



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 19-03105
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

08/19/2022

Decision

FOREMAN, LeRoy F., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 9, 2018. On October 15, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F. 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR in an undated document, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on January 10, 2022. On January 11, 2022, 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 received the FORM on January 23, 2022, and she submitted a response on May 6, 2022, which was admitted without objection. The case was assigned to me on June 16, 2022.

Findings of Fact

In Applicant's answer to the SOR, she admitted the allegations in SOR ¶¶ 1.a-1.h and 1.j-1.m. She denied the allegation in SOR ¶ 1.i. Her admissions are incorporated in my findings of fact.

Applicant is a 58-year-old contracts manager employed by various defense contractors from November 2002 to the present. She married in September 1982 and has two adult children.

Applicant was a federal employee from March 1986 to December 1993. She underwent a security investigation in 2006 and was granted a clearance on a date not reflected in the record. Her SCA reflects that she was cleared for access to sensitive compartmented information (SCI) in December 2011. (FORM Item 3 at 45.) She was unemployed from November 2016 to October 2017. About three months after she returned to work in October 2017, her husband lost his job and was unemployed for about a year, until he found a part-time job.

After a personal subject interview (PSI) with a security investigator in September 2018, Applicant submitted documentation that four delinquent credit-card accounts were paid or settled; a credit card debt of \$2,932 was cancelled in 2014; a delinquent credit-card debt of \$447 was resolved in January 2015; a delinquent credit-card debt of \$208 was resolved in March 2016; and a delinquent dental bill for \$1,731 was resolved in October 2016. These debts were incurred, became delinquent, and were resolved before she became unemployed in November 2016. None of these debts were alleged in the SOR. (FORM Item 5 at 3, 4, 6-8, 11-14). I have considered the evidence of these delinquent debts for the limited purposes of deciding which adjudicative guidelines are applicable; evaluating evidence of mitigation, and as part of my whole-person analysis

The SOR alleges that Applicant failed to timely file her federal and state income tax returns for tax years 2016 through 2018 (SOR ¶ 1.a), that she owes delinquent federal taxes of \$10,512 (SOR ¶ 1.b), and that she owes delinquent state income taxes of \$11,648 (SOR ¶ 1.c). The SOR also alleges 11 delinquent consumer debts that are reflected in credit reports from April 2019, December 2021, and March 2018 (FORM Items 6, 7, and 11.). The evidence concerning the allegations in the SOR is summarized below.

SOR ¶ 1.a: failure to timely file federal and state income tax returns for tax years 2016 through 2018. In Applicant's response to the SOR, she stated that the federal and state returns for tax years 2016 and 2017 were late because she and her husband had difficulty obtaining records. She did not provide any explanation of the nature or cause

of their difficulty. Thus, I am unable to determine if her difficulty in obtaining records was due to disorganization, carelessness, procrastination, or some reason beyond her control. Her admission establishes the allegation in SOR ¶ 1.a that the federal and state returns for 2016 and 2017 were not timely filed.

Applicant stated that the 2018 return was timely mailed but not received. She did not submit any evidence of timely mailing. She stated that she and her husband filed the 2018 return again in December 2019 but have been unable to document that filing, because the IRS is backlogged with processing returns due to the COVID-19 pandemic. She stated that she was told by an IRS representative to “be patient.”

SOR ¶ 1.b: federal tax debt of \$10,512. Applicant incurred a federal tax debt of \$11,410 for tax year 2014. She attributed the debt to a mistake in her return. She provided no evidence of the nature of the mistake. She had a payment plan providing for payments of \$160 per month, and she made three payments in 2018 and one in 2019. The payment plan was terminated because she was late filing her returns for 2016 and 2017. Her refunds of \$1,225 for 2016 and \$4,348 for 2017 were applied to her tax debt. When she submitted her SCA in February 2018, she calculated that her refund for 2018 would be \$3,886, which would also be applied to her federal tax debt. In her response to the FORM, she provided documentary evidence that her current federal tax debt is zero. (FORM Response, Exhibit 1.) The documentary evidence establishes that the federal tax debt alleged in SOR ¶ 1.b was paid, albeit involuntarily.

