



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 21-02570
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

11/22/2022

Decision

MARINE, Gina L., 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 April 7, 2020 (April 2020 SCA). On December 8, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F. The CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (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 June 8, 2017.

On December 23, 2021, Applicant responded to the SOR (Answer), and requested a decision based on the written record in lieu of a hearing. On March 29, 2022, the Government sent Applicant a complete copy of its written case, a file of relevant material (FORM) including evidentiary documents identified as Items 1 through 10. She was given

an opportunity to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation to the Government's evidence. She received the FORM on April 21, 2022, but did not respond to the FORM or object to the Government's evidence. The case was assigned to me on July 21, 2022.

Evidentiary Matters

Items 1 through 4 contain the pleadings in the case. Items 5 through 10 are admitted into evidence. Although Item 10 was not authenticated as required by Directive ¶ E3.1.20, I conclude that Applicant waived any objection to Item 10. The Government included in the FORM a prominent notice advising Applicant of her right to object to the admissibility of Item 10 on the ground that it was not authenticated. Applicant was also notified that if she did not raise an objection to Item 10 in her response to the FORM, or if she did not respond to the FORM, she could be considered to have waived any such objection, and that Item 10 could be considered as evidence in her case.

Procedural Matter

Applicant apparently submitted an SCA prior to the April 2020 SCA, as indicated during her background investigation. She was interviewed during her background investigation on February 5, 2020 (Interview 1), February 26, 2020 (Interview 2), and February 28, 2020 (Interview 3). She discussed information apparently from the prior SCA during Interviews 1 and 3. Because it was not proffered by the Government or otherwise included in the record, I have neither reviewed nor considered the prior SCA.

Findings of Fact

Applicant, age 42, is a single mother of two adult children and one minor child. Her two youngest children reside with her. She attended college between 2007 and 2011, but did not earn a degree. She has been employed as a material handler by a defense contractor since January 2020. This is her first application for a security clearance. (Item 5)

The SOR alleged 16 delinquent debts totaling \$16,166, each of which were confirmed by credit reports from 2020 and 2021. In her Answer, Applicant admitted each debt, with explanations in support of mitigation. With respect to SOR ¶¶ 1.a through 1.c, 1.e through 1.h and 1.i, she stated that she was working on a "credit repair." Concerning SOR ¶¶ 1.d, 1.k, 1.n, and 1.o, she stated that they were included in a 2013 Chapter 13 bankruptcy. She also stated that she resolved the mortgage account in SOR ¶ 1.j (which had also been included in the bankruptcy) and was still residing in the home. She claimed that she paid SOR ¶ 1.m "10 years ago," and SOR ¶ 1.p (on a date not indicated). With regard to SOR ¶ 1.i, she stated that it was a "voluntary repossession due to getting a better vehicle with a better price that I'm [sic] currently paying for with no problem." She did not proffer any documentary evidence to corroborate her statements or refute the information from the credit reports. (Items 6, 7, 8)

Applicant reported no periods of unemployment in her April 2020 SCA. However, during Interview 3, she revealed that she had been unemployed from November 1, 2019 through November 15, 2019. She left her prior employer at the end of October 2019 to find a shorter commute to work. She was supported by her savings during that period of unemployment while she searched for a new job. She worked primarily in retail jobs from 2009 until she began working with a defense contractor in January 2020. (Items 5, 10)

Applicant disclosed a Chapter 13 bankruptcy on her April 2020 SCA and reported that it was initially filed in June 2013, refiled in January 2014 (due to a clerical error), and then discharged in December 2018. She stated: "Filing chapter 13 allowed me to pay all/portion of my debt." She also disclosed that she voluntarily surrendered a vehicle for repossession in about September 2019 to resolve a \$5,600 debt. During Interview 1, she attributed her bankruptcy filing to a combination of her pregnancy with her youngest child and an employer cutting back her work hours. That employer changed its policy and required everyone to reduce hours to part-time except for managers (which she was not). While the record did not specify the period when her hours were reduced, Applicant indicated that it began around the time when she was pregnant with her youngest child. On the April 2020 SCA, Applicant reported that her youngest child was born in 2010 and that she worked for said employer from October 2009 through June 2013. The record did not otherwise specify her income history. (Items 5, 10)

