



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



In the matter of:)	
)	
)	ISCR Case No. 20-02718
)	
Applicant for Security Clearance)	

Appearances

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

08/20/2021

Decision

CERVI, Gregg 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 (SCA) on February 10, 2017. On September 27, 2019, the Defense Counterintelligence and Security Agency, Consolidated Adjudications Facility (DCSA CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F (Financial Considerations). 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) effective on June 8, 2017.

Applicant responded to the SOR on December 10, 2020 (Ans.), and requested a decision based on the written record without a hearing. The Government's written brief with supporting documents, known as the file of relevant material (FORM), was submitted by Department Counsel on February 4, 2021. A complete copy of the FORM was provided

to Applicant, who was afforded an opportunity to file objections and submit material to refute, rebut, or mitigate the security concerns. Applicant received the FORM on March 24, 2021, however she did not submit any additional evidence. The case was assigned to me on July 6, 2021. Government Exhibits (GE) 1 through 6 are admitted into evidence without objection.

Findings of Fact

Applicant is a 33-year-old configuration management specialist for a defense contractor, employed since December 2017. Applicant is a high school graduate, and served in the U.S. Marine Corps from 2006 until she was honorably discharged in 2010. She has a work history of full employment since her discharge from the Marine Corps. She married in 2009 and separated in 2017. She has one child. Applicant previously had a security clearance while serving in the Marine Corps.

The SOR alleges under Guideline F that Applicant owes approximately \$101,052 in five delinquent debts. Her debts include \$49,080 in collection and charged-off accounts (SOR ¶¶ 1.a – 1.d), and a \$51,972 mortgage deficiency after a foreclosure (SOR ¶ 1.e). Applicant admitted SOR ¶¶ 1.a- 1.d, and denied SOR ¶ 1.e.

Applicant explained in her SCA and Answer to the SOR that the delinquent debts were incurred while she lived in State A with her husband. She stated that she was in an abusive relationship with her husband. His history of mental illness and physical abuse of her and the child resulted in a felony conviction against her husband for assault on their child.

In her Answer to the SOR, Applicant's stated that her debts were incurred while living in State A with her husband. Her husband provided little support to the household, and she received a 40% pay cut when her employer changed under a new government contract. She noted that SOR debts ¶¶ 1.a and 1.d were the subject of collection efforts, but she did not have the funds to resolve them. She noted that she is working with a collection company to try to settle the debt in SOR ¶ 1.a, and she has hired a debt relief company to help her settle the debts in SOR ¶¶ 1.b-1.d.

While in State A, she and her husband received a foreclosure notice in June 2017 on a home they purchased with a VA loan. Applicant separated from her husband, sold her personal property, and moved to State B. She claimed that she gave her husband \$9,000 to bring the mortgage up to date, but he absconded with the money without paying the mortgage. The mortgage was foreclosed in November 2017. Applicant's most current credit report (2020) shows no deficiency balance owed on the property.

Applicant did not provide evidence showing her current financial status or household budget, the status of her debts, or evidence of efforts by the debt resolution company to resolve her debts. In addition, I have no information on any efforts to obtain financial counseling.

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.

National security eligibility 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 a person’s stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG ¶ 1(b).

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. *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, e.g., ISCR Case No. 12-01295 at 3 (App. Bd. Jan. 20, 2015).

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, e.g., 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 ¶ 1(d).

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. . . .

The relevant disqualifying conditions under AG ¶ 19 include:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant's admissions and the documentary evidence in the record are sufficient to establish the disqualifying conditions AG ¶¶ 19(a) and (c).

The following mitigating conditions under AG ¶ 20 are potentially relevant:

- (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;
- (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; and

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

Applicant's history of debt accumulation may have resulted from a period of turmoil during an abusive relationship, but there is insufficient evidence to support a finding that the debts were incurred so long ago, were so infrequent, or occurred under such circumstances that additional delinquencies are unlikely to recur. There is insufficient evidence showing efforts to resolve the debts, or that Applicant acted responsibly under the circumstances. There is no information in the record showing any financial counseling or a satisfactory financial status since the delinquencies were incurred.

A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)).

I am convinced however that the foreclosure deficiency debt in SOR ¶ 1.e has not been substantiated as the evidence shows that since 2020, Applicant does not owe a deficiency on the mortgage.

Applicant has a history of full employment although her salary has fluctuated. I am not convinced she acted responsibly to address her debts after leaving her husband and State A. I am not persuaded that her financial condition is under control or that it will not recur. No mitigating condition fully applies to debts in SOR ¶¶ 1.a-1.d.

Whole-Person Concept

Under AG ¶¶ 2(a), 2(c), and 2(d), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the whole-person concept, the 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. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d).

I considered all of the potentially disqualifying and mitigating conditions in light of the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F in my whole-person analysis. I also considered Applicant's employment history, military service, past marriage, and financial difficulties. However, I remain unconvinced of her overall financial responsibility and ability, intent, and desire to meet her financial obligations in the future.

Accordingly, I conclude Applicant has not carried her burden of showing that it is clearly consistent with the national security interest of the United States to grant her eligibility for access to classified information.

Formal Findings

Formal findings for or against Applicant 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.d:	Against Applicant
Subparagraph 1.e:	For Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interest of the United States to grant Applicant eligibility for access to classified information. Applicant's application for a security clearance is denied.

Gregg A. Cervi
Administrative Judge