



**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*
 01/30/2023

Remand Decision

CERVI, Gregg A., Administrative Judge

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Procedural Rulings

This is a security clearance case in which the Defense Office of Hearings and Appeals (DOHA) Appeal Board remanded the case to me on January 12, 2023, to consider post-hearing evidence that was not previously forwarded to me and therefore not considered in my initial decision. My initial decision in this case concluded that Applicant had a history of financial problems and a number of delinquent debts, and that she did not provide sufficient evidence of efforts to resolve debts. I then concluded she did not present sufficient evidence to rebut, extenuate, mitigate, her financial delinquencies and decided the case against her. Applicant appealed that decision to the Appeal Board.

The Appeal Board noted in its remand decision, that Applicant claimed to have timely submitted post-hearing documentation to Department Counsel in accordance with my direction at the hearing, however that information was not included in the record at the time of my decision of November 28, 2022. As a result of Applicant’s appeal, Department Counsel forwarded Applicant’s post-hearing exhibits (AE) E-L to me on

January 3, 2023 (Record Ex. 1). As a result of the remand, I notified Applicant and Department Counsel that I was going to reopen the record to permit them an opportunity to submit any additional evidence by January 27, 2022. (Record Ex. 2) Applicant submitted AE A-D. Nothing further was submitted by Department Counsel and he did not object to any of Applicant's exhibits. AE A-L are admitted without objection. After consideration of Applicant's post-hearing evidence, I conclude that Applicant has sufficiently mitigated the Guideline F security concerns raised in the SOR.

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 initially held open until November 5, 2022, for Applicant to supplement the record. As stated above, Applicant timely submitted post-hearing information that was not considered in my initial decision, but will be considered in this remand decision. Applicant also submitted supplemental information as a result of her appeal and remand, and I have considered that evidence as well. 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 after a short marriage in which she described as a "horror of a marriage." (Tr. 19) She has three adult children.

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; all 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. Applicant attributed her financial problems to being laid off in 2015 and her divorce in 2018. She struggled financially since 2015, until she secured a well-paying position with her current employer in 2018 where she earned almost twice her previous job. (Tr. 24-28)

SOR ¶ 1.a is a personal loan that was originally a \$30,000 auto loan in her son's name, for a vehicle for his use. 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. Applicant did not make regular payments on the loan after 2016, and it was charged off. Applicant's son stopped paying on the loan after being laid off, and does not contribute to repayment of the personal loan. In October 2022, Applicant arranged a repayment plan with the creditor, and she started making \$25 payments every two weeks, beginning November 4, 2022, in accordance with the agreement. (AE I) She testified that she has been faithfully making the scheduled payments and restated in January 2023 that she would continue payments as agreed. (AE A) This account is being resolved.

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 did not have the funds to pay the full debt. Based on her testimony and post-hearing submission (AE F), it appears that Applicant was able to arrange a payment plan in November 2022, whereby she would deposit \$25 per month into an account with the credit union for that purpose, and the credit union would apply it toward the loan. (AE F) She noted in an email that she will continue to pay on this account. (AE A) This account is being resolved.

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 most recent credit report shows the mortgage is 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 provided a post-hearing document showing a payment of \$25 on November 4, 2022, and a balance of \$2,250 that shows a decreasing balance on the account. (AE G) She also noted in an email that she will continue to pay on this account. (AE A) This account is being resolved.

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. In her post-hearing submission, Applicant provided a receipt from a collection

agent showing a payment of \$213.14 on December 31, 2022, and a total amount paid on the debt of \$426.88. This amount was the full settlement agreement, and the collection account was closed. (AE B and AE C) This debt is resolved.

SOR ¶ 1.f is an attorney-fee debt for \$677. Appellant agreed to accept an attorney's services to assert a claim for an unclaimed money account. She received about \$2,000 in 2016, but failed to pay the attorney's fee. In her post-hearing submission, she provided documentary evidence that she settled the account in December 2022, and paid the debt in full. (AE B and AE D) This account is resolved.

SOR ¶ 1.g is a medical debt for \$528. The medical debt resulted from a surgery in 2005. She testified that she has taken no action to resolve the debt, and did not submit any post-hearing documents regarding the debt. In an email, she alluded to accounts in which she had not received a response to her calls. This was apparently one of those accounts. The debt is no longer reflected on her most recent credit report, and standing alone, does not give rise to a security concern.

SOR ¶¶ 1.h and 1.i are charged-off credit accounts. Applicant testified that she paid the accounts after she answered the SOR. In her post-hearing submission, she provided evidence that these accounts were settled in full in March 2022 and March 2021, respectively. (AE E, AE H, AE K, AE L) Both accounts are resolved.

SOR ¶ 1.j is a charged-off credit account for \$414. Applicant testified that she paid the account after she answered the SOR. In an email, she alluded to accounts in which she had not received a response to her calls. (AE E) This was apparently one of those accounts. The debt is no longer reflected on her most recent credit report. It appears to have been resolved.

Applicant stated that she 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 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 has about \$300 in 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 attributes her delinquent debts to being laid off in 2015, underemployed until 2018, and a 2018 divorce. She was supporting her youngest son at the time. Before she began her current employment in 2018, she did little to address her debts. While this impugns her history of financial responsibility, she did not have the financial means or understanding to tackle her mounting debts. Once she gained employment with her current government contract position, she was able to get back on a solid financial footing over time. Moreover, when she learned that obtaining a security clearance was in jeopardy because of about \$25,000 in delinquent debts, she undertook significant action to address this relatively manageable amount of debt.

As a result of the issuance of the SOR and her hearing in this case, Applicant made substantial efforts to get a handle on her debts, contact all of her creditors, and resolve debts or obtain payment plans and begin payments toward their final resolution. Although late, I am satisfied that Applicant now fully understands the importance of keeping up with her debts, and taking action to resolve delinquent accounts as soon as financially feasible.

Applicant's work to resolve her delinquent accounts has mitigated the financial concerns and her reliability, trustworthiness, and good judgment are no longer in question. She has financial assets including equity in a home, a positive net remainder, and newfound financial acumen. I trust that Applicant will continue to honor the remaining repayment arrangements she has made and will refrain from further delinquencies. Also, she stated that she received financial counseling and utilizes a written budget, which should contribute to good financial management in the future. Mitigating conditions AG ¶¶ 20(b), (c), and (d) apply.

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, job loss, and underemployment. I am now convinced of her overall financial responsibility through her recent efforts to resolve delinquent debts, and I believe that she will timely meet her financial obligations in the future.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the 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.j:	For Applicant

Conclusion

I conclude that it is 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 granted.

Gregg A. Cervi
Administrative Judge