



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



In the matter of:)	
)	
)	ISCR Case No. 21-00651
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeffery T. Kent, 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 March 11, 2020. On April 26, 2022, the Department of Defense Consolidated Adjudications Facility (CAF) sent her 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on June 15, 2022, and requested a decision on the written record without a hearing. Department Counsel submitted the Government’s written case, containing the evidence in this case, on June 22, 2022. On June 23, 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 July 26, 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 7 are admitted into evidence without objection. Admission of FORM Item 7 is discussed below.

Evidentiary Issue

FORM Item 7 is a summary of a personal subject interview (PSI) conducted on June 11, 2020. The PSI summary was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant in the FORM that the PSI was being provided to the Administrative Judge for consideration as part of the record evidence in this case; and that he was entitled to comment on the accuracy of the PSI; make any corrections, additions, deletions, and updates necessary to make the summary clear and accurate; or object on the ground that the report is unauthenticated. I conclude that Applicant waived any objections to the PSI 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-e and g-h. She denied SOR ¶ 1 f. Her admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 61 years old. She has been working full time as an accountant for a federal contractor since December 2019. She was awarded a master's degree in 2002. She married in 1981 and has two adult children. (Item 3 at 16, 15-16, and 36.) She first held a security clearance in 1983. (Item 7 at 6.)

Applicant states the debts were primarily due to her and her husband's medical conditions. (Item 2 at 3.) She states she has been unable to get a higher paying job after leaving by mutual agreement a position she held for nine years with a government agency in 2015. (Item 3 at 26.) In 2018, after a year with a company she left her position following allegations of misconduct. (Item 7 at 6.) She notes her actions to reduce her expenses by use of local social services, driving an older vehicle, and living in a low rent area. (Item 2 at 3 and Item 6 at 11.)

The SOR alleges eight delinquent debts that are established by two credit reports from March 2022 (Item 4), April 2020 (Item 5), and her answers to the July 2021 interrogatories (Item 6). Applicant, with the exception of SOR ¶ 1.f, admitted each allegation and stated she did not have the funds to pay these accounts. The evidence concerning these debts is summarized below.

SOR ¶ 1.a: phone account placed for collection of \$1,920. (Item 4 at 2.)

SOR ¶ 1.b: medical account placed for collection of \$891. (Item 4 at 2.)

SOR ¶ 1.c: medical account placed for collection of \$464. (Item 4 at 2 and Item 5 at 8.)

SOR ¶ 1.d: medical account placed for collection of \$441. (Item 4 at 2 and Item 5 at 9.)

SOR ¶ 1.e: medical account placed for collection of \$313. (Item 4 at 3.)

SOR ¶ 1.f: a mortgage that is past due for \$8,319.00, with a total loan balance of \$231,042. (Item 4 at 3, and Item 5 at 6, and Item 6 at 3.) Applicant denies this debt, stating she and her husband had entered into a foreclosure agreement. (Item 2 at 3 and Item 7 at 9.)

SOR ¶ 1.g: education loan placed for collection of \$221,667. (Item 4 at 4, Item 5 at 6-7, and Item 6 at 3.)

SOR ¶ 1.h: education loan placed for collection of \$91,066. (Item 4 at 4, Item 5 at 7, and Item 6 at 4.)

Applicant's student loans total about \$312,733. (Item 4 at 4, Item 5 at 6-7, and Item 6 at 3-4.) Her student loans were in collection status before the COVID-19 pandemic. (Item 5 at 7.)

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 relating to the guideline for financial considerations 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual 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 the FORM 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".

Applicant accrued delinquent debts, including a home foreclosure, student loan debts, and medical bills, during a period of unemployment or underemployment and health issues involving both her and husband. 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, or a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and

AG ¶ 20(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. She acknowledged in her Answer she has not resolved any of the debts. She provided no mitigating documentation to support her assertion that SOR ¶ 1.f had been resolved.

AG ¶ 20(b) partially applies because Applicant's medical debts occurred due to circumstances beyond her control. She cites without further information or documentation

the expenses associated with her and her spouse's ongoing health issues. Her claims of medical expenses and underemployment are considered against the misconduct issues that resulted in her leaving two of her jobs. She declares has acted responsibly under the circumstances by having no negative influences in her life, such as alcohol or drug abuse, and affirms her intent to resolve the financial issues. 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.

Applicant's financial delinquencies are ongoing and unresolved. Satisfaction of a debt by foreclosure does not constitute a "good-faith effort" to resolve it. She did not establish that her financial problems are in the past and are unlikely to recur. She has not established a plan to resolve her financial problems. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). She did not establish that she has made a good-faith effort to pay or resolve her debts. AG ¶ 20(d) does not apply.

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.h: 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