for good-faith deposits in amounts larger than she can afford. Once the garnishment is satisfied, she will work on amassing the requested deposits. She anticipated that the garnishment would be completed by about mid-November 2019. (Item 2 at 3-4; FORM response)

At the close of her FORM response, Applicant stated the following:

I can say that I made some very poor judgments with my credit, and have learned my lesson from helping people when it comes to my credit. I was young, moved away from home, and did not think about how me not paying things on time or at all would affect me in the long run. I also understand now that I am older how important my credit is, in life and also how important it is to maintain and keep my clearance and my occupation. I am trying my best to fix my credit . . . I can't take care of my debt overnight. [sic]

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.” (*Egan* 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.” (EO 10865 § 2).

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.” (EO 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. (*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. 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. (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; AG ¶ 2(b)).

Analysis

Guideline F: Financial Considerations

The security concern under Guideline F (Financial Considerations) is set out in AG ¶ 18, as follows:

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

Applicant's unresolved debts totaling \$43,417 establish two disqualifying conditions under this guideline: AG ¶ 19(a) (inability to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations).

None of the following potentially applicable mitigating conditions under this guideline are fully established:

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.

I credit Applicant with her one-time payment towards satisfaction of the debt alleged in SOR ¶ 1.i. The fact that the debt alleged in SOR ¶ 1.e is being resolved via involuntary garnishments after a judgment does not exemplify a "good-faith effort." Because she did not provide sufficient proof, I am unable to conclude that she made the purported payments for the debt alleged in SOR ¶ 1.d.

The company Applicant engaged to assist in repairing her credit has not helped her settle any debts. The fact that the debts alleged in SOR ¶¶ 1.b and 1.j were removed from her credit report does not absolve her from repaying them given that she had no basis to dispute them. She similarly failed to proffer any such basis as to the debt in SOR ¶ 1.c. While Applicant asserted a reasonable basis as to the debt alleged in SOR ¶ 1.a, she failed to provide any documented proof to substantiate it. Moreover, the debts alleged in SOR ¶¶ 1.a and 1.c were reported as valid debts on her August 2019 credit report.

Applicant credibly proclaimed an evolved understanding about the importance of maintaining good credit and improving her financial stability. However, substantial debts remain unresolved and she failed to demonstrate that she acted responsibly to address them. She has not received any financial counseling, nor demonstrated that she has control of her finances. Applicant is on the right track by developing a repayment plan, but there is no evidence that she is able to follow through with the plan or that her indebtedness is not likely to recur. She has not fully resolved any of the SOR debts, nor has she established a meaningful track record of voluntary payments to her creditors. Thus, in light of the record before me, I cannot conclude that Applicant has mitigated the Guideline F concerns at this time.

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 adjudicative 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 Guideline F in my whole-person analysis, and I have considered the 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 that Applicant has not mitigated security concerns raised by her indebtedness. Accordingly, Applicant has not carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

Formal Findings

Formal findings 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.k:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Clearance is denied.

Gina L. Marine
Administrative Judge