



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



In the matter of:)
)
) ISCR Case No. 21-01697
)
Applicant for Security Clearance)

Appearances

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

11/16/2022

Decision

HALE, Charles C., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application on October 25, 2019. On November 12, 2021, the Department of Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) issued 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), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006, and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, National Security Adjudicative Guidelines (December 10, 2016).

Applicant answered the SOR on May 17, 2022, and requested a decision on the written record without a hearing. Department Counsel submitted the Government’s written

case on July 14, 2022. On July 15, 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 August 2, 2022, and did not respond. The case was assigned to me on October 14, 2022.

The SOR and the answer (FORM Items 1 and 2) are the pleadings in the case. FORM Items 3 through 8 are admitted into evidence without objection. Admission of FORM Item 4 is discussed below.

Evidentiary Issue

FORM 4 is a summary of a triggered enhanced subject interview (TESI) conducted on December 4, 2019. The TESI summary was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant the TESI was being provided to the Administrative Judge for consideration as part of the record evidence in this case, and she was entitled to comment on the accuracy of the TESI summary; make any corrections, additions, deletions, and updates necessary to make the summary clear and accurate; object on the ground that the report is unauthenticated. I conclude that Applicant waived any objections to the TESI summary by failing to respond to the FORM. "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. 12010810 at 2 (App. Bd. Jul. 12, 2016).

Findings of Fact

In Applicant's answer to the SOR, she admitted SOR ¶¶ 1.a-1.o, and 1.r-1.s, and denied SOR ¶¶ 1.p-1.q and 1.t. Her admissions in her answer are incorporated in my findings of fact.

Applicant is 63 years old, earned an associate's degree in 2013, and has worked as a human resource specialist for a federal contractor since January 2015. She has two adult children and is divorced.

The SOR alleges twenty delinquent debts reflected in two credit reports from July 2020 (Item 5) and November 2019 (Item 6), and two civil court judgments. (Items 7 and 8.) Applicant, with the exception of SOR ¶¶ 1.p-1.q, and 1.t, admitted each allegation and stated she did not have the funds to pay these accounts but was working on a plan. The evidence concerning these debts is summarized below.

SOR ¶ 1.a: unpaid 2015 judgment against Applicant the amount of \$13,349. (Item 7.) Applicant admits the debt. In her Answer, she included a letter from her daughter concerning SOR ¶1.a. Applicant's daughter stated the debt was incurred when Applicant cosigned on her apartment lease to help her "during a time of economic duress." (Item 2 at 4.) Applicant states this debt is no longer on her credit report. (Item 2 at 1.)

SOR ¶¶ 1.b-j, 1.l, and 1.n: past-due federal student loan accounts with the Department of Education, totaling a combined \$58,920. Applicant admits each debt and each debt remains delinquent. She states her financial situation changed when she assisted her daughter financially in 2014. Her daughter defaulted on her lease and was incarcerated for financial crimes. Paying her daughter’s legal expenses impacted her ability to meet her own financial obligations. (Item 4 at 2.) She dropped out of college at that time with 15 credits remaining for her bachelor’s degree. Her student loans were in collection status before the COVID-19 pandemic. (Item 4 at 2 and Item 5 at 2-4.) In 2020, she asserts her financial status had improved, and she planned to contact the loan department and get the education loan amount reduced closer to the original amount and make payment arrangements. However, the COVID-19 pandemic required her to move back home to care for her elderly parents. Her parents are now deceased. She affirms her intention to continue with her original plan to contact the student loan office for payment arrangements and begin making them. (Item 4 at 2.) She provided a table showing her student loan situation for each student loan allegation and the total amount of interest accrued. (Item 2 at 5.)

SOR ¶ 1.s: credit card debt placed for collection for \$55. (Item 5 at 5.) Applicant admits the debt. She states she had not received notice of the debt, which was incurred in 2019 during the time she was in transition from caring for her parents. She avows it will be paid. (Item 2 at 3.)

SOR ¶¶ 1.k, 1.m, 1.o, and 1.r: past due credit card accounts totaling \$8,157. Applicant admits each debt and each debt remains delinquent. (Item 5 at 4-5.) She provided a second table displaying her delinquent credit cards amounts. (Item 2 at 6.) She states these accounts were opened about six years before her “financial status decreased.” She asserts she now maintains one credit card, which is used for emergencies and “keep in good standing.” (Item 2 at 6.)

SOR ¶¶ 1.p-q: past due credit card accounts placed for collection and SOR ¶ 1.t is a judgment, all totaling \$4,110. Applicant denies these debts on the basis they are no longer listed on her credit report. (Item 5 at 5 and Item 8.) She states further investigation will be done on her part. (Item 2 at 3.)

Applicant did not present any information that shows she has paid or otherwise addressed her debts. She has not consulted with a professional financial planner or debt counselor to advise her on how best to rectify her financial difficulties.

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 record evidence establishes Applicant has student loans placed for collection totaling over \$58,000; (SOR ¶¶ 1.a-1.f, 1.h-1.j, and 1.l-1.m.); two civil judgments against her totaling \$15,726 (SOR ¶¶ 1.a and 1.t.); and eight past-due credit-card accounts totaling \$12,322. (SOR ¶¶ 1.k, and 1.m-1s.)

Applicant's admissions establish the following disqualifying conditions under this guideline: AG ¶ 19(a) (inability to satisfy debts), AG ¶ 19 (b) (unwillingness to satisfy debts regardless of the ability to do so), and AG ¶ 19(c) ("a history of not meeting financial obligations").

The following mitigating conditions, under AG ¶ 20, are potentially applicable:

(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, or a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and

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

AG ¶ 20(a) is not established. Applicant's delinquent debts are recent, numerous and ongoing.

AG ¶ 20(b) partially applies because Applicant's debts occurred due to circumstances beyond her control. She cites without further information or documentation the expenses associated with her and her parent's ongoing health issues. Her student loans were in collection status before the COVID-19 pandemic. (Item 5 at 2-4.) Her claim that her financial downturn caused by her daughter's default on her lease is not a condition beyond her control. She voluntarily agreed to co-sign on the lease and pay her daughter's legal expenses. Even though her debts may have occurred due to circumstances beyond her control, she did not provide sufficient evidence that she acted responsibly under the circumstances to resolve them. AG ¶ 20(b) is not established.

AG ¶ 20(d) is not established. Applicant submitted no evidence of payments, payment plans, or other resolution of the debts alleged in SOR ¶¶ 1.p-q and 1.t. The fact that certain debts are no longer listed in a credit report does not establish that the debt was resolved. The mere fact that a debt no longer appears in a credit report does not establish any meaningful, independent evidence as to the disposition of the debt. Debts may fall off credit reports for various reasons, including the passage of time. See ISCR Case No. 18-01250 at 2 (App. Bd. Feb. 13, 2019).

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense 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). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate her credibility and sincerity based on demeanor. 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 Guideline F.

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 (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a-1.t:

Against Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Charles C. Hale
Administrative Judge