



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



In the matter of:)
)
) ISCR Case No. 21-02508
)
Applicant for Security Clearance)

Appearances

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

06/29/2023

Decision

HALE, Charles C., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application on May 21, 2020. On February 11, 2022, the Department of Defense (DoD) sent her 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) implemented by the DoD on June 8, 2017.

Applicant answered the SOR on April 29, 2022, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on June 23, 2022, and the case was assigned to me on March 8, 2023. On March 21, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for May 16, 2023. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant’s Answer included a

statement addressing each SOR allegation and an enclosure dated April 15, 2022, showing SOR ¶ 1.c was now considered paid in full. She did not provide any documentation at the hearing. At the conclusion of the hearing, I kept the record open to give Applicant the chance to submit documentation, and she timely submitted Applicant's Exhibits (AE) A through J, which were admitted without objection. DOHA received the transcript (Tr.) on May 23, 2023. The record closed on May 30, 2023.

Findings of Fact

Applicant admitted, SOR ¶¶ 1.a and 1.b, alleging delinquent student loans totaling \$31,778. She denied SOR ¶ 1.c, a delinquent telecommunications account, on the basis that she had resolved the debt.

Applicant is 46 years old. She was married from 1996 to 2001 and has two adult children who are twins. She earned her bachelor's degree in 2008 and her master's degree in 2010. (Tr. at 27.) Between 2014 and 2015 she studied part-time for a certificate but did not receive it. (Tr. at 29.) She has been employed full-time since 2008. According to her security clearance application she has worked for her security clearance sponsor since 2010 and was previously investigated for a security clearance in 2004. (GE 1 at 15, 48 and Tr. at 29-31.)

Applicant elected to go into default in order to qualify for credit repair programs. She was supporting her two children. (GE 1 at 23.) She wanted to ensure that her children did not end up in debt. One child graduated from college and the other is fully employed in a trade. Her children did not qualify as full dependents, because her children lived in another state. She provided documentation showing her income between 2015 and 2021. Her annual income in 2015 was \$50,126. (AE A.) Her wages from her employer in 2018 were over \$67,000. (AE B.) Her total wages in 2021 were \$84,721. (AE C.) She is now making over \$100,000. (Tr. 72.)

Applicant resided in a home she owned from 2009 until 2014, when she moved to a new state. She moved again after a year to the state she now resides. She moved to her current location in 2020, in hopes of earning a salary that would enable her to cover her student loan payments. (GE 1 at 9-11.) Her \$88,000 salary was insufficient for the metro area she was living in. She found herself choosing between paying her rent, food expenses, and commuting costs or paying \$700 in student loan debt each month. (Tr. at 20.) To improve her financial situation, she started a cleaning business in 2021. The start-up expenses to buy the franchise required her to put \$2,000 down, and then finance the remainder. The finance costs are covered in the monthly income that business brings in. The first year was not profitable. (Tr. at 61, 77-81.) Between her salary and her cleaning business income, Applicant makes approximately \$6,200 a month. She maintains a "loose budget." (Tr at 62-67, 72.) With a recent raise she has roughly \$2,000 left over after expenses. (Tr. at 72.)

SