



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 21-01408
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel
 For Applicant: *Pro se*
 12/20/2021

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 May 7, 2020. On June 24, 2021, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F. The 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 26, 2021, and requested a decision based on the written record in lieu of a hearing. On September 23, 2021, the Government sent Applicant a complete copy of its written case, a file of relevant material (FORM), including evidentiary 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 September 30,

2021, and did not respond to the FORM or object to the Government's evidence. The case was assigned to me on December 2, 2021. On December 6, 2021, I reopened the record to afford Applicant the opportunity to update the record. On December 13, 2021, I contacted Applicant by phone and left a voicemail message to follow up. I did not receive any response from Applicant. I closed the record on December 14, 2021.

Evidentiary Matters

Applicant's SOR answer included documents that I admitted into evidence as Applicant Exhibits (AE) A and B. Items 1 and 2 contain the pleadings in the case. Items 3 through 7 are admitted into evidence. Item 7 was not authenticated as required by Directive ¶ E3.1.20. However, I conclude that Applicant waived any objection to Item 7. The Government included in the FORM a prominent notice advising Applicant of her right to object to the admissibility of Item 7 on the ground that it was not authenticated. Applicant was also notified that if she did not raise an objection to Item 7 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 7 could be considered as evidence in her case. Applicant did not respond to the FORM or object to Item 7.

Findings of Fact

Applicant, age 37, is a single mother of three children, ages 15, 16, and 18. She has never been married. She attended community college from May through August 2019. She has been employed as a custodian by a defense contractor since March 2020. This is her first application for a security clearance. (Item 3)

The SOR alleged 30 delinquent debts totaling \$51,008, including 25 medical accounts totaling \$35,570; one \$11,606 federal social security administration (SSA) account; and four consumer accounts totaling \$3,832. In her SOR answer, Applicant admitted each alleged debt. (Items 1, 2)

Applicant attributed the medical debts alleged in SOR ¶¶ 1.a through 1.t, 1.y, and 1.aa through 1.dd to expenses she incurred to treat a medical condition when she did not have health insurance. She did not have health insurance during periods when she worked for employers who did not offer health insurance. During her June 2020 security clearance interview, she expressed an intent to resolve her medical debts via a payment plan with the help of a state Medicaid program she found. She anticipated that all of her medical debt would be resolved within two years. In her SOR answer, she asserted that she set up a payment plan to resolve the issue. She did not offer documentary proof of that plan or any payments made. (Item 2; Item 7 at 1-2)

Applicant attributed the SSA debt alleged in SOR ¶ 1.w to an alleged overpayment of social security benefits that she received while unemployed. During her 2020 interview, Applicant acknowledged that she received a letter from the SSA indicating that she was overpaid, but disagreed because she did not know how or why she would have been overpaid. She planned to investigate the matter. She intended to pay the debt if it was determined that she did, in fact, owe the SSA for overpayment. In her SOR answer, she

asserted that she set up a payment plan to resolve the issue. She did not offer documentary proof of that plan or any payments made. (Item 2; Item 7 at 2)

The debts alleged in SOR ¶¶ 1.u (\$1,236) and 1.v (\$949) are two credit-card accounts that Applicant had through the same company. She opened them to pay for expenses during periods of unemployment. They both became delinquent in November 2019 and were charged off in April 2020. In her SOR answer, Applicant stated that she set up payment plans to resolve the debts. She provided documentary proof of the arrangement she made with the creditor in August 2021 to resolve the debt alleged in SOR ¶ 1.u, but not of any payments she made pursuant to that arrangement. She did not offer documentary proof of either a plan or any payments made towards the debt alleged in SOR ¶ 1.v. (AE A; Item 2; Item 4 at 6; Item 7 at 2)

Applicant incurred the utility debt alleged in SOR ¶ 1.x (\$1,395) during a period when she was either unemployed or underemployed. During her 2020 interview, Applicant expressed an intent to contact the creditor to set up a payment plan. In her SOR answer, she provided documentary proof of the payment plan she arranged with the creditor in August 2021 to resolve this debt. However, she did not offer documentary proof of any payments made pursuant to that plan. (AE B; Item 2; Item 7 at 2)

Applicant borrowed the funds alleged in SOR 1.z (\$252) via a payday loan to pay bills during a period when she was unemployed. She made a few payments on the loan before she defaulted on it. During her 2020 interview, she did not express a specific plan to pay this debt, but indicated that she intended to continue making progress on satisfying all of her then delinquent debts, which included this loan. In her SOR answer, she asserted: "There was no information on this company," and did not offer a plan to resolve this debt. (Item 2; Item 7 at 2)

Applicant's SCA revealed instability in her employment history, including five periods of unemployment and extended periods of part-time employment between January 2010 and March 2020. Her unemployment appeared to have been involuntary in all but one instance. The record did not indicate the reason that she worked on a part-time basis, rather than full time. During her June 2020 security clearance interview, Applicant described her financial situation as improving because of her new job, which not only provided her with steady employment but also a higher salary. She expressed an intent to continue taking positive steps toward satisfying her debts. (Item 3; Item 7 at 2)

Applicant reported monthly expenses totaling \$1,650 on her February 2021 personal financial statement. Based on the year-to-date salary reported on her February 2021 pay stub, Applicant's take-home pay averaged approximately \$2,119 per month. The pay stub indicated that her salary varied each pay period. The record did not indicate her previous salary or expense history, or whether she had any financial counseling. Applicant's June 2021 credit report revealed that she opened two credit-card accounts in 2020, with \$300 and \$800 credit limits and balances of \$171 and \$496, respectively. Both were in good standing. (Item 6 at 12-13).

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

The record establishes the following two disqualifying conditions under this guideline: AG ¶ 19(a) (inability to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations).

Having considered all of the factors set forth in AG ¶ 20 that could mitigate the concern under this guideline, I find the following relevant:

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; and

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's delinquent debts appear to have largely resulted from circumstances beyond her control. I considered that they consist primarily of medical expenses. However, because she did not provide sufficient documentary evidence to support her claims, she failed to meet her burden to establish mitigation under either AG ¶ 20(a), (b), or (d). I credit her with the arrangements she made to resolve the debts alleged in SOR ¶¶ 1.u and 1.x. However, without documentary proof, I am unable to conclude that she made any payments pursuant to the plans. Similarly, without documentary proof of the other alleged payment plans and the payments she made pursuant to those plans or otherwise, I am unable to conclude that she initiated and is adhering to the good-faith efforts to resolve her debts or that she otherwise acted responsibly to address her debts. There is also insufficient evidence for me to conclude that she is able to repay her debts and that her indebtedness is not likely to recur. Thus, I find that Applicant has not mitigated the Guideline F concerns at this time.

Whole-Person Analysis

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 the security concerns raised by her delinquent debts. 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.dd: Against Applicant

Conclusion

I conclude that it is not clearly consistent with interests of national security to grant or continue Applicant eligibility for access to classified information. Clearance is denied.

Gina L. Marine
Administrative Judge