



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



In the matter of:)
)
) ISCR Case No. 19-03949
)
Applicant for Security Clearance)

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: *Pro se*
11/28/2022

Decision

CERVI, Gregg A., 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 January 4, 2019. On April 10, 2020, 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) effective on June 8, 2017.

Applicant responded to the SOR on March 2, 2021, and requested a hearing before an administrative judge. The case was assigned to me on September 19, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 30, 2022, scheduling the hearing for October 24, 2022. The hearing was held via video teleconference as scheduled.

Government Exhibits (GE) 1 through 5 were admitted into evidence without objection. Applicant testified but did not submit exhibits at the hearing. The record was held open until November 5, 2022, for Applicant to supplement the record. She did not submit any post-hearing documents. DOHA received the hearing transcript on November 3, 2022.

Findings of Fact

Applicant is a 52-year-old aircraft mechanic for a Government contractor, employed since 2018. In 2015, she was laid off from her job while her youngest son was living at home. She supplemented her income with unemployment insurance and a lower-paying job. She did not complete high school. She married in 1987 and divorced in 2005. She again married in 2016 and divorced in 2018. She has three adult children. She reported receiving a security clearance in 2005 or later.

The SOR alleges under Guideline F that Applicant has ten delinquent debts including loans, a mortgage, legal fees, credit cards, a medical debt, and a telephone service account totaling over \$25,000 (SOR ¶¶ 1.a to 1.j). Applicant admitted all of the debts with some explanations, except she denied a small credit account (SOR ¶ 1.j), claiming it was paid. The evidence submitted by the Government supports the SOR allegations.

SOR ¶ 1.a is a personal loan that was originally a \$30,000 auto loan in her son's name. She refinanced the loan in her name to help him, but could not afford the payments after she was laid off. The car was sold in 2016, and the balance was partially paid off. The loan was converted to a personal loan for \$8,715. There is no evidence that Applicant has made any payments on the loan since 2016, and it was charged off. Applicant testified that in about late summer 2022, she started making \$25 payments every two weeks on the loan after speaking to a Government investigator about her security clearance. She claimed she would provide documentation of the repayment agreement with the creditor and proof of payments, but nothing was submitted after the hearing.

SOR ¶ 1.b is a credit union line of credit collection account for \$7,672. Applicant used the loan for home repairs in about 2015. She initially made payments, but stopped in 2016. She spoke with a credit union representative in 2019 and October 2022, who demanded payment in full. She does not have the funds to pay the debt.

SOR ¶ 1.c is a past-due mortgage that incurred late fees totaling \$3,214. Applicant testified that she began making payments in October 2021 and is paying an extra \$25 per month toward her late fees. Her recent credit report shows the account is now up to date.

SOR ¶ 1.d is a credit union personal loan that has been charged off for \$2,792. Applicant testified that she was able to arrange a repayment plan about six months ago, and began making \$25 payments every two weeks, beginning about four to five months ago. She has not provided documentary evidence of a repayment plan or regular payments on the plan.

SOR ¶ 1.e is a telephone account debt for \$766. Applicant claims her new telephone carrier was to pay off this account when she switched, but failed to do so. She disputed the account several years ago, and it is no longer reflected in her current credit report.

SOR ¶¶ 1.f and 1.g include an attorney-fee debt for \$677 and a medical debt for \$528. Appellant agreed to accept an attorney's services to assert an unclaimed money account. She received about \$2,000 in 2016, but failed to pay the attorney's fee. The medical debt resulted from a surgery in 2005, but she has taken no action to resolve the debt.

SOR ¶¶ 1.h, 1.i, and 1.j are charged-off credit accounts. Applicant testified that she paid the accounts after she answered the SOR, but has not provided documentary evidence of payments or other actions to resolve the accounts.

Applicant claimed to have received financial counseling in 2019 from a credit repair service. The counselor did not assist her with a budget, but she claims she currently has a written budget. She did not submit a copy of the budget or evidence of financial counseling, despite the opportunity granted to her after the hearing. She has no savings and about \$417 in checking accounts. She owns a home valued at about \$310,000, with a remaining mortgage balance of about \$50,000. She is preparing her home to eventually offer for lease or sale. She rents another home for \$650 per month. She claims to have about \$300 in a net monthly remainder. She contributes toward her youngest son's tuition and pays his car insurance.

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.

National security eligibility 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 a person's stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG ¶ 1(b).

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. *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, e.g., ISCR Case No. 12-01295 at 3 (App. Bd. Jan. 20, 2015).

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, e.g., 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; see, AG ¶ 1(d).

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. . . .

The relevant disqualifying conditions under AG ¶ 19 include:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant's admissions, testimony, and the documentary evidence in the record are sufficient to establish the disqualifying conditions AG ¶¶ 19(a) and (c).

The following mitigating conditions under AG ¶ 20 are 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;
- (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.

Applicant has a history of not responsibly meeting her financial obligations. The guideline 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 incurred debts when she was laid off and underemployed in 2015. She was supporting her youngest son at the time. Since she began her current employment in 2018, she did little to address her debts until she learned that obtaining a security clearance became jeopardized. I give credit to Applicant for resolving her mortgage

and telephone service debts (SOR ¶¶ 1.c and 1.e). She has not shown sufficient evidence of resolution of the remaining debts or of financial counseling.

A debt that became delinquent several years ago is still considered recent because “an applicant’s ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions.” (ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016))).

Applicant’s failure to address her remaining delinquent accounts puts into question her reliability, trustworthiness, and good judgment. Although she has been employed in her current position since 2018, she has done very little to address her debts. Except for the two resolved accounts, mitigating conditions AG ¶¶ 20(a) - 20(e) do not apply to the remaining debts.

Whole-Person Concept

Under AG ¶¶ 2(a), 2(c), and 2(d), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the 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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d).

I considered all of the potentially disqualifying and mitigating conditions in light of the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F in my whole-person analysis. I also considered Applicant’s life circumstances, in particular her divorces and job loss. However, I remain unconvinced of her overall financial responsibility, efforts to resolve delinquent debts, and her ability, intent, and desire to meet her financial obligations in the future.

Overall, the record evidence leaves me with question and doubts about Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations security concerns. I considered the exceptions under Security Executive Agent Directive (SEAD) 4, Appendix C, dated June 8, 2017, and determined they are not applicable in this case.

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:	AGAINST APPLICANT
Subparagraphs 1.a, 1b, 1d, and 1.f-1.j:	Against Applicant

Subparagraphs 1.c and 1e:

For Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interest of the United States to grant Applicant eligibility for access to classified information. Applicant's security clearance is denied.

Gregg A. Cervi
Administrative Judge