



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 22-01677
)	
Applicant for Security Clearance)	

Appearances

For Government: Patricia Lynch-Epps, Esq., Department Counsel
For Applicant: *Pro se*

03/15/2023

Decision

MARINE, Gina L., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on March 29, 2022. On September 21, 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 (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

On September 28, 2022, Applicant responded to the SOR (Answer), and requested a decision based on the written record in lieu of a hearing. On November 21, 2022, the Government sent Applicant a complete copy of its written case, a file of relevant material (FORM) including evidentiary documents identified as Items 1 through 6. She

was given an opportunity to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation to the Government's evidence. She received the FORM on November 29, 2022. She timely submitted three responses, including documentary evidence, dated December 12, 2022, January 8, 2023, and January 27, 2023, which I marked as Applicant's Exhibits (AE) A through C, respectively. The case was assigned to me on February 16, 2023.

Evidentiary Matters

Items 1 and 2 contain the pleadings in the case. Without objection, Items 3 through 6, and AE A through C, are admitted into evidence. Although Item 4 was not authenticated as required by Directive ¶ E3.1.20, I conclude that Applicant waived any objection to Item 4. The Government included in the FORM a prominent notice advising Applicant of her right to object to the admissibility of Item 4 on the ground that it was not authenticated. Applicant was also notified that if she did not raise an objection to Item 4 in her response to the FORM, she could be considered to have waived any such objection, and that Item 4 could be considered as evidence in his case. Applicant did not raise any such objection in her FORM responses.

On March 14, 2023, for good cause and without objection from the Government, I reopened the record to receive additional exhibits that I admitted into evidence collectively as AE D. I appended to the record as Administrative Exhibit (AX) I the Government's argument against mitigation in response to AE D.

Findings of Fact

Applicant, age 39, has three children, ages 13, 15, and 19, the eldest of which currently resides with her. Her two youngest children reside with their father, her first husband, to whom she was married from 2006 until they divorced in early 2015. She remarried in 2021. She received her Generalized Education Development credential in 2001. She has been employed as a junior financial analyst by a defense contractor since April 2022. She did not report any periods of unemployment in her SCA. This is her first application for a security clearance. (Items 3, 4)

The SOR alleged two debts, a \$37,993 home equity line of credit (HELOC) (SOR ¶ 1.a) and a \$653 credit-card account (SOR ¶ 1.b). Applicant admitted both allegations in her Answer.

Applicant co-signed the HELOC with an original balance of \$50,000 in May 2008 with her first husband to remodel a garage and add an addition to their marital home. Her husband was the "primary applicant" on the HELOC. The mortgage on the home was solely in her husband's name. The HELOC remained in good standing until June 2016, when her then ex-husband stopped making payments. The lender charged off the debt, in the amount of \$37,883, to profit and loss in May 2017, as alleged in SOR ¶ 1.a. (Items 2, 4, 5, 6)

After an initial period of separation from May 2012 through February 2014, Applicant reconciled with her first husband. She also resumed living with him again until December 2014, when he was incarcerated for committing an act of domestic violence against her. Due to the nature of their separation, she agreed to an uncontested divorce to expedite the process. Before finalizing their divorce, she and her first husband reached a verbal agreement that he would be solely responsible for repaying the HELOC as he retained exclusive possession of their former marital home with their children. In her Answer, Applicant stated, "There was a verbal, non contractual [*sic*] agreement with no documentation nor court order naming him the responsible party and relinquishing myself of the obligation," and "The verbal agreement was reached due to his ownership of the home used as collateral to obtain the HELOC and my financial capabilities at the time." (Items 2, 4, 5, 6)

Following Applicant's initial separation from her first husband, she was unable to provide an ideal home for her children. In December 2012, upon the petitions filed by both fathers, the court awarded custody of the two youngest children to her first husband and the eldest to her child's father. At that time, the court also ordered Applicant to pay child support of \$343 per month to her first husband and \$303 per month to her eldest child's father. Her then annual gross income was \$26,000. After deductions for child support and health insurance for the family, her net income was "barely above \$600" per month and rendered her "incapable" of repaying the HELOC. (Items 2, 5)

