



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 19-04071
)	
Applicant for Security Clearance)	

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: Daniel P. Meyer, Esq.

05/18/2023

Decision

FOREMAN, LeRoy F., 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 on June 14, 2019. On April 20, 2020, 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) implemented by the 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 9, 2022, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on June 13, 2022, and the case was assigned to me on February 23, 2023. On March 7, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on March 22, 2023. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through F, which were admitted without objection. I kept the record open until April 24, 2023, to enable her to submit additional documentary evidence. At her request, the deadline for submitting additional evidence was extended to May 10, 2023. She timely submitted AX G through AX J, which were admitted without objection. DOHA received the transcript (Tr.) on March 31, 2023.

Findings of Fact

In Applicant's answer to the SOR, she admitted all the allegations, with explanations. Her admissions are incorporated in my findings of fact.

Applicant is a 48-year-old program analyst employed by defense contractors since December 2005. She received a security clearance in November 2008.

Applicant was a teacher from June 2002 until she was hired by a defense contractor. She received an associate degree in teaching education in December 1995, an associate degree in psychology in August 1996, a bachelor's degree in education in May 1998, and a master's degree in education in August 2002.

Applicant married her high-school sweetheart in July 1999. Shortly after Applicant married, she discovered that her then husband was an abusive alcoholic and an addicted gambler.

In May 2009, as Applicant was driving to work at a Navy facility, she was rear-ended by a 19-year-old man who was texting while driving. She suffered severe back injuries that required extensive surgical repair. (Answer to SOR, TAB C at ¶ 6) As a result of her injuries, she is unable to stand for long periods of time, and her ability to move around is limited. (Tr. 65)

Applicant's daughter, age 18, is autistic and has a sensory processing disorder, combined attention deficit disorder and attention deficit hyperactivity disorder, oppositional compulsive disorder, anxiety, and depression. She functions at the level of age 12 or 13. (Tr. 15)

Applicant's special-needs daughter was mauled by a dog in October 2009, with serious damage to her face. When Applicant's then husband arrived at the hospital, he was drunk, and he told Applicant that she should be taking care of him instead of her daughter. This event solidified Applicant's decision to end the marriage. (Answer to SOR,

TAB C at ¶¶ 5, 7-9) They divorced in December 2011. (GX 1 at 28-29; Answer to SOR, TAB C at ¶ 5; Tr. 34)

In 2012, Applicant met and began cohabitating with a retired Navy pilot. In 2013, she sold her townhouse so that she and her cohabitant could build a new house. She assumed that the new house would be titled in both names, but she later learned that it was titled only in the cohabitant's name. Without Applicant's knowledge, he used a keystroke tracker to take over their finances, open credit-card accounts in her name without her knowledge, and gain access to her savings and retirement accounts. As their relationship continued, her cohabitant became physically abusive. She left her cohabitant in early 2015, and he stalked her repeatedly until she obtained a protective order against him. (GX 2 at 3-5; Answer to SOR, TAB C at ¶ 16 and 17)

Between 2013 and 2017, Applicant and her ex-husband were involved in extensive litigation regarding custody of their daughter and responsibility for her medical care. She estimated that she spent about \$15,000 for legal fees. (Answer to SOR, TAB C at ¶ 13-14)

In 2016, Applicant's pay was reduced by \$30,000 per year when her employer lost a contract. She was laid off and unemployed for about six weeks in June 2017. After she worked at a lower-paying job for about a year, she found another position at about the same pay as her 2016 job. (Answer to SOR, TAB C at ¶ 18)

In August 2019, the water main into Applicant's home broke and flooded the entire first floor. Her insurance had a \$2,000 deductible, and she needed to take leave without pay for three weeks to deal with insurance companies, the mortgage holder, and contractors. (Answer to SOR, TAB C at ¶ 19) The flood destroyed much of Applicant's documentation of her efforts to resolve her debts. (Tr. 73)

The SOR alleges seven delinquent debts. The evidence concerning these debts is summarized below:

SOR ¶ 1.a: Home mortgage loan past due for \$3,850 with a balance of \$240,958. A credit report dated June 13, 2022, reflects that this account is current. (GX 4 at 7) At the hearing, Applicant testified that she was in the process of refinancing this loan to lower her payments. (Tr. 43) The refinancing has been completed, but the record does not reflect how much her monthly payments were reduced. (AX H)

