



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 21-01845
)
 Applicant for Security Clearance)

Appearances

For Government: John Lynch, Esq., Department Counsel
For Applicant: *Pro se*

11/10/2022

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 28, 2019. On September 25, 2021, 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 DCSA 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 received the SOR on September 28, 2021. (Hearing Exhibit (HX) I.) She answered it on October 18, 2021, and requested a hearing before an administrative judge. She attached five documents to her answer: an application for a direct consolidation loan

for her student loans, an application for an income-driven repayment plan, and three documents that she later submitted again as exhibits at the hearing (Applicant's Exhibits (AX) A, E, and F).

Department Counsel was ready to proceed on December 28, 2021, and he sent Applicant the "discovery letter," transmitting the documents he intended to submit at the hearing. (HX II.) On the same date, Department Counsel amended the SOR by adding one additional allegation (SOR ¶ 1.x). Applicant answered the amendment on January 20, 2022.

Scheduling of the hearing was delayed by COVID-19. The case was assigned to me on September 6, 2022. On September 13, 2022, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on October 3, 2022. I issued a case management order on September 27, 2022, requiring the parties to provide me and each other with copies of all exhibits they intended to submit at the hearing. (HX III.)

I convened the hearing as scheduled. Government Exhibits (GX) 1 through 7 were admitted in evidence without objection. Applicant testified and submitted AX A through X, which were admitted without objection. Department Counsel did not receive AX B, AX C, AX D, and AX G through AG X before the hearing, because Applicant had not sent them to him as required by the case management order. After Applicant testified, I continued the hearing until October 6, 2022, to enable Department Counsel to review AX B, AX C, AX D, and AX G through AG X before cross-examining her. The hearing resumed and was completed on October 6, 2022. I kept the record open until October 21, 2022, to enable Applicant to submit additional documentary evidence. She timely submitted AX Y through AX FF, which were admitted with comments from Department Counsel but without objection. (HX IV.) DOHA received the transcript of the first day of the hearing on October 17, 2022 (Tr-1) and the transcript of the second day of the hearing (Tr-2) on October 19, 2022.

Findings of Fact

In Applicant's answer to the SOR, she admitted the allegations in SOR ¶¶ 1.a, 1.b, 1.d-1.x. She denied the allegation in SOR ¶ 1.c. Her admissions incorporated in my findings of fact.

Applicant is a 43-year-old electrical shop supervisor employed by a defense contractor. She graduated from high school in May 1998. She served on active duty in the U.S. Navy from July 1998 to February 2003 and received an honorable discharge. She worked for federal contractors from July 2008 until she was hired by her current employer in December 2018. She received a security clearance from another federal agency in July 2011.

Applicant married in December 2016. She has a 22-year-old daughter and a 20-year-old son from a previous relationship. She did not receive child support from their

father because he was and continues to be incarcerated. (Tr-1 at 22.) She and her current husband have two-year-old twins. The twins were in intensive care for about three weeks after their birth. (Tr-1 at 25.)

Applicant's husband is a deputy sheriff. He previously was an independent truck owner and driver. He currently earns about \$54,000 annually. As an independent owner and operator, his earnings varied. In 2019 and 2020, his gross income was about \$150,000. (Tr. 29.) He stopped driving in order to spend more time with his family. He is attempting to sell his truck in order to pay off some of their debts. (Tr. 18.)

About four years ago, Applicant's father-in-law was seriously injured in a car accident when he had a stroke while he was driving. Applicant's husband stopped working for about three months to take care of his father. Applicant testified that this reduction in family income caused her to fall behind on her student-loan payments. (Tr-1 at 31-33.)

The SOR alleges 24 delinquent debts reflected in credit reports from September 2020, April 2021, December 2021, and September 2022 (GX 2; GX 3; GX 4; GX 7.) The evidence concerning the debts alleged in the SOR is summarized below.

SOR ¶¶ 1.a, 1.v, and 1.w: delinquent student loans placed for collection of \$48,716; \$12,179; and \$7,878. These loans were opened in December 2006 and were delinquent as of December 2018. On October 13, 2021, after Applicant received the SOR, she applied for a direct consolidation loan and an income-driven payment plan. As of the date of the hearing, her student loans had been consolidated and were reflected as current. She has not begun making payments because of the COVID deferment. (GX 7 at 8; Tr-1 at 35-37.)

SOR ¶ 1.b: credit-card account placed for collection of \$6,852. A judgment for this debt was entered against Applicant in February 2021. (GX 5 at 3.) On October 14, 2021, Applicant and the creditor agreed that she would make an initial payment of \$702 and monthly \$150 payments until the debt is paid in full. (SOR Answer; AX E; AX F.) She has made the required payments for every month through January 2022. (AX L through Y; AX EE.)

SOR ¶ 1.c: credit-card account placed for collection of \$1,401. Applicant denied this debt and asserted that it was due to identity theft. She testified that after her dispute of the debt was unsuccessful, she used funds from a federal income tax refund to pay the debt in full. (AX AA; Tr-1 at 42.) However, she did not produce any documents showing that the debt was paid. (AX Y.) An applicant who claims that a debt has been resolved is expected to present documentary evidence supporting the claim. See ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016).

SOR ¶¶ 1.d, 1.f, 1.j, and 1.u: credit-card accounts placed for collection of \$835, \$21, \$183, and \$834. Applicant testified that she paid these debts in October 2021. (Tr-1 at 44.) She did not provide any documentation of payment. (Tr-1 at 44-45.) The debts alleged in SOR ¶¶ 1.d and 1.u appear to be the same account. (GX 3 at 3 and 7.)