Once the divorce was finalized in early 2015, Applicant and her first husband no longer communicated about finances. They did not discuss the HELOC again until 2017, when her first husband advised Applicant of his and their children's new home address due to the short sale of their former marital home. At that time, he conveyed to her that he expected the proceeds of the short sale to cover the then delinquent balance of the HELOC. It was not until October 2018, during an attempt to finance the purchase of a vehicle, that Applicant learned the HELOC remained in delinquent status. She immediately contacted her first husband and he advised her that he would contact the lender to investigate why it was not satisfied through the short sale. In her Answer, she stated, "his ownership of the home used as collateral [for the HELOC] as well as being the primary applicant on the [HELOC] is why I continued to look to him for answers versus contacting the lender myself. I understand this does not excuse me from taking responsibility as the co-signer of this debt." (Item 2)

In her April 2022 SCA, Applicant reported that she resolved a \$7,000 child support debt. Beginning in December 2014, she fell behind in her child support payments, due to the lack of a steady income. She maintained full-time work with the same employer in the health care industry from January 2008 until July 2014, when she left to work a more part-time schedule so that she could be home more for her children. In August 2013, she obtained a second job working part time nights and weekends as a bartender and server in the restaurant industry. In August 2014, she transitioned her part-time position to full time and continued to work nights and weekends. In June 2015, she took on a second part-time job working as a janitor in her local government until she was laid off in February 2016. She continued working in the same restaurant position until September 2017, when she determined that she "no longer needed the supplemental income." (Items 3, 5)

During her April 2022 security clearance interview (SI), Applicant explained that, although she fell behind in her child support payments in December 2014, she continued to make partial payments. In December 2017, both fathers of her children filed a petition in December 2017 to settle the \$7,000 arrearage. Both fathers agreed to release Applicant from the \$7,000 arrearage in exchange for Applicant's agreement to pay the full amount of her child support obligation going forward. Applicant had been paying the full amount from October 2017 through at least April 2022. Given the financial stability afforded by her then new full-time position with her current employer, she expected to be able to continue paying the full amount through her children's 18th birthdays. The child support debt was reported as "closed or paid," with a \$0 balance in her April and August 2022 credit bureau reports (CBRs). As this debt was not alleged in the SOR, it will be considered solely to evaluate mitigation and the whole person concept. (Items 4, 5, 6)

During Applicant's SI, she also addressed the two SOR debts as well as a resolved property tax debt. Attempting to rebuild her credit, Applicant opened a credit-card account in May 2019 with a \$300 credit limit. At that time, she felt confident that she could afford to make the payments given her then two-income household. She used the card to pay for clothing, food, and fuel. However, she fell behind in her payments in October 2019 because she could no longer afford them as her household was reduced to one income. No information was available in the record concerning how she became a two-income household or lost the second income. She defaulted on the card so that she could ensure housing for herself and maintain a good payment record on her vehicle. During that time, she took on a secondary job as a waitress to supplement her income. However, the supplemental income was "sporadic and unreliable." In May 2020, the creditor charged off the debt, in the amount of \$653 (including penalties and interest), to profit and loss in March 2020, as alleged in SOR ¶ 1.b. (Items 2, 4, 5, 6)

Although her April 2022 CBR listed the credit-card debt with a \$0 balance, Applicant told the investigator that she intended to contact the creditor to settle the debt. In her Answer, she explained that she had been working to accrue enough savings to make monthly payments on the account. In a December 2022 FORM response, she explained that her attempts to settle the account had been thwarted because it had been transferred "multiple times." On March 10, 2023, the collection agency for the debt alleged in SOR ¶ 1.b confirmed that it had been paid in full. In addition, although it was not alleged in the SOR, in January 2023, Applicant negotiated a payment with the same collection agency to repay a debt for a "much older account" with a balance of \$567. She agreed to pay \$72 per month from January 2023 through December 2023 to resolve that debt. (AE A, C, E; Item 2, 4 5, 6)

Applicant's wages were garnished for one week in October 2017 to repay an unpaid \$400 personal property tax debt. The tax had been assessed on a vehicle that was jointly titled in her name and an ex-boyfriend's name. When the ex-boyfriend moved away following their breakup, he took sole possession of the vehicle and verbally agreed to pay all expenses associated with the vehicle, including the property tax. Applicant was not aware of the existence of the tax debt until her wages were garnished. Because this debt was not alleged in the SOR, it will be considered solely to evaluate mitigation and the whole person concept. (Item 4 at 6)

