



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



In the matter of:)	
)	
)	ISCR Case No. 22-01466
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel
For Applicant: *Pro se*

03/17/2023

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 August 23, 2021. On September 7, 2022, the Department of Defense sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F. The Department of Defense 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 October 14, 2022, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on November 28, 2022. A complete copy of the file of relevant material (FORM) was sent to Applicant on November 29, 2022, who was given an opportunity to

file objections and submit material to refute, extenuate, or mitigate the Government's evidence. She received it on December 8, 2022. She did not respond. The case was assigned to me on March 8, 2023.

The SOR and the Answer (FORM Items 1 and 2) are the pleadings in the case. The exhibit attached to Applicant's Answer on page 6 is also located on page 14 of Item 7. FORM Items 3 through 7 are admitted into evidence without objection.

Findings of Fact

In Applicant's answer to the SOR, she admitted SOR ¶¶ 1.a through 1.f and 1.h. She denied SOR ¶ 1.g. 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 a 46-year-old VTC engineer. (Item 3 at 7.) She has worked for her sponsor since January 2019. (Item 3 at 14.) She served honorably from 1997 through 2001 in the Navy. (Item 3 at 25.) She earned a bachelor's degree in 2005. (Item 3 at 13.) She divorced in 2000, and she has a 23-year-old daughter who currently resides with her. She has three siblings. (Item 3 at 29-30 and 33-35.) She previously held a Secret clearance in approximately 2001. (Item 3 at 42.)

Applicant cites various life events in her Answer, including caring for her mother after her father's passing; her mother's move into assisted living; the hospitalization of her mother and daughter as well as herself; and the expenses incurred when the "family dog fell ill and passed away." (Item 2 at 5). Her eight delinquent debts total \$30,158. The debts are established by her SCA, multiple credit reports and her answer to interrogatories. (Items 3-7.) The specific debts in the SOR are as follows:

SOR ¶ 1.a: past-due account charged-off for \$9,178. FORM Items 4 and 5 show no change in the balance of the debt or its status. (Item 4 at 2 and Item 5 at 2.) In her April 8, 2022 interrogatories she acknowledged the debt was not paid; payment arrangements had not been made; and that she was not making payments. (Item 7 at 4.)

SOR ¶ 1.b: past-due account charged-off for \$3,709. FORM Items 4 and 5 show no change in the balance of the debt or its status. (Item 4 at 2 and Item 5 at 3.) In her April 8, 2022 interrogatories she acknowledged the debt was not paid; payment arrangements had not been made; and that she was not making payments. (Item 7 at 4.)

SOR ¶ 1.c: past-due account charged-off for \$3,667. FORM Items 4 and 5 show no change in the balance of the debt or its status. (Item 4 at 2 and Item 5 at 3.) In her April 8, 2022 interrogatories she acknowledged the debt was not paid; payment arrangements had not been made; and that she was not making payments. (Item 7 at 3.)

SOR ¶ 1.d: past-due account charged-off for \$3,385. FORM Items 4 and 5 show no change in the balance of the debt or its status. (Item 4 at 3 and Item 5 at 3.) In her

April 8, 2022 interrogatories she acknowledged the debt was not paid; payment arrangements had not been made; and that she was not making payments. (Item 7 at 3.)

SOR ¶ 1.e: past-due account charged-off for \$3,254. FORM Items 4 and 5 show no change in the balance of the debt or its status. (Item 4 at 3 and Item 5 at 3.) In her April 8, 2022 interrogatories she acknowledged the debt was not paid; payment arrangements had not been made; and that she was not making payments. (Item 7 at 2.)

SOR ¶ 1.f: past-due account placed for collection for \$3,222. FORM Items 4 and 5 show no change in the balance of the debt or its status. (Item 4 at 3 and Item 5 at 4.) In her April 8, 2022 interrogatories she acknowledged the debt was not paid; payment arrangements had not been made; and that she was not making payments. (Item 7 at 2.)

SOR ¶ 1.g: past-due account placed for collection for \$2,400. FORM Items 4 and 5 show no change in the balance of the debt or its status but show that she disputed the debt. (Item 4 at 3 and Item 5 at 4.) In her April 8, 2022 interrogatories she acknowledged the debt was not paid; payment arrangements had not been made; and that she was not making payments. (Item 7 at 2.)