SOR ¶ 1.g: telecommunications account placed for collection of \$368. Applicant disputed this debt, but the dispute was not resolved in her favor. (AX AA; Tr-1 at 50.) She did not provide any documentation of the basis for her dispute. This debt is not resolved.

SOR ¶¶ 1.e, 1.h, 1.i, and 1.k-1.t: medical debts placed for collection of a total of \$2,423: On October 13, 2021, Applicant paid \$1,144 to a collection agency for numerous unspecified medical debts. (AX G.) On the same date, she paid \$960 to another collection agency for three medical debts. (AX H.) She paid the specific debts alleged in SOR ¶¶ 1.e, 1.k, 1.o, 1.p, and 1.t on October 14, 2021. (GX 2 at 3; Tr-1 at 45-46.) She paid the specific debt alleged in SOR ¶ 1.s on October 19, 2021. (AX A.) She has made regular \$165 payments to a medical collection agency handling the other medical debts for every month from October 13, 2021, through September 15, 2022. (AX L through AX W; AX EE.)

SOR ¶ 1.x: medical debt reduced to judgment for \$1,547. A default judgment for \$1,547 was entered against Applicant in May 2021 for this debt, which was for medical care for Applicant's twins. It is not resolved.

Applicant testified that she incurred numerous medical bills due to her high blood pressure and an irregular heartbeat, but cardiologists successfully treated her, and her symptoms are now controlled by medication. For a while, she had a health savings account with a high deductible. After her twins were born and spent three weeks in intensive care, she incurred additional medical expenses. Her medical insurance carrier for the expenses related to her childbirth has not yet reimbursed her. (Tr-1 at 47-48.) She has about \$2,000 in a health savings plan with a former employer, but she admitted that she had not contacted the former employer about transferring the funds. (Tr-1 at 54-55.)

Applicant owes about \$19,584 for hospital care that her insurance carrier has declined to cover. (AX X; Tr. 56-60.) Because this debt is not alleged in the SOR, it may not be an independent basis for revoking her security clearance. However, it may be considered to assess her credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether she has demonstrated successful rehabilitation; or as part of a whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) (citations omitted). I have considered this debt for these limited purposes.

Applicant admitted at the hearing that she did not take her medical bills seriously, believing that she could pay them when she could afford it. After she submitted her SCA and was interviewed by a security investigator, she began focusing on resolving her debts. (Tr-1 at 18.) She sought financial advice from her credit union about a year ago and she now has a written budget. (Tr-1 at 67.) In December 2021, she and her husband refinanced their home to lower the interest rate on their mortgage loan. (Tr-1 at 24; AX C.)

Applicant is highly regarded by her coworkers for her hard work, integrity, and dedication, as well as for being a devoted mother and spouse. (AX Z; AX BB; AX DD; and AX FF.) A former supervisor describes her as mission-focused with a reputation for hard work, fairness, and integrity. (AX CC.)

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 submitted at the hearing establish two disqualifying conditions under this guideline: AG ¶ 19(a) (“inability to satisfy debts”) and AG ¶ 19(c) (“a history of not meeting financial obligations”). 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(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.

AG ¶ 20(a) is not established. Applicant's debts are recent, numerous, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not fully established. Applicant encountered several conditions largely beyond her control. She suffered medical conditions requiring care from a cardiologist and a regimen of medications. The birth of her twins triggered substantial medical expenses. She changed jobs in December 2018, which complicated her access to her health savings account with a former employer. Her husband's change of jobs caused a significant reduction in family income. Her husband was unemployed for several months while caring for his father after a serious automobile accident.

However, Applicant has not acted responsibly. She attributed her delinquent student loans to her husband's loss of income while caring for his father, but she did not take action to rehabilitate her student loans until she received the SOR and realized that her security clearance was in jeopardy. She admitted at the hearing that she was not concerned about her mounting medical debts until she learned that her debts could be an impediment to retaining her security clearance. She estimated that she had significant funds in her health savings plan with her former employer, but she had not taken any action to obtain those funds as of the date of the hearing.

AG ¶ 20(c) is not fully established. Applicant sought and received financial advice from her credit union and began using a written budget, but her financial problems are not yet under control.

AG ¶ 20(d) is not established. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201 (App. Bd. Oct. 12, 1999). Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance. Applicants who begin to address their security-significant conduct only when their personal interests

are at stake may be lacking in judgment and reliability. ISCR Case No. 16-01211 (App. Bd. May 30, 2018).

Although Applicant has consolidated the delinquent student loans in SOR ¶¶ 1.a, 1.v and 1.w and payments are deferred, the loans were delinquent before she consolidated them and before the COVID deferments began. She did not begin to address her delinquent debts until she received the SOR. Accordingly, there is a concern that Applicant will not make timely payments on her student loans when collections are resumed.

AG ¶ 20(e) is not established. Applicant disputed the debts alleged in SOR ¶¶ 1.c and 1.g, but she submitted no evidence of the basis for her disputes, and neither was resolved in her favor.

The evidence indicates that the debts alleged in SOR ¶¶ 1.d and 1.u are the same debt. When the same conduct is alleged more than once in the SOR under the same guideline, one of the duplicative allegations should be resolved in the applicant's favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). Accordingly, I have resolved the debt in SOR ¶ 1.d in Applicant's favor.

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. Applicant served honorably in the U.S. Navy and has held a security clearance for many years. She was candid and sincere at the hearing. She is highly regarded by her fellow workers and a former supervisor. She has made progress in her efforts to regain financial stability, but her efforts have been motivated mostly by self-interest rather than a sense of duty, triggered after she received the SOR. 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 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-1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e-1.x:	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