



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



In the matter of:)
)
) ISCR Case No. 21-01520
)
Applicant for Security Clearance)

Appearances

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

02/13/2023

Decision

HALE, Charles C., 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 27, 2020. On July 14, 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 (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 March 23, 2022, and requested a decision on the written record without a hearing. Department Counsel submitted the Government’s File of relevant material (FORM) dated October 4, 2022, including documents identified as

Items 1 through 11. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. She received the FORM on October 26, 2022, and submitted a timely Response. The case was assigned to me on January 12, 2023.

The SOR, the Answer (FORM Items 1 and 4), and Response are the pleadings in the case. Pages 5-30 of the Answer, Item 4, contain exhibits and pages 7-18 of the Response contain exhibits. These exhibits will be cited as Answer Exhibits (AE) or Response Exhibits (RE) at the applicable page number. FORM Items 5 through 11 are admitted into evidence without objection. Applicant's Answer exhibits and Response exhibits are admitted into evidence without objection.

Evidentiary Issue

FORM Item 11 is a summary of a personal security interviews (PSI) conducted on June 22, 2020, July 2, 2020, and August 24, 2020. The PSI summary was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant the PSI was being provided to the Administrative Judge for consideration as part of the record evidence in this case, and she was entitled to comment on the accuracy of the PSI; make any corrections, additions, deletions, and updates necessary to make the summaries clear and accurate; and object on the ground that the reports are unauthenticated. I conclude that Applicant waived any objections to the PSI summary. "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. 12-10810 at 2 (App. Bd. Jul. 12, 2016).

Findings of Fact

The SOR alleges that Applicant filed for Chapter 7 bankruptcy, is delinquent on federal income taxes for multiple tax years totaling approximately \$421,176, delinquent on state income taxes in the approximate amount of \$6,129, ten delinquent student loans totaling approximately \$252,335, and 3 additional delinquent debts totaling approximately \$15,212. In Applicant's Answer to the SOR and Response to the FORM, she admitted all SOR allegations. Her admissions are incorporated in my findings of fact.

SOR ¶ 1.a: Applicant filed Chapter 7 bankruptcy in 2011. She states the bankruptcy was a result of her husband being out of work for almost two years starting in the summer of 2007. During this period the family relied on a single income. (Answer at 1.) She offered her September 2011 Discharge of Debtor letter from the Bankruptcy Court as evidence of the final order releasing her of her debts. (AE at 5.)

SOR ¶ 1.b: **delinquent federal income taxes for tax years 2007 through 2018 in the approximate amount of \$421,176.** In her PSI she told the investigator she was just late when she filed. (Item 11 at 6.) In two letters in June 2020, the Internal Revenue Service (IRS) temporarily closed her case for tax years 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, and 2018. (AE at 6 and AE at 7.) The IRS stated in both

letters she still owed the amounts in question. She was further advised to continue making voluntary payments for the amounts owed. The IRS noted applicable penalties and interest would continue to accrue. (AE at 6 and 7.) She provided canceled checks showing a monthly \$700 payment to the IRS from June 2019 through April 2020. (AE at 8-18.) She also provided evidence of a payment in November 2021. (AE at 19.) She explained that “once things improved due to COVID-19, [the IRS] would reconnect and reopen the case.” (RE at 2.) She stated that she had been working with the IRS to reinstate the installment agreement closed by the IRS and that she had submitted forms 433F (Financial Collection Information Statement) and 9465 (Installment Agreement Request) per the IRS's request. (RE at 2.) Until the plan is approved she said that she is resuming monthly payments of \$700, based on the pre-COVID agreement. She provided a receipt for a payment made for tax year 2011 taxes dated in November 2022. (RE at 7.)

SOR ¶ 1.c: delinquent state income taxes totaling approximately \$6,129. She provided documentation showing she entered into a payment agreement effective October 31, 2021. (AE at 20-21.) She provided her payment history and correspondence showing that the debt was paid in full in November 2022. This debt is resolved. (RE at 8-13.)

SOR ¶¶ 1.d-1.i and 1.k-1.o: ten student loan accounts placed for collection totaling \$252,335. (Item 7.) A September 2022 credit report shows that these student loans were first reported delinquent in May 2018, with a last payment date of April 2020. (Item 7 at 5, 6, 5, 7, 4, 4, 6, 4, 5, and 7.) In April 2020, the Department of Education issued her employer a Notice of Cancellation Order For Withholding Of Wages For All Employees (Order). The Order requested her company cease garnishment of her wages to provide relief to those impacted by COVID-19. (AE at 27.) Applicant states in her Answer that “the plan is to resume payments in May 2022” and adds in her Response that she has been in discussion with the Department of Education to work on reinstating a payment plan. (RE at 6.) Until the payment plan is approved, she indicated she would resume making monthly payments of \$700 and provided a receipt for a \$700 payment made in November 2022. (RE at 16.)