During her SI, Applicant explained that she did not report the HELOC debt on her SCA because she did not know that it remained in delinquent status. Sometime between the completion of her SCA and the SI, she learned, for the first time, that her marital home had been foreclosed upon (not sold via short sale). She also became aware that the HELOC remained in delinquent status. In her Answer, Applicant acknowledged her responsibility for repaying the debt as a co-signer on the HELOC. She expected that she would be able to repay the debt given the salary increase associated with her current employment. She intended to reach out to the lender to negotiate a “financially feasible” repayment agreement. She anticipated that she may have to file bankruptcy if she could not arrange a payment arrangement that she could afford. (Item 2)

In her December 2022 FORM response, Applicant explained that she had been in contact with the HELOC creditor. The creditor advised that there was a significant discrepancy between the balance owed on the HELOC according to their records and the amount being reported on Applicant’s credit report. The creditor advised Applicant that it would be in her best interest to file a dispute with the credit bureau to resolve the issue. The creditor also reviewed various repayment options. Applicant planned to begin repaying the debt once the credit bureau resolved her dispute. In the meantime, she also consulted with an attorney about filing a Chapter 13 bankruptcy. Based upon the advice received, she and her current husband were exploring the option of filing for Chapter 13 to consolidate their debts to gain a lower monthly payment. On December 21, 2022, based on its research of the account, the credit bureau resolved the dispute by deleting the HELOC debt from Applicant’s CBR. (AE A, B, D).

No new delinquent debts were reported on Applicant’s August 2022 CBR. All accounts reported on Applicant’s March 9, 2023 CBR were in good standing. She intends to maintain her credit going forward. In her Answer, she stated, “The fluctuation in my credit score as well as the delinquency of these accounts has impacted my life tremendously and I have learned how important it is to uphold financial obligations as agreed to do so.” She does not intend to make any future payments to the HELOC creditor due to the successful resolution of her dispute with the credit bureau. (AE D; Item 2)

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.” (*Egan* 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.” (EO 10865 § 2)

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. 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.” (EO 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* 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. 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. (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 [or her] 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* at 531; AG ¶ 2(b))

Analysis

Guideline F: Financial Considerations

The 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. 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

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

The record evidence and Applicant's admissions 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).

I considered each of the factors set forth in AG ¶ 20 that could mitigate the concern under this guideline and find the following 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

(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 successfully disputed the HELOC debt thereby resolving SOR ¶ 1.a. She paid the credit-card debt alleged in SOR ¶ 1.b in full. She incurred the HELOC debt under circumstances that were beyond her control and are not likely to recur. Her first husband agreed to repay the HELOC debt as part of the terms of their divorce, which was reasonable given that he retained possession of the marital home and held the primary mortgage in his sole name. He failed to pay the HELOC as promised. He also failed to provide Applicant notice of the home's foreclosure and the HELOC's default. Despite these circumstances, Applicant acknowledged, that as a co-signer on the loan, she was responsible for the HELOC debt and initiated efforts to resolve it with the creditor. She

also consulted with a bankruptcy attorney to explore options should she be unsuccessful in negotiating a feasible repayment plan. The creditor provided her with a reasonable basis to dispute the debt with the credit bureau. Based on its research, the credit bureau deleted the debt from her credit report.

Applicant addressed the SOR debts within her means. None of her debts resulted from irresponsible spending. Considering the record as a whole and the resolution of both SOR debts, I conclude that her indebtedness is resolved, unlikely to recur, and no longer casts doubt about her reliability, trustworthiness, and judgment. that AG ¶¶ 20(a), 20(b), 20(d), and 20(e) apply to mitigate the Guideline F concerns.

Whole-Person Analysis

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the adjudicative guidelines, each of which is to be evaluated in the context of the whole person. 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 I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F and evaluating all the evidence in the context of the whole person, I conclude that Applicant has mitigated the security concerns raised by the debts alleged in the SOR. Accordingly, Applicant has carried her burden of showing that it is clearly consistent with the interests of national security to grant her eligibility for access to classified information.

[intentional blank space]

Formal Findings

Formal findings 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.b: For Applicant

Conclusion

I conclude that it is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Clearance is granted.

Gina L. Marine
Administrative Judge