



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



In the matter of:)	
)	
)	ISCR Case No. 22-01914
)	
Applicant for Security Clearance)	

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: *Pro se*

05/26/2023

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 April 25, 2022. On October 13, 2022, the Department of Defense (DoD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on February 27, 2023, a complete copy of the file of relevant material (FORM) containing information in support of the SOR was sent to Applicant, who was given an opportunity

to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. She received the FORM on March 10, 2023, and provided a Response. The case was assigned to me on May 12, 2023.

The SOR and the Answer (FORM Items 1 and 2) are the pleadings in the case. FORM Items 3 through 6 are admitted into evidence without objection.

Findings of Fact

In Applicant's Answer to the SOR, she admitted SOR ¶¶ 1.a-f, consisting of \$75,496 in delinquent student loans and \$1,265 consumer and medical debts. 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 35 years old. She has three children with her boyfriend. She earned her associate's degree in 2008. She has been employed by her sponsor since May 2022. She held an accounting technician position from December 2016 until she was hired by her sponsor. (Item 3 at 5, 10, and 20-21.)

Applicant did not list any delinquent debts on her SCA. In her Response she states she did not have sufficient income to meet her obligations and then be able to apply any of the excess to her alleged debts. She cites as an example having to replace her car, which resulted in a higher car payment and a higher insurance rate.

The evidence concerning these debts is summarized below.

SOR ¶¶ 1.a and 1.b: education loans placed for collection in March 2015 in the amounts of \$45,478 and \$30,018. Applicant in her May 2022 security clearance interview acknowledged her student loans were in default. She told the investigator she never placed her loans in deferment or applied for forbearance and had never taken action to repay her loans. (Item 4 at 5 and Item 5 at 2.) She states in her Answer she was young when she allowed her "student loans to go into default and for the "years since it was in default [she] didn't think there was much [she] could do." She offered that she had called the U.S. Department of Education and with the help of a representative "applied for the Fresh Start Program." She states she applied on December 1, 2022, and that the representative said she would receive a letter affirming the transfer. Her Answer infers that she received the letter, but no letter was included in Answer. The February 2023 credit report shows her education loans as paid as agreed. (Item 6.)

In March 2020, as a result of the COVID-19 pandemic, the President directed the DoED to provide the following temporary relief on Department of Education (DoED)-owned federal student loans: suspension of loan payments, stopped collections on defaulted loans, and a 0% interest rate. On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) provided for the above relief measures through September 30, 2020. See Federal Student Aid (FSA) website, ISCR Case No. 20-02787 at 3 n.1 (App. Bd. Mar. 2022). This student loan debt relief has been extended several times. See <https://studentaid.gov/announcements-events/covid-19;>.

SOR ¶¶ 1.c and 1.d: utility accounts placed for collection in the amounts of \$684 and \$291. The accounts remain delinquent. (Item 5 at 3 and Item 6 at 3.) Applicant stated in her Answer she had an agreement with her boyfriend that he would pay these bills. She stated she had taken accountability for these debts and that they would be paid on or after January 22, 2023. No evidence of a payment was provided.

SOR ¶¶ 1.e and 1.f: medical accounts placed for collection in the amounts of \$240 and \$50. The accounts remain delinquent. (Item 5 at 3 and Item 6 at 3.) Applicant stated in her Answer she had now “taken accountability for [these debts].” She declared that they will be paid on or after January 22, 2023. No evidence of a payment was provided.

She explains in her Answer that her debt was the result of youth and naivety. She had agreed to split the bills with her boyfriend but that did not happen. Moving forward her plan is to not overextend her ability to pay. She adds in her Response that the steps she took to “develop and maintain a wellness plan” has increased her credit score from 405 to 674 and that her student loans have been restored to good standing. She offers she has reached out to a credit counseling agency and will be a member going forward. She does not support these statements with documentation.

Applicant offers in her Response that her employer expressed to her that she is trustworthy, exercises good judgment, and is reliable. She notes she is eligible for rehire from a previous employer. She does not provide any supporting documentation.

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 relating to the guideline for financial considerations 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

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)

Applicant's credit reports and admissions 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, or 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(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) is not established. Applicant's delinquent debts are recent, numerous and ongoing. She provided no evidence to support the plan in her Answer to resolve her student loans or provide evidence of payment concerning the other delinquent debts that she indicated would be resolved on or after a specified date.

AG ¶ 20(b) is not established. Applicant cited having to replace her car but there is no supporting evidence of any circumstances beyond her control in the record. There is no evidence that her former boyfriend was responsible for the delinquent utility debts. She did not provide evidence to support her claims that she acted responsibly under the circumstances to resolve her debts.

Applicant's financial delinquencies are ongoing and unresolved. The February 2023 credit report does not clarify whether those student loan accounts were reported as

paid as agreed because of payments by Applicant (voluntary or involuntary withholding of income tax refunds), the CARES act and extension of COVID-19 emergency measures, the Fresh Start Program, or otherwise. Applicant provided no documentary evidence to support her claims. See ISCR Case No. 20-01527 at 2 (App. Bd. Jun. 7, 2021) She did not establish that her financial problems are in the past and are unlikely to recur. She cites without evidence that she has established a plan to resolve her financial problems. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). She has failed to establish that she has made a good-faith effort to pay or resolve her debts. AG ¶ 20(d) does not apply.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense 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). I considered her statements, which she attributed to others, concerning her trustworthiness, good judgment, and reliability in my whole-person analysis. 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 Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by Guideline F.

Formal Findings

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

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

Subparagraphs 1.a-1.f:

Against Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Charles C. Hale
Administrative Judge