



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 22-01674
)	
Applicant for Security Clearance)	

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: *Pro se*

04/11/2023

Decision

HESS, Stephanie C., Administrative Judge:

Applicant’s past financial difficulties were due to circumstances largely beyond her control, are unlikely to recur, and do not cast doubt on her current reliability, trustworthiness, or judgment. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on February 2, 2022. On November 7, 2022, the Department of Defense (DOD) sent her a Statement of Reasons (SOR), alleging security concerns under Guideline F (Financial Considerations). The DOD acted under Executive Order 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; and the adjudicative guidelines effective June 8, 2017.

Applicant submitted her Answer to the SOR on December 12, 2022, and requested a decision on the record without a hearing. Department Counsel submitted the Government’s written case on December 29, 2022. On January 4, 2023, a complete copy of the file of relevant material (FORM,) which included Government Exhibits (GX) 1

through 6, was sent to Applicant. The DOHA transmittal letter informed Applicant that she had 30 days after her receipt to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. She received the FORM on January 16, 2023, and submitted a timely response to which the Government did not object. The DOHA transmittal letter and receipt are appended to the record as Administrative Exhibit (Admin. Ex.) 1. The case was assigned to me on March 30, 2023. Government Exhibits 1 through 6 are admitted without objection.

Findings of Fact

Applicant, 43, works in computer maintenance and is currently employed by a federal contractor since January 2022. She previously worked for the same federal contractor from November 2019 until June 2021. She married in 2003 and divorced in 2013. This is her first application for a security clearance. (GX 3; GX 4.)

The SOR alleges four debts totaling \$63,562. The debts are comprised of a personal loan and two credit cards owed to the same creditor and a \$143 debt owed to a cable company. In her answer to the SOR, Applicant admits the three debts owed to the same creditor and denies the debt owed to the cable company stating that she has paid it. The delinquent debts are reflected in Applicant's March 2022 credit-bureau report (CBR). (GX 5.) She also discussed her delinquent debts during her April 2022 personal subject interview (PSI). (GX 4.) Applicant's admissions are incorporated in my findings of fact.

From March 2007 until March 2012, Applicant was employed by a federal contractor overseas. When she returned to the United States in 2012, her income decreased significantly. Following her divorce in 2013, Applicant's minor children lived with her and she was primarily responsible for all of their care. This created even greater financial strain. Applicant stated in her PSI that during the period between 2012 and 2019 she struggled financially due to her decreased income, her increased financial responsibilities, including medical bills for one of her children, who suffered from an illness. (GX 4.)

In 2011, while employed overseas, Applicant opened a personal credit-card account. She routinely used this card and made on-time payments. After returning to the United States, Applicant began using her credit card for necessary living expenses. In 2013, Applicant opened a second personal credit-card account with the same creditor that she used in an effort to maintain her financial obligations in the wake of her divorce. In 2014, Applicant obtained a personal loan through the same creditor. Because she required a vehicle to maintain employment and care for her children, she used the proceeds of this loan to pay off her vehicle loan as well as to maintain her other financial obligations. (GX 4; GX 5; GX 6; Answer.)

Between March 2012 and December 2017, Applicant was employed in low-paying positions outside of her professional field of expertise. By March 2016, she was no longer able to maintain the payments on her two credit-card accounts and on her personal loan.

Applicant contacted the creditor and explained her circumstances, but was not in position to resolve the accounts, and defaulted on each of the accounts. These are the delinquent accounts alleged in SOR ¶¶ 1.a through 1.c. These accounts have been charged off. (GX 3; GX 4; GX 5; GX 6.)

Despite her efforts to find employment, the job market was difficult in the area where Applicant and her children resided. Applicant was unemployed from December 2017 until August 2018. From August 2018 until November 2019, Applicant was employed part time in a low-paying job. In November 2019, she gained employment with a federal contractor in an overseas position in her field of expertise. She discontinued her cable service, paid her final bill, and returned the equipment to the company. The creditor of the \$134 debt alleged in SOR ¶ 1.d is this cable company. Applicant contacted the creditor and disputed the debt as indicated on GX 5. In her answer to the SOR in her response to the FORM, Applicant again stated that she had contacted this creditor. The debt does not appear on her December 2022 CBR. This account has been resolved.

Between November 2019 and mid-2021, Applicant submitted an e-QIP several times. However, her federal-contractor employer terminated her in June 2021 without explanation. After her termination, Applicant contacted the DOD Consolidated Adjudications Facility (CAF) for information regarding the status of her security clearance processing. The DOD CAF contacted her employer, who stated that the reason for Applicant's termination was that there was an internal administrative issue that resulted in her e-QIP not being properly completed or submitted, that resulted in the discontinuation of their sponsorship. (GX 3; GX 4.)

Following her termination, Applicant returned to the United States. She was unemployed from June 2021 until January 2022 when she regained employment with her prior federal contractor employer. She has returned to her overseas position. However, she is experiencing the same difficulties as she previously experienced as she awaits resolution of her security clearance status. In an effort to maintain her employment, she has been using her vacation leave, approved administrative leave, and has taken a leave of absence. (GX 3; Response.)

Despite the financial difficulties that Applicant experienced between 2012 and 2019, she has not had any additional delinquent accounts since 2013. Her children are now adults and she is no longer financially responsible for them. Applicant understands that she is responsible for repaying these accounts and considers resolving them a priority. (GX 5; GX 6; GX 4; Response.)

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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant’s 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.” See 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. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

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; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

The concern under this guideline is set out in AG ¶ 18:

Failure or inability 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 risk of having to engage in illegal or otherwise questionable acts to generate funds.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual 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).

The record evidence establishes two 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 are potentially applicable:

AG ¶ 20(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;

AG ¶ 20(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

AG ¶ 20(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's financial issues initially arose in 2012 when she returned to the United States from overseas employment and experienced a significant decrease in income. Between 2012 and 2019 Applicant was either underemployed or unemployed. She and her husband divorced in 2013 and Applicant had primary financial and custodial responsibility for her two minor children, one of whom suffered from an illness. In an effort to make ends meet, Applicant used her two credit cards and the proceeds from her personal loan in an effort to maintain her financial obligations for herself and for her children. She prioritized using a portion of the personal loan proceeds to pay off her vehicle loan. Ultimately, in 2016, she was no longer able to maintain the payments on her two credit cards and personal loan and she defaulted on them. These are the delinquent accounts alleged in SOR ¶¶ 1a. through 1.c.

However, Applicant acted responsibly under the circumstances. Between 2012 and 2019, she secured whatever employment was available to her. Despite her sustained period of underemployment or /unemployment, she did not incur any delinquent debt or default on any accounts after 2013. She contacted the creditor of SOR debts 1.a. through 1.c and advised them of her financial situation prior to defaulting on the accounts. In 2019 she accepted a lucrative position in her field of expertise working overseas for a federal contractor. Since she was terminated from his position due to administrative error on the employer's part, she has been rehired and is again working overseas in a lucrative position. She remains committed to resolve these debts as soon as she is financially able. She successfully disputed the debt alleged in SOR ¶ 1.d, a small remainder from an old cable bill, and it no longer appears on her most recent credit-bureau report.

A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) While those granted access to classified information are held to a high standard of conduct, they are not held to a standard of perfection.

There is nothing in the record that suggests Applicant's financial habits are reckless or irresponsible or that she is likely to disregard her financial obligations in the future. She accepts responsibility for her three remaining delinquent accounts and fully will resolve them. She lives within her means and has not incurred any recent delinquent debt. Applicant's past financial issues do not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶¶ 20(a), 20(b), and 20(e) apply.

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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but I have also considered the following:

Applicant's federal-contractor employer's willingness to rehire Applicant indicates that she previously conducted herself in a manner consistent with an individual warranting a security clearance. Despite the significant financial challenges that she experienced between 2012 and 2019, including divorce, underemployment and unemployment, and the illness of her child, Applicant did not incur any additional delinquent debt in the last 10 years.

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 mitigated the potential security concerns raised by her financial issues. Accordingly, I conclude she has carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

Formal Findings

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

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

Subparagraphs 1.a through 1.d: For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Stephanie C. Hess
Administrative Judge