SOR ¶ 1.b: Credit-card account placed for collection of \$1,278. Applicant testified that this debt was incurred for veterinary services for her pets. She and her daughter have volunteered for an animal rescue program for pets that have disabilities that keep them from being adopted. They currently have eight cats. Caring for the cats is therapy for her daughter. (Tr. 78) Now that Applicant's income has returned to its previous level, she has been able to resolve this debt. The creditor has agreed to settle this debt for \$703, to be paid in monthly installments of \$234, beginning in July 2023. (AX J at 8; Tr. 44-45)

SOR ¶ 1.c: Credit-card account placed for collection of \$3,673. The June 2022 credit report reflects that this account was charged off. (GX 4 at 9) Applicant testified that she does not recognize this debt, but it probably is a credit card that her ex-cohabitant opened in her name. (Tr. 45) She was afraid to dispute this debt because it would involve contacting her ex-cohabitant. The creditor has agreed to settle the debt for \$1,600, to be paid in three monthly payments. Applicant made the first payment of \$600 on April 24, 2023. (AX J at 1-2)

SOR ¶ 1.d and 1.e: Credit-card accounts placed for collection of \$27,114. Applicant testified that these credit-card accounts were opened by her ex-cohabitant in her name. Both accounts have been paid. (AX G at 3)

SOR ¶ 1.e: Credit union debt placed for collection of \$28,142. This is a car loan that Applicant refinanced at a lower rate with another lender. The account is current. (AX G at 8)

SOR ¶ 1.f: Credit-card account placed for collection of \$14,366. Applicant testified that this was another credit card opened in her name by her ex-cohabitant. (Tr. 46) She accepted a settlement offer and made the first payment of \$200 on May 2, 2023. (AX J at 2-5)

SOR ¶ 1.g: Credit-card account placed for collection of \$3,636. Applicant testified that this credit card was solely in her name. (Tr. 47) She testified that she received a settlement offer about two weeks before the hearing. (Tr. 75) In a post-hearing narrative, she stated that a customer-service representative for the creditor informed her that the creditor had filed an IRS Form 1099 for the entire balance, but that it was willing to reduce the balance to \$1,454, to be paid in 11 monthly installments. Applicant was unable to obtain documentary confirmation of this conversation by the date the record closed. (AX J at 6)

A program manager for a defense contractor has known Applicant since May 2017 and is familiar with her family situation and her daughter's medical issues. He has found her to be meticulous in safeguarding classified information and trustworthy in completing jobs competently and on time. He states that Applicant's "big heart, trustworthiness, and helpful nature is evident both at home and in the office." (Answer to SOR, TAB D at 1-4)

A licensed daycare provider who has cared for Applicant's daughter since 2011 submitted a declaration attesting to Applicant's devotion to her daughter, her tenacity in facing financial difficulties, her good judgment, and her ability to protect sensitive information. (AX D at 5-7)

An emergency medical service chief has been Applicant's friend since 1989. He is familiar with Applicant's responses to her financial difficulties. He considers her one of the most honest people he knows. He has observed that her level of focus and drive is "higher than most people [he] knows." (AX D at 9-10)

In January 2018, Applicant completed financial counseling from a state-approved credit counseling agency. (AX E at 13) She has been selected by her employer for a leadership development program. (AX J at 8) She completed additional financial counseling on May 10, 2023. (AX J at 9) She received a pay raise in December 2022. Her current annual salary is \$113,311. (AX E at 16) The pay raise has enabled her to set aside about \$1,200 per month to resolve her debts. (Tr. 76)

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 evidence in the record establish 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;

AG ¶ 20(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

AG ¶ 20(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 are recent and numerous, but they were incurred under circumstances making them unlikely to recur.

AG ¶¶ 20(b), 20(c), and 20(d) are established. Applicant encountered several conditions largely beyond her control: a marital breakup in in 2009, followed by costly and contentious litigation about custody and child support; a disabling injury in 2009; the birth of a special-needs daughter; a pay reduction; temporary unemployment and underemployment; serious flooding of her home and uninsured property losses; and fraudulent conduct of a cohabitant. She has acted responsibly by seeking financial counseling, systematically undoing the thievery of her former cohabitant, staying in contact with creditors, and systematically paying or making payments to her creditors.

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. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment. Applicant was sincere, candid, and credible at the hearing. She has steadfastly overcome an array of adverse events beyond her control. She naively became the victim of an unscrupulous cohabitant, but she has learned from her experience and rebounded from it. I am satisfied that her financial problems are behind her and will not recur. 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 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 (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a-1.g:

For Applicant

Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to continue Applicant's eligibility for access to classified information. Clearance is granted.

LeRoy F. Foreman
Administrative Judge