SOR ¶ 1.h: past-due account charged-off for \$1,343. FORM Items 4 and 5 show no change in the balance of the debt or its status. (Item 4 at 3 and Item 5 at 5.) In her April 8, 2022 interrogatories she acknowledged the debt was not paid; payment arrangements had not been made; and that she was not making payments. (Item 7 at 3.)

Applicant addressed three other debts in her response to interrogatories. A charged-off department store credit card in the amount of \$343. (Item 7 at 16-17.) She provided evidence she had paid off the debt. (Item 7 at 16-17.) A delinquent medical account placed in collection in the amount of \$67. She provided evidence the debt was paid in full. (Item 7 at 15.) She provided an October 2018 payment agreement for another account with an existing balance of \$2,425, and an agreed upon payment amount of \$1,335, with a monthly payment of \$34. (Item 7 at 14.) This appears to be the disputed debt alleged in SOR ¶ 1.g.

Applicant completed a Personal Financial Statement as part of her response to interrogatories. It showed a net remainder of \$1,690 available to her each month for discretionary spending. (Item 7 at 9.) She lists her bank savings as \$15,000. (Item 7 at 9.) Her estimated salary in 2017 was \$80,000 before taxes and insurance. Her biweekly March 2022 pay stub showed a net pay of \$3,684. (Item 7 at 18.) She states she had not been making this salary in years and had other expenses to pay with the extra money. (Item 7 at 9.)

Applicant in her Answer cites the statute of limitations on the various outstanding delinquencies and her concern that any call or contact would restart the statute of limitations. She explains that she did not want to risk a court proceeding that could put her government contractor job in jeopardy. She started a higher-paying job in 2019 and

states her hope that the new job will allow her to resolve the debts that she incurred in 2017. (Item 2 at 4-5.)

Applicant engaged a debt consolidation company and then withdrew from the agreement over a dispute over costs. (Item 2 at 5.) She states it was “probably not the best idea to enter a debt consolidation program” and cites her credit report and the accounts she has addressed to show her mitigation efforts and that she has not avoided her financial obligations. She explains that due to the age of the remaining accounts, she figured she could get a better outcome on her own. She offers that the expenses associated with her mother are now finished and she can focus on her situation. She elected to “push the older debts from 2017 off to the side” and states she has not forgotten them. (Item 2 at 4-5.)

Applicant states she does not talk about her financial obligations with anyone and all that her employer and coworkers know of her situation is that she had been taking care of her mother. (Item 2 at 5.) She does not want to enter into agreements “with the past companies” without knowing if she would retain her clearance, and does not want to put herself “in jeopardy” over these debts if she loses her job. (Item 2 at 4.)

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. 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. See ISCR

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

Applicant's admissions and the documentary evidence in the FORM 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").

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;

(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.

AG ¶ 20(a) is partially established. Applicant's delinquent debts occurred under such circumstances that they are unlikely to recur. She listed various life events in her Answer. She acknowledged she has been focused on current debts and not her older debts. Her response to the interrogatories shows that her financial problems are not being resolved or are under control.

AG ¶ 20(b) is partially established. Applicant cited unexpected medical emergencies to both her and her daughter; the death of her father; rendering financial assistance to her mother; and expenses incurred for her pet. She provided some evidence that she addressed three uncharged debts in her response to interrogatories. She does not support her claim that she acted responsibly under the circumstances, either through payment or with legal action, with regard to the majority of her debts. Where she stated she had acted or intended to act there is limited evidence of action on her part.

AG ¶¶ 20(c) and 20(d) are partially established. Applicant engaged a debt consolidation company and then withdrew from the agreement over a dispute. She stated she does not want to enter into agreements "with the past companies" without knowing if she would retain her clearance. (Item 2 at 4.) She has not shown that the problem is being resolved or is under control. She acknowledged she pushed her older debts aside. Merely waiting for a debt to drop off a credit report by the passage of time is not a factor in an

applicant's favor. See ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001).

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. 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 Guidelines F and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by her delinquent debts.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.h:	Against 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