SOR ¶ 1.c: state tax debt of \$11,648. Applicant owed state taxes of \$552 for 2016; \$1,602 for 2017; and \$1,705 for 2018. (FORM Item 4 at 5.) In response to DOHA interrogatories in January 2020, She stated that she believed that the state tax debt was due to a mistake made by her husband’s employer, causing a school district tax assessment to be paid to the wrong district. She stated that she had entered into a payment plan for \$100 per month to pay the tax debt. (FORM Item 4 at 6-8.) In her response to the FORM, she stated that the IRS had rejected their federal return because someone else had claimed their dependents, that they were required to amend and resubmit their state return, that the state erroneously estimated that they owed \$11,648, and that they had been paying \$500 per month since December 2021. They resubmitted their 2019 state tax return in March 2022, and the state tax transcript reflects that they owed \$176, not the \$11,648 alleged in the SOR. (FORM Response, Exhibit 2.) A state tax lien that was imposed on a date not reflected in the record was released in March 2022. The release recites that the tax debt “has been settled, cancelled- and/or satisfied.” (FORM Response, Exhibit 3.) The debt is resolved.

SOR 1.d: home equity line of credit, past due for \$689 with a balance of \$24,598. After a PSI with a security investigator on September 6, 2018, Applicant provided documentation that a past-due balance was paid in full. (FORM Item 5 at 8.) The April 2019 credit report reflects that the past-due amount alleged in the SOR was incurred after the PSI and after the account was previously brought up to date. (FORM Item 6 at 2.) In her response to the FORM, Applicant asserted that payments on this account are

current, but she did not provide documentary evidence to support her assertion. (FORM Response at 2.)

SOR ¶ 1.e: credit-card account charged off for \$12,870. After the PSI, Applicant provided documentation of a \$50 payment on September 10, 2018. (FORM Item 5 at 2.) She provided no evidence of any other payments. In her response to the FORM, she asserted that she was making payments on this debt until it was sold, and that she has not been able to locate who owns the debt. (FORM Response at 2.) She did not provide any documentation of the amounts and frequency of her payments after September 2018. The fact that the debts were charged off indicates that the payments were less than required. She also did not provide any documentary evidence of her efforts to locate the current holder of the debt. This debt is not resolved.

SOR ¶ 1.f: credit-card account charged off for \$1,385. After the PSI, Applicant submitted evidence of a payment of \$267 on this debt in May 2014. (FORM Item 5 at 9.) In response to the FORM, she provided documentary evidence that, as of October 22, 2021, she was making monthly \$300 payments by automatic withdrawals from her bank account. (FORM Response, Exhibit 4.) This debt is being resolved.

SOR ¶ 1.g: medical bill for \$946. In Applicant's response to the FORM, she stated that she had been trying for two years to resolve this debt but that the creditor has failed to submit the claim to her insurance provider. She did not provide any documentation of her efforts to resolve the debt, nor did she explain why she has not contacted her insurance provider directly. The debt is not resolved.

SOR ¶ 1.h: credit-card account past due for \$185 with a balance of \$900. In Applicant's response to the FORM, she submitted evidence of monthly \$50 payments totaling \$800 on a debt of \$972. (FORM Response, Exhibit 5.) The debt is being resolved.

SOR ¶ 1.i: unsecured loan placed for collection of \$645. In Applicant's response to the FORM, she submitted evidence that she settled this debt for \$128.95. (FORM Response at Exhibit 6.) The debt is resolved.

SOR ¶ 1.j: veterinarian bill placed for collection of \$495. Applicant disputed this bill on the ground that the veterinarian did not properly treat her dog, causing the dog's death. In her response to the FORM, she stated that the veterinarian agreed to cancel the bill. She provided no evidence to support her dispute and no evidence that the debt was cancelled. The debt is not resolved.

SOR ¶ 1.k: charge account placed for collection of \$288. In Applicant's response to the FORM, she stated that she paid this debt "years ago," but could not find her documentation. It is not resolved.

SOR ¶¶ 1.l and 1.m: installment account charged off for \$1,824, and line of credit charged off for \$1,418. Both debts were charged off in March 2016. In the September 2018 PSI, Applicant stated that both debts were satisfied. (FORM Item 4 at

13.) She provided no documentary evidence showing that they were satisfied. In her answer to the FORM, she admitted these debts but stated that she has been unable to find the current owners of the debts. She provided no documentary evidence of contact with the original creditors or her efforts to locate the current owners. She has not disputed the debts with any of the credit bureaus. The debts are not resolved.

SOR ¶ 1.n: telecommunications bill placed for collection of \$239. Applicant did not respond to this allegation in her answer to the SOR. She admitted it in her response to the FORM, asserting that the debt was paid in full. However, she provided no documentation to support her assertion.

