



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



In the matter of:)
)
) ISCR Case No. 21-00259
)
Applicant for Security Clearance)

Appearances

For Government: Erin Thompson, Esq., Department Counsel
For Applicant: *Pro se*

06/30/2022

Decision

BENSON, Pamela C., Administrative Judge:

Applicant failed to make sufficient timely progress resolving the debts listed on the statement of reasons (SOR). Guideline F (financial considerations) security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On October 6, 2020, Applicant completed her Questionnaires for Investigations Processing or security clearance application (SCA). (Government Exhibit (GE) 1) On March 12, 2021, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guideline F. On May 7, 2021, Applicant provided a statement admitting all of the delinquent debts alleged in SOR

(¶¶ 1.a through 1.s), and stated: “I have paid outstanding collections and/or put in good standing.” She requested a hearing before an administrative judge. (SOR Response)

On August 31, 2021, Department Counsel was ready to proceed. On September 17, 2021, the case was assigned to me. On March 9, 2022, the Defense Office of Hearings and Appeals issued a Notice setting the hearing date for April 5, 2022. Her hearing was held as scheduled using the DOD Microsoft Teams video teleconference system.

During the hearing, Department Counsel offered three exhibits; Applicant did not offer any exhibits, and all proffered exhibits were admitted into evidence without objection. I held the record open for two weeks in the event either party wanted to supplement the record with additional documentation, but no other documents were submitted. On April 13, 2022, DOHA received a copy of the transcript (Tr.).

Findings of Fact

In Applicant’s SOR response, she admitted all of the allegations in SOR (¶¶ 1.a, through 1.s). Her admissions are accepted as findings of fact.

Applicant is a 41-year-old employee of a DOD contractor who has worked for this employer since April 2017. Her job title is backup lead and she is making about \$21 per hour in this position. She earned a bachelor’s degree in 2013. She is unmarried and does not have any children. She currently lives with her disabled parents. This is her first application for a DOD security clearance. (Tr. 18-20, 32; GE 1)

Financial Considerations

The SOR alleges 12 student loan accounts totaling approximately \$43,000, that were referred to the U.S. Department of Education for collection. (¶¶ 1.a through 1.l) Applicant stated that about six months following her college graduation in 2013, she was required to start repaying her student loans that she used to fund her college education. She did not pay on her student loans as required, nor did she contact the student loan creditor to explain why she was unable to make payments. When the creditor contacted her for payment, (date unrecalled), she told them that she could not afford to make any payments. Her paycheck was garnished (dates unrecalled) for a period of time, and she also had some of her Federal income tax refunds intercepted and applied to her delinquent student loans. Applicant testified that she has never “voluntarily” made a payment on her student loans. (Tr. 21-25; GE 1, GE 2, GE 3)

Department Counsel questioned Applicant why she listed in her SOR response that half of her student loans were in “good standing” and the other half were “closed.” Applicant testified that due to the pandemic and the CARES ACT, her credit report showed that about half of her delinquent student loans were now considered in good standing. The credit report also showed the other half of her student loans were closed, which she considered meant that she no longer owed any money even though she has never voluntarily made payments on these accounts. (Tr. 26-27; SOR response)

SOR ¶¶ 1.m through 1.o allege three medical accounts totaling \$1,628 that were referred for collection. Applicant listed in her SOR response that these accounts were paid. During the hearing she testified that after completing her security clearance investigative background interview, she paid these medical accounts in full. She no longer had documentation to show that these accounts were paid, but she stated that she could obtain documentation from her bank account to corroborate her claim. The record was held open for two weeks, but Applicant failed to provide supporting documentation. These medical accounts remain unresolved. (Tr. 27-30)

