



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



In the matter of:)
)
) ISCR Case No. 21-02552
)
Applicant for Security Clearance)

Appearances

For Government: Nicholas Temple, Esq., Department Counsel
For Applicant: Joyce H. Price, Personal Representative

11/01/2022

Decision

BENSON, Pamela C., Administrative Judge:

Applicant was faced with unforeseen circumstances that adversely affected her finances, and she acted responsibly in addressing her delinquent debts and creating a workable plan to repay her student loans. Guideline F (financial considerations) security concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On August 24, 2020, Applicant completed and signed her Questionnaires for Investigations Processing or security clearance application (SCA). On December 17, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA 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 DCSA 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 (financial considerations). Applicant provided an undated response to the SOR and requested a hearing. On April 8, 2022, the case was assigned to me.

On July 27, 2022, DOHA issued a notice of hearing, setting Applicant's hearing for August 18, 2022. Her hearing was held as scheduled using the Microsoft Teams teleconference system. At the hearing, Department Counsel offered nine Government exhibits (GE) 1-9; Applicant did not offer any exhibits and did not object to GE 1-9, which were admitted into evidence. I held the record open until September 1, 2022, in the event either party wanted to supplement the record. On August 26, 2022, DOHA received a transcript (Tr.) of the hearing. On August 31, 2022, Applicant submitted eight exhibits, which I labeled as Applicant Exhibit (AE) A-H, which were admitted into evidence without objection.

Findings of Fact

In Applicant's SOR response, she admitted SOR allegations ¶¶ 1.a, 1.b, and 1.c, and she denied SOR ¶ 1.d. Applicant's admissions and the credit reports in the record support the SOR allegations. Additional findings follow.

Applicant is 52 years old, and she has been employed by a government contractor as a business analyst since July 2019. Her annual salary is about \$52,762. In 2016, she received an associate's degree. She has been married for 29 years, and she has six adult children. She requires eligibility for a DOD secret security clearance in order to perform specific duties for her employer. (GE 1; AE B; Tr. 22-26, 54)

Financial Considerations

The SOR alleges a previous Chapter 7 bankruptcy case filed by Applicant and her spouse in December 2013, and three delinquent debts. Two of the three debts are student loans referred to the U.S. Department of Education (Dept. ED) for collection, and the final debt is a medical account referred for collection. Applicant denied the medical account in her SOR response because this debt has been paid in full. (SOR response; Tr. 26-33; GE 1-7)

SOR ¶ 1.a alleges that Applicant and her spouse filed for Chapter 7 bankruptcy protection in December 2013. The case was discharged by the bankruptcy court in March 2014. Applicant stated that the debts that were included in the case totaled about \$70,000 and were mostly medical accounts. Her spouse was unemployed at that time and suffered from health complications after their medical insurance had lapsed. In addition, their youngest son got into serious trouble and they had pay significant legal fees to provide an attorney for him. (GE 1, GE 2, GE 3, GE 4; Tr. 47-49)

SOR ¶¶ 1.b and 1.c allege that Applicant owes a total of \$73,739 for two delinquent student loans that were placed with the Dept. ED for collection in about 2018. The student loans are currently deferred due to the COVID-19 relief pause enacted by the

government. Student loan payments are to begin after December 31, 2022. It is her intention to repay her student loans. (GE 4, GE 5, GE 8; AE A, AE F, AE G; Tr. 29-42)

Applicant stated during her January 2021 background interview that she was directed in about 2017 to make \$1,200 monthly payments for her student loans. She could not afford the monthly payment, and requested to be placed into the income-driven student loan payment plan. Her payments were lowered to \$800 monthly. Her spouse had been laid-off by his employer, and she was still unable to make the lower monthly student loan payments. In 2020, she submitted another income-driven application with her student loan creditor. Shortly after submitting the application, her student loans were deferred due to the COVID-19 pandemic. She also submitted a student loan consolidation application with Direct Loans. As of January 2022, Applicant provided documentation that she had successfully rehabilitated her student loans. Her monthly payments beginning in about January 2023 will be about \$288. (Tr. 29-42; AE C, AE D; GE 8, GE 9)

SOR ¶ 1.d alleges that Applicant owes \$422 for a medical account that has been referred for collection. She provided sufficient documentation showing that this account has been paid. (GE 1, GE 4; AE F; Tr. 27-28)

Applicant began to experience financial problems in about 2017 after her spouse suffered from various medical issues without health insurance coverage and inconsistent employment. At the time of the hearing, he was unemployed and no longer receiving unemployment benefits. They recently sold their house, paid off their debts with the money, and moved into an apartment. Since July 2019, they have been covered by medical insurance through her employer. She now manages the apartment complex and receives an apartment rent-free plus a monthly salary of \$685. She is able to live within her means, and she has not developed any new delinquent debt. She is committed to maintaining her financial responsibilities in a productive manner. (Tr. 48-50, 53-56; AE A)

Applicant provided a financial summary and monthly budget post-hearing. After deducting her monthly expenses from her net monthly income, she is left with a monthly net remainder of about \$1,200. Her budget included the student loan monthly payment of \$288. She also participated in financial counseling after filing for bankruptcy almost nine years ago. (Tr. 59-60; GE 3; AE A)

Applicant's employer considers her to be a valuable asset. She was nominated for an award in 2019 due to her outstanding professionalism and willingness to serve others' needs before her own. In 2021, she received an employee merit pay increase. (AE B, AE E)

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

Guideline F: 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 two 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." The record establishes the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable in this case:

(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.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

Applicant has a history of not meeting financial obligations. She had a previous Chapter 7 bankruptcy and discharge in 2014. In approximately 2017, her finances became delinquent again. Circumstances beyond Applicant's control adversely affected her finances, including a loss of income from her spouse during sporadic periods of unemployment, his medical issues requiring treatment after their health insurance had lapsed, and her youngest son getting into serious trouble and the unforeseen accrual of legal expenses. However, "[e]ven if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

There is sufficient evidence that the medical debt alleged in SOR ¶ 1.d, totaling about \$422, has been paid. I find that Applicant mitigated this SOR allegation.

Applicant's income has increased over recent years, and she now carries medical insurance through her employer. Her most recent budget showed that she had a net monthly remainder of \$1,200 after paying expenses, to include her estimated monthly student loan payment beginning in January 2023. Although there is insufficient evidence to establish a track record of steady student loan payments, I find Applicant to be credible in her on-going efforts to resolve her student loans. She provided documentation dated January 2022 that she had successfully rehabilitated her student loans.

Clearance decisions are aimed at evaluating an applicant's judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The guidelines do not require an applicant to establish resolution of every debt or issue alleged in the SOR. An applicant needs only to establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve issues or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts or issues alleged in an SOR be resolved first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts, or resolution of such issues, one at a time.

I find that Applicant acted in a reasonable and responsible manner when dealing with her financial delinquencies by paying off her medical debt and rehabilitating her student loans. She has established a workable monthly budget and has not created any new delinquent debt. It is clear that she is committed to repaying all of her outstanding student loan accounts. I find that financial considerations security concerns are mitigated.

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 that guideline but some warrant additional comment.

Applicant's actions have removed any lingering doubts about her commitment to resolving all of her delinquent accounts. She has demonstrated the requisite good judgment, reliability, and trustworthiness that is required for possessing a DOD security clearance.

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 successfully mitigated 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:	FOR APPLICANT
Subparagraphs 1.a – 1.d:	For Applicant

Conclusion

In light of all of the circumstances in this case, it is 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 granted.

Pamela C. Benson
Administrative Judge