



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 21-01001
)
 Applicant for Security Clearance)

Appearances

For Government: Brittany White, Esq., Department Counsel
For Applicant: *Pro se*

02/02/2022

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on December 1, 2019. On July 7, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F. The 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), and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on July 15, 2021, and requested a decision on the written record without a hearing. Department Counsel submitted the Government’s written case on September 21, 2021. A complete copy of the file of relevant material (FORM)

was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. She responded to the FORM on October 11, 2021, and submitted Applicant's Exhibits (AX) A, B, and C, which were admitted without objection. The case was assigned to me on December 2, 2021.

Evidentiary Issue

The FORM included a summary of a personal subject interview (PSI) conducted on February 1, 2020. The PSI summary was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that she was entitled to comment on the accuracy of the PSI summary; make any corrections, additions, deletions or updates; or object to consideration of the PSI summary on the ground that it was not authenticated. Applicant responded to the FORM, but she did not comment on the accuracy or completeness of the PSI summary, nor did she object to it. I conclude that she waived any objections to the PSI summary. Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive. ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016).

Findings of Fact

In Applicant's answer to the SOR, she denied the allegations in SOR ¶¶ 1.a-1.q and 1.s. She admitted the allegation in SOR ¶ 1.r. Her admission is incorporated in my findings of fact.

Applicant is a 56-year-old over-the-road truck driver employed by a defense contractor since November 2019. She is a high school graduate. She married in December 1985 and divorced in July 1994. She has cohabited with her fiancé since March 2015. She has three adult children.

Applicant worked for a major telecommunications company from May 1999 to July 2011, when she was laid off. She worked part time for about two months and then was unemployed after marrying and moving to a new location. She worked in several low-paying jobs from May 2012 to November 2014. She completed a truck driving course in January 2015, received a commercial driver's license (CDL), and has worked continuously as an over-the-road truck driver from January 2015 to the present.

When Applicant submitted her SCA, she disclosed that she failed to timely file her federal income tax return for 2013 and pay the taxes due. She stated that her past-due returns had been filed and she was on a payment plan for her federal tax debt.

When Applicant was interviewed by a security investigator in February 2020, she acknowledged that she had filed a Chapter 13 bankruptcy petition in July 2013, which was dismissed in July 2015. She stated that all her debts were discharged. (GX 7 at 5.) The credit report from December 2019 reflects that she filed a Chapter 13 bankruptcy in July 2013, and it was paid and dismissed in July 2015. (GX 6 at 6.)

In the February 2020 interview, Applicant also disclosed that she did not pay her federal income taxes for 2012 and 2013 because of her low pay, and that she was paying \$250 per month on her tax debt. In her response to the FORM, she submitted evidence that she had been making regular payments to the IRS since March 2019 and that her balance on the IRS debt is zero. (AX B.)

The 17 delinquent student loans alleged in SOR ¶¶ 1.a-1.q all became delinquent in December 2015. She entered a rehabilitation program in February 2020, requiring monthly payments of \$332 for nine months. (GX 7 at 11.) The delinquent loans are all reflected in the credit report from May 2021 as special direct consolidation loans, except for the loans in SOR ¶¶ 1.p and 1.q, which are described as federal loan purchases in the amounts of \$2,531 and \$20,018. The total indebtedness is \$89,692, which includes the two federal loan purchases.

Applicant's FORM response reflects two consolidation loans, one with a balance of \$59,468 and the other with a balance of \$7,182 as of October 11, 2021, and they were both in forbearance until January 31, 2022. Her FORM response also includes Stafford loans totaling \$22,400, in forbearance until January 31, 2022. The total balance of the three loans is \$89,050, indicating that all of the loans alleged in the SOR, totaling \$89,692, have been consolidated and are in forbearance. The forbearance has recently been extended through May 1, 2022. (<https://studentaid.gov>.)

The estimated monthly payments for the three consolidation loans are \$199, \$75, and \$25. Although Applicant did not provide any information about her current income and expenses, the estimated monthly payments appear to be affordable now that she is employed.

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 evidence in the FORM is sufficient to raise the following disqualifying conditions under this guideline:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(f): failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

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

AG ¶ 20(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶ 20(a) is not established. Applicant's delinquent debts were recent, frequent, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is established for the Chapter 13 bankruptcy in July 2013, because it was preceded by multiple periods of unemployment and underemployment. She acted responsibly by completing the Chapter 13 payment plan.

AG ¶¶ 20(b), 20(d), and 20(g) are established for the federal tax debt and the delinquent student loans. Applicant filed her past-due returns (not alleged) and systematically paid her tax debt. She completed a loan rehabilitation program and consolidated her student loans. Her loans are in forbearance, and the estimated payments after the period of forbearance ends are well within her ability to pay them.

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.

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 mitigated the security concerns raised by her financial problems.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a-1.s:

For Applicant

Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is granted.

LeRoy F. Foreman
Administrative Judge