SOR ¶ 1.j: automobile loan charged off for \$14,324. Applicant acknowledged she stopped making payments in March 2020 and had missed payments because of other garnishments. (Item 11 at 7.) In her Response she stated she had made regular \$400 payments and a \$4,000 final payment to resolve the debt. (Response at 15.) She submitted a letter from the creditor stating the debt had been settled in full as of September 19, 2022. This debt is resolved. (RE at 14.)

SOR ¶ 1.p: medical account referred for collection of \$62. (Item 8 at 4-5.) Applicant states this debt has been paid but provided no supporting documentation. (Answer at 4 and Response at 6.)

SOR ¶ 1.q: credit-card account charged-off for \$826. Applicant provided a February 1, 2022 letter from the current creditor thanking her for her assistance in resolving the account. This debt is resolved. (AE at 29.)

Applicant is 54 years old. She has been married since 2005 and has one child and three adult step-children. She earned her master's degree in 2006 and was awarded her doctorate in 2014. She has worked as a federal contractor since 2013. (Item at 22, 28-30, 12, 13, and 13-16.)

Applicant states she had an unscheduled medical expense of \$8,501 in October 2021. She provided her fee agreement for proof of the medical expense and the out-of-pocket cost to her. (RE at 18.) She states that since this medical expense is resolved, she can now address the remaining debts. She specifically identified her federal tax debt and the delinquent student loans for resolution. (Response at 6.)

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 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. . . .

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

Applicant's admissions and her credit reports establish the following disqualifying conditions under this guideline: AG ¶ 19(a) (“inability to satisfy debts”); AG ¶ 19(b) (“unwillingness to satisfy debts regardless of the ability to do so”); AG ¶ 19(c) (“a history of not meeting financial obligations”); and AG ¶ 19(f) (“failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required”).

The following mitigating conditions under AG ¶ 20 are 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;

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

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant argues she has faced financial hardships and setbacks for various reasons such as her husband's job loss and layoffs or contracts ending. Over the past year or so she has become more financially stable as she pays off her various debts, which has made funds available to address her other debts, specifically citing her federal tax debt and student loans.

AG ¶ 20(a) is partially established. The bankruptcy alleged in SOR ¶ 1.a was filed and discharged in 2011 and she has not filed for bankruptcy since. Applicant's unresolved federal tax debt, unresolved student loans, and her limited progress resolving her other debts over a period of eleven years did not occur under circumstances unlikely to recur and raise doubts about her current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) is partially established. Her husband's employment situation, medical problems, medical debts, and periods of unemployment were largely beyond her control. She acted responsibly by developing and successfully executing a plan to resolve her delinquent state taxes, and by resolving her delinquent automobile loan and credit card (SOR ¶¶ 1.b, 1.j, and 1.q). When the IRS suspended her federal tax debt, it noted she was still responsible for interest and penalties for the delinquent tax years. She was advised during the suspension to make voluntary payments and that the IRS had "temporarily closed" her case. However, she has provided insufficient evidence that she has acted responsibly regarding her delinquent federal income taxes and student loans. Her federal tax plan has not progressed sufficiently to constitute responsible actions under the circumstances for delinquent taxes for the alleged tax years, 2007 through 2018. She remains in the planning process to resolve her student loans. The voluntary payment she provided on her tax year 2011 federal taxes was made after her Answer. Her failure to take any action on these delinquent accounts until now does not constitute a good-faith debt resolution. See ISCR Case No. 10-05909 at 3 (App. Bd. Sept. 27, 2012). An applicant who begins to resolve their debts only after having been placed on notice that their clearance or trustworthiness designations are in jeopardy may be disinclined to

follow rules and regulations when their personal interests are not at stake. ISCR Case No. 17-04110 at 3 (App. Bd. Sept. 26, 2019).

AG ¶ 20(c) is not fully established. Although Applicant would have received financial counseling during her bankruptcy proceedings, her financial problems are not under control. She does not have an approved payment plan for either from the IRS or the Department of Education.

AG ¶¶ 20(d) and 20(g) are partially established. Applicant successfully completed her payment plan to resolve her delinquent state income taxes. She does not have payment plans in effect for her delinquent federal taxes or her student loans. She receives some mitigation credit for reducing some of these debts by voluntary payments after receiving the FORM and initiating discussions with the IRS and Department of Education to establish a payment plans.

A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, pay the debts alleged in the SOR first, or establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Her delinquent federal taxes still total over \$400,000 and her delinquent student loans total over \$200,000.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense 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 and applying the adjudicative factors in 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 financial considerations security concerns.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraphs 1.b, 1.d-1.k, and 1.m-1.p Against Applicant

Subparagraphs 1.a, 1.c, 1.l, and 1.q: For Applicant

Conclusion

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

Charles C. Hale
Administrative Judge