Applicant attributed her financial problems to unexpectedly being laid off in November 2016, after earning about \$110,000 annually, and her husband's loss of employment for more than a year, followed by his underemployment for a year and a half. She provided no explanation for the delinquent debts that were incurred before she was laid off. Her SCA reflects that she and her husband took a vacation trip outside the United States in April 2017, after she was laid off. (FORM Item 3 at 37-38.)

Federal income tax transcripts reflect joint adjusted gross income of \$241,412 for tax year 2014; \$198,930 for 2015; \$191,577 for 2016; and \$118,878 for 2017. (FORM Item 4 at 19-25.) Applicant has not provided any information regarding her current income or expenses. She told an investigator that she had hired a debt-consolidation service in the spring of 2016 but terminated her contract because the service did not make any payments to her creditors.

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).

Applicant's admissions and the evidence in record establish 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(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;

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 debts are numerous, recent, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is not fully established. Applicant provided no evidence that the difficulty in gathering records and subsequent late filing of income tax returns was due to conditions largely beyond her control, as opposed to poor record keeping, disorganization, or procrastination. Her unemployment and her husband's unemployment and underemployment were conditions largely beyond their control. The mistaken application of a school district assessment to her husband's income appears to have been beyond her control. However, the evidence reflects that she had significant delinquent debts before she became unemployed. Furthermore, she did not act responsibly regarding her federal tax debts. She made payment plans for her federal taxes, but they were terminated because of her failure to timely file subsequent tax returns. After her payment plans were terminated, she made no further payments, but acted passively, allowing her tax refunds to be applied to his debt.

Applicant did not provide documentary evidence of responsible conduct regarding the consumer debts alleged in SOR ¶¶ 1.e, 1.g, 1.k, 1.l, and 1.m. She did not provide documentary evidence supporting her claims that these debts were resolved. She spent money on a vacation trip in 2017 in spite of her reduced income and financial problems.

AG ¶ 20(c) is not established. Applicant submitted no evidence of the type of financial counseling contemplated by this mitigating condition, and her financial situation is not yet under control.

AG ¶ 20(d) is established for the debts alleged in SOR ¶¶ 1.c, 1.f, 1.h, and 1.i, which have been paid or are being resolved. It is not established for the federal tax debt alleged in SOR ¶ 1.b, which was collected by involuntary diversion of tax refunds. Payment by involuntary collection is not a good-faith payment. See ISCR Case No. 09-05700 (App. Bd. Feb. 24, 2011). It is not established for the debts alleged in SOR ¶¶ 1.k-1.n. Applicant claimed that these debts were resolved, but she submitted no documentary evidence to support her claim. When an applicant claims that a debt is resolved, it is reasonable to expect him or her to present documentary evidence supporting that claim. ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016).

The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, pay the debts alleged in the SOR first, or establish resolution of every debt alleged in the SOR. However, an applicant is expected to have a credible and reasonable a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant's episodic and undocumented efforts to resolve her debts fall short of a credible and reasonable plan. Furthermore, many of her efforts to resolve delinquent debts appear to have been triggered after she submitted her SCA and realized that her security clearance was in jeopardy. An applicant who waits until his or her clearance is in jeopardy before resolving debts may be lacking in the judgment expected of those with access to classified information. ISCR Case No. 16-01211 (App. Bd. May 30, 2018).

AG ¶ 20(g) is established for the tax returns and tax debts alleged in SOR ¶¶ 1.a, 1.b, and 1.c. However, the fact that Applicant has filed her past-due returns "does not

preclude careful consideration of Applicant's security worthiness based on longstanding prior behavior evidencing irresponsibility." ISCR Case No. 12-05053 (App. Bd. Oct. 30, 2014).

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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment. I have considered Applicant's long service as an employee of a defense contractor, her service as a federal employee, and the fact that she has held a security clearance for many years, apparently without incident. Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate her credibility and sincerity based on demeanor or to question her about her efforts to resolve the debts alleged in the SOR. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). 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 not mitigated the security concerns raised by her tax delinquencies and delinquent debts.

Formal Findings

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

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a and 1.b: **Against Applicant**

Subparagraph 1.c: **For Applicant**

Subparagraphs 1.d and 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraphs 1.h and 1.i:	For Applicant
Subparagraphs 1.j-1.n:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to continue Applicant's eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman
Administrative Judge