



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



In the matter of:)
)
) ISCR Case No. 20-02777
)
Applicant for Security Clearance)

Appearances

For Government: Alison Marie, Department Counsel
For Applicant: *Pro se*

01/12/2022

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 November 11, 2019. On November 20, 2020, the Department of Defense Counterintelligence and Security Agency, Consolidated Adjudications Facility (DCSA CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DCSA 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 replied to the SOR in an undated response and requested a hearing before an administrative judge. The case was assigned to me on July 6, 2021. Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 10,

2021, scheduling the hearing via an online video platform for December 1, 2021. The hearing was convened as scheduled.

Government Exhibits (GE) 1, 3 and 4 were admitted into evidence without objection. Applicant objected to GE 2 (personal subject interview summary) pending her review post hearing and acknowledgement. The objection was sustained, and Applicant did not withdraw her objection post hearing. Department Counsel withdrew a credit bureau report at the hearing. Applicant testified but had no exhibits to submit. The record was held open until December 31, 2021, to permit Applicant to submit documentary evidence. Applicant submitted Applicant Exhibit (AE) A, which included an email and several copies of a November 2021 case management summary and credit reports from a credit repair law firm, engaged by Applicant. DOHA received the hearing transcript on December 8, 2021.

Findings of Fact

Applicant is a 59-year-old risk security officer for a government contractor, employed from September 2019 to December 31, 2021. Applicant graduated from high school in 1980, and completed some college credits. She married in 1981 and divorced in 1989. She remarried in 1992, but her spouse is intermittently involved in her life since 2017 and does not contribute to the household finances. Applicant lives with her granddaughter (20 years old) and great grandson (two years old). She has never held a security clearance.

The SOR alleges under Guideline F that Applicant owes approximately \$50,408 in eight delinquent debts. The government's exhibits support the SOR allegations. Applicant admitted all of the SOR allegations with explanations. She essentially turned her financial delinquencies over to a credit repair law firm, who has submitted challenges to certain debts to creditors and the credit reporting agencies. She testified that she began in 2020 or early 2021, and pays them \$59 per month. The post-hearing documents submitted by Applicant include a November 2021 case management statement and credit reports, and note challenges submitted to creditors and credit bureaus but does not list the basis for the disputes or conclusively show resolution of debts as a result of the disputes. There is insufficient evidence of settlements or payments made toward debt resolution.

Applicant admitted to a history of delinquent debts of which she is unable to pay, and has no intention to pay debts listed in the SOR. She testified that three large debts resulted from vehicle loan defaults after repossessions (SOR ¶¶ 1.b, 1.d, and 1.h). She cosigned for her children or husband on two loans in possibly 2010 and 2013 (she is unsure of when and for whom the loans were made), and the third loan was for her own vehicle purchase in about 2018 that was repossessed a year later.

Applicant has struggled to manage her family finances with her \$15 per hour pay with limited overtime. Her granddaughter earns \$5 per hour plus tips, and has medical issues. Applicant lost some work due to the COVID-19 pandemic and she testified that she carries about \$8,000 in delinquent credit card debt. She owns a home valued at about

\$150,000, but has little equity because of previous refinancing and a mortgage modification. She has about \$80,000 in retirement funds, and about \$625 in available cash. Applicant has not had financial counseling, and testified that she has a very small net monthly remainder after paying expenses.

Applicant disclosed in testimony that she received a notice from the IRS of an approximately \$5,000 federal tax debt. She hired a nationally advertised tax relief company to interact with the IRS, and paid \$2,000 plus \$200 per month for six months toward that effort. She is unsure of the current status, and has not had discussions with the IRS herself. This information was not alleged in the SOR and will not be considered for disqualifying purposes, but may be considered when making a credibility determination, in the application of mitigating conditions, and in a whole-person analysis.

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, testimony, 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;

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

(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.

Applicant has a history of debt accumulation with little personal involvement in their resolution except for use of a credit repair firm to dispute debts. She attributes her financial difficulties to a low-paying job and responsibilities for her granddaughter and great grandson. Although she has employed a credit repair firm, she has shown little success in resolving her debts, and failed to show a legitimate basis to dispute the accounts. She has a history of financial irresponsibility as evidenced by cosigning loans for people without an intent or ability to pay, and for her own inability or unwillingness to pay a car loan and other debts. Her financial problems have been longstanding and remain a concern.

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)). Applicant has not shown a willingness or ability to address her debts despite a history of full employment since 2019. Understandably, she has little liquid financial assets available to pay debts. She has not consulted a financial counselor, and her credit repair firm has shown little tangible progress toward resolution of the SOR debts. Applicant’s federal tax debt is unresolved, and may be considered in evaluating mitigating information and her overall financial responsibility.

Applicant’s financial status is minimally sufficient to meet her current monthly expenses. She is financially stretched and does not appear to have available assets to resolve her current delinquencies, or pay future obligations. Overall, I am not persuaded that she has exhibited financial responsibility and have significant doubts about her intent and willingness to resolve her debts now and in the future. No mitigating condition fully applies.

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 status, potential loss of income during COVID-19 cutbacks, and financial stress due to her household income. However, I remain unconvinced of her overall financial responsibility, and her 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.h:	Against 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