SOR ¶¶ 1.p through 1.s allege four student loans delinquent in the amount of approximately \$2,041, with a total combined balance of \$25,373. Applicant had also listed these loans as being in good standing in her response to the SOR. At the time of the hearing, the CARES Act emergency relief for student loans was set to expire on May 1, 2022. She had never voluntarily paid on these loans after her college graduation in 2013, but stated that she had recently saved about \$1,000. It was her intention to start repaying her student loans after the CARES Act expired. Three days after this hearing, President Biden extended the CARES Act pandemic relief for individuals holding Federal student loans until August 31, 2022. (Tr. 30-32; SOR response)

Applicant testified that she nets about \$1,300 in her bi-weekly paychecks with her hourly wage of about \$19.15. Shortly before the hearing she received a job promotion, and her new hourly pay increased to about \$21. A review of her financial obligations showed that she does not pay rent to her parents, but she contributes money for other expenses. After deducting her expenses from her monthly net pay, she was left with a monthly remainder of over \$1,100. I asked Applicant why she was unable to make better progress with her unpaid debts since she certainly had the financial means to do so. Applicant admitted that she does not like parting with her money during these uncertain times, and worries that she will end up with no money at all. She had never participated in financial counseling, and she does not maintain a monthly budget. (Tr. 33-44)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no 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 applicant’s 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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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, these guidelines are applied 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, 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 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 “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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.

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 includes disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts"; and "(c) a history of not meeting financial obligations."

In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). The SOR alleges 19 delinquent debts totaling approximately \$46,700, the majority of which stems from 16 delinquent student loans. The record establishes the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions. Discussion of the disqualifying conditions is contained in the mitigation section.

The financial considerations mitigating conditions under AG ¶ 20 are as follows:

(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 stated that she did not have enough income to pay her student loan accounts despite continuous employment with a DOD contractor since April 2017. After a review of her financial obligations, it is clear she earns sufficient money to pay on some, if not all, of her delinquent accounts. Once she realized that her delinquent finances were a concern to the Government after participation in her background interview, she claimed to have paid her three delinquent medical accounts. She failed to provide documentation to support her claim. In light of her finances, I find that repaying her student loans has not been a priority for Applicant, especially when taking into account she was fully employed for almost three full years before the pandemic hit our country.

There is no requirement that an applicant immediately resolve all financial issues or make payments on all delinquent debts simultaneously. Rather, a reasonable plan and good-faith efforts to pay delinquent debts, or resolution of such issues, one at a time, may be sufficient. An applicant's mere promises to pay debts in the future, without further confirmed action, are inadequate.

Applicant did not provide any supporting documentation about her financial resources or show why she was unable to make greater progress resolving her delinquent SOR debts before the SOR was issued. Although she meets the criteria under the CARES Act to state her student loans are currently "in good standing," a review of her previous seven-year history must be considered. During that time period Applicant failed to show that she has dealt with her student loan creditors responsibly, or that she established a good-faith effort to repay her financial obligation. Applicant's promises to pay her student loans at some point in the future, without further confirmed action, fail to remove the lingering doubts that remain whether she has demonstrated the judgment, reliability, and willingness to abide by well-established rules and regulations that is required for granting a security clearance. I find that Applicant failed to mitigate the financial considerations security concerns.

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 the circumstances. The 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.

Under AG ¶ 2(c), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

Applicant is a 41-year-old employee of a DOD contractor who has worked for this employer since April 2017. In 2013, she received a bachelor's degree. She was able to attend college after obtaining student loans to fund her education. Her unwillingness to make good-faith efforts to repay the delinquent student loans when she has the financial means to do so shows she cannot always be trusted to fulfill her promises. Her financial history raises unmitigated questions about her reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. "[A] favorable clearance decision means that the record discloses no basis for doubt about an applicant's eligibility for access to classified information." ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No.12-00270 at 3 (App. Bd. Jan. 17, 2014)).

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards establishing a track record of financial responsibility, and a better record of behavior consistent with her obligations, she may well be able to demonstrate persuasive evidence of her security clearance worthiness.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the

context of the whole person. Applicant failed to mitigate financial considerations security concerns.

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 through 1.s:	Against Applicant

Conclusion

In light of all of the circumstances in this case, it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Pamela C. Benson
Administrative Judge