During Interview 1, Applicant explained that she was not behind in her payments for the vehicle reported in the April 2020 SCA. She decided to voluntarily surrender the vehicle to the creditor when she realized that she could not afford to keep up with the payments (\$265/bi-weekly) due to cost of repairs and gas. At the time of the surrender, the creditor told her that she might owe a deficiency balance. However, she had not received anything from the creditor since the surrender. This debt was reported in SOR ¶ 1.i. After the surrender, she purchased another vehicle with a lower monthly payment, saving her \$110 per month. Her 2021 credit report corroborated that her current car loan was in good standing. The record did not otherwise specify her expense history. She described her then financial situation as decent. She did not expect to incur any additional delinquent debts because she had begun reading books on repairing credit, created a budget, and reduced her car payment. (Item 6, 10)

Later during Interview 1, Applicant was confronted with delinquent debts that were not reported on her April 2020 SCA. She did not believe that she needed to list the specific debts included in her bankruptcy. She denied any knowledge of other debts that had not been included in the bankruptcy, but stated that she would be willing to pay them if it was determined that she owed them. She did not address what, if any, steps she would take to investigate the unknown debts. She maintained that she did not possess any documents concerning her finances. (Item 10)

During Interview 2, Applicant volunteered that she was working on repairing her credit. She also purchased a book titled "By the Book Credit Repair" to assist in those efforts. Upon investigation, she learned that one of the debts that she had previously identified as a medical bill during Interview 1 was actually a mortgage loan. However, the SOR and credit reports indicate that the debt was not a mortgage loan (SOR ¶ 1.m), but

a childcare expense. She also reiterated that the federal student loan accounts discussed during Interview 1 were in forbearance status and no longer past due (which was corroborated by her November 2021 CBR). She did not discuss her delinquent debts during Interview 3. (Items 6, 10)

The Government provided a copy of the bankruptcy petition filed by Applicant and the court's docket sheet of the bankruptcy proceedings. According to those documents, the petition was filed in February 2014. The Chapter 13 plan was filed in February 2014 and confirmed in May 2014. Neither the terms of the plan nor any plan payments made by Applicant were indicated in the record. In November 2017, the trustee filed a motion to dismiss (MTD) for failure to make plan payments. A certificate of service for the MTD was filed in June 2018. In November 2018, the court entered an order of default granting the MTD. The case was closed in January 2019. The docket sheet listed the "debtor disposition" as "Dismissed for failure to make plan payments." (Item 9)

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." (*Egan* 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." (EO 10865 § 2)

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. 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." (EO 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. (*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. 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. (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 [or her] 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; AG ¶ 2(b))

Analysis

Guideline F: Financial Considerations

The 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. 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

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. (ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012))

The record evidence and Appellant’s admissions establish the following disqualifying conditions under this guideline: AG ¶ 19(a) (inability to satisfy debts) and AG ¶ 19(c) (a history of not meeting financial obligations). There was insufficient evidence in

the record to establish AG ¶ 19(b) (unwillingness to satisfy debts regardless of the ability to do so).

I considered all of the factors set forth in AG ¶ 20 that could mitigate the concern under this guideline and find the following potentially relevant:

(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; and

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

The Government presented a *prima facie* case for disqualification under Guideline F. Accordingly, it was incumbent on Applicant to present sufficient reliable information on which application of available mitigating conditions could be based. She failed to do so. Although Applicant raised the potential applicability of the mitigating conditions cited above, she produced no documentation or other corroborating information to support any of them. Her attempt to resolve debts through bankruptcy could be considered an acceptable form of debt resolution. However, the record did not reflect any plan payments made pursuant to the bankruptcy plan or that the bankruptcy debts were successfully discharged. Based on the evidence before me, I cannot conclude that Applicant has provided sufficient evidence to mitigate the Guideline F concerns at this time.

Whole-Person Analysis

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the adjudicative guidelines, each of which is to be evaluated in the context of the whole person. 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 I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has not mitigated the security concerns raised by her delinquent debts. Accordingly, Applicant has not carried her burden of showing that it is clearly consistent with the interests of national security to grant her eligibility for access to classified information.

Formal Findings

Formal findings 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 – 1.p:	Against Applicant

Conclusion

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

Gina L. Marine
Administrative Judge