



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



In the matter of:)	
)	
)	ISCR Case No. 20-03186
)	
Applicant for Security Clearance)	

Appearances

For Government: Kelly M. Folks, Esq., Department Counsel
For Applicant: *Pro se*

03/29/2023

Decision

HALE, Charles C., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application on January 14, 2020. On November 15, 2021, the Department of Defense (DoD) sent her a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. The DoD 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) implemented by the DoD on June 8, 2017.

Applicant answered the SOR on December 5, 2021, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on September 22, 2022, and the case was assigned to me on October 12, 2022. On January 20, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for February 23, 2023. I convened the hearing as scheduled. Government

Exhibits (GX) 1 through 8 were admitted in evidence without objection. Applicant included eight enclosures with her Answer, testified, and submitted Applicant's Exhibits (AX) A through E at the hearing, which were admitted without objection.

I kept the record open to enable Applicant to submit additional documentary evidence. She timely submitted four exhibits: AX-F (bank statement), AX-G (student loan agreement), AX-H (IRS fax cover sheet), and AX-I (obituary), which were admitted without objection. DOHA received the transcript (Tr.) on March 2, 2023. The record closed on March 9, 2023.

Findings of Fact

Applicant denied the allegation in SOR ¶ 1.a, alleging that she failed to file her Federal income tax return for tax year 2019, and SOR ¶¶ 1.b and 1.c, alleging delinquent student loans in the approximate amounts of \$62,605 and \$72,590 respectively. She also denied the allegation in SOR ¶ 2.a, alleging that she deliberately falsified her security clearance application by failing to disclose the delinquent student loan accounts alleged in SOR ¶¶ 1.b and 1.c.

Applicant is a 44-year-old employee of a defense contractor. She has been employed by her sponsor since April 2012. (GX-1 at 11.) She testified she received a clearance in 2016, but did not list an investigation on her security clearance application. (Tr. at 10, 41 and GX-1 at 28.) She graduated high school in 1987 and enrolled in college that year. She transferred colleges before ending up at the university she attended from 1997 through early 2000. (Tr. at 24 and GX-1 at 10.) She has one child, who is an adult. Her younger brother, who suffers from severe arthritis, resides with her. (Tr. at 61 and GX-3 at 17.)

SOR ¶ 1.a: failure to timely file, as required, a Federal income tax return for tax year 2019. Applicant testified her untimely filing of her taxes was an isolated incident and at the time she was going through a lot. Her uncle, who had served as her father figure, had passed away in December 2019. She was "handling his matters because [she] was his power of attorney with his medical and helping out the family with doing a lot of things that he asked [her] to do prior to him passing." (Tr. at 50-51.) She testified she mailed her tax returns in August 2020. She considered her 2019 taxes filed when she put the return in the mail. She explained that, when she received a refund, she considered the issue resolved, not realizing that the refund she received was for her state return. (AX-F.) She testified that she called the Internal Revenue Service (IRS) to verify that they had processed her tax return. The IRS had no record of her return, and she was instructed to fax the tax return in, which she did on July 30, 2021. (Tr. at 20.) After waiting a week, Applicant testified she contacted the IRS again, and the IRS informed her they still had not received her return. She faxed the return again on August 19, 2021. (Tr. at 20 and AX-H.) She waited another week, and the IRS still had not received the tax return. She made an appointment and delivered the tax return in person. (Tr. at 20.)

SOR ¶¶ 1.b-c: two education loans placed for collection. In Applicant's Answer to the SOR, she acknowledged these debts and denied the allegations on the basis she had not failed "to live within ones means, satisfy debts, and meet financial obligations, have poor self-control, lack of judgment, or willingness to abide by rules and regulations and the ability to protect classified or sensitive information."

When Applicant enrolled in college in 1987, she took out student loans. She took out student loans again each time she reenrolled after life events in 1991, 1997, and 2000 required her to stop her schooling. She was able to get her student loans either deferred or placed in forbearance in each situation. She understood that the loans were still accruing interest. (Tr. at 27.)

When Applicant reenrolled in 1997 as a part-time student, most of her course work did not transfer, and she was forced to start over. Her student loans remained in a forbearance or a non-payment status during this time. She chose not to make any voluntary payments, citing her other expenses as a single parent. (Tr. at 32-33.) She remained a part-time student until 2000. She withdrew from school during finals when the mother died in the spring of 2000. She did not return and estimates she is two classes short of her degree.

Applicant testified she was notified she had received the maximum number of deferments or forbearance and that she needed to work out a payment plan to avoid the loan going into default. (Tr. at 56.) She worked with the Student Loan Rehabilitation Department to set up a payment plan and work with them. The payment plan was approved on July 1, 2019. Her first payment was due until October 2019, and after five payments the CARES (Coronavirus Aid, Relief and Economic Security) Act passed. She had her payments suspended and her student loans placed in administrative forbearance. Her monthly payments will pick back up once the administrative forbearance is lifted. (Tr. at 21.) She supported her testimony with documentary evidence. (AX-E, AX-F, and AX-G.)

Applicant fell behind on her mortgage payments in 2013 after she was hospitalized and needed emergency surgery. Given her new employment status, she did not receive full pay and only a percentage of the surgery was covered by insurance. She "had to pick and choose what could be paid," but she entered into a refinancing program and brought "everything current going forward." (Tr. 40 and AX-D.) She received a congratulatory letter in March 2021 from her mortgage holder, acknowledging her six years of good standing and that she had earned financial incentives that would be applied to the principle. (AX-D.)

Applicant estimates she has about \$50,000 in credit card debt. She supports her daughter and her brother, who also lives with her. (Tr. at 60, 68.) After paying all her standing expenses (mortgage, car, groceries, clothing, food, gym membership, etc), and adding her student loan payments, she estimates she has approximately \$300 left over. (Tr. at 63.) Applicant has "little breathing room in her budget," but the credit bureau reports

show that Applicant is generally current on her payments. (Tr. at 81-82. and GX-4 through GX-8.)

The Guideline E allegation stems from her failure to disclose that she was delinquent on student loan accounts as alleged in SOR ¶¶ 1.b and 1.c. In Applicant's Answer to the SOR she denied the allegation on the basis her student loan was reported current and that she had confirmed that information with the Department of Education. She wrote in Answer: "At the time of my response, I correctly answered no. My student loan was being reported as current and I confirmed that information with the U.S. Department of Education National Payment center." She wrote in her interrogatory response that she had been approved for a student loan rehabilitation with a \$200 monthly payment. (GX-4 at 6.) She testified the only thing she could think was that she got distracted and did not think about everything that needed to be done during that process. (Tr. at 52.) At the time she completed her security clearance application she was struggling to get herself together. Her uncle, with whom she was close, died in December 2019. (Tr. 51-52 and AX-I.) When she submitted her security application, she listed various debts related to credit cards, medical bills, and her mortgage. (GX-3 at 30-34.)

Applicant provided two letters attesting to her character and trustworthiness. The first is from a personal acquaintance that she has known over 20 years, and the second is from a supervisor that she has known for over six years. (Tr. at 22 and AX-B and AX-C.)

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 guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are established by the evidence:

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

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

(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; 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.

AG ¶ 20(a) is established. Applicant's tax delinquency was a onetime occurrence that occurred after her uncle's death, making recurrence unlikely.

AG ¶ 20(b) is established. Applicant's failure to timely file her Federal tax returns was not the result of her financial mismanagement or a conscious decision on her part to not file her 2019 Federal tax return. For her student loans, she has applied for and received deferment or forbearance on her student loans. When she reached the maximum number of deferments, she negotiated a monthly payment amount on her student loans that she demonstrated she can meet.

AG ¶ 20(g) is established. Applicant provided documentary evidence to support her credible testimony that she followed the IRS's direction when the return could still not be located.

Applicant does not present a perfect case in mitigation, but perfection is not required. Under the limited circumstances of this case, I find that her finances no longer generate questions about her judgment, reliability, trustworthiness, and ability to protect classified information. Security concerns about her finances are mitigated.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant did not intentionally provide false information on her January 2020 security clearance application. She supported her Answer with documentary evidence. Her testimony added additional detail for why she mistakenly put only certain debts on her application. AG ¶ 16(a) is not established. No other disqualifying conditions under this guideline are established.

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 Guidelines E and F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations security concerns and refuted the personal conduct security concerns.

Formal Findings

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

Paragraph 1, Guideline F:

FOR APPLICANT

Subparagraphs 1.a-c:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

It is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Charles C. Hale
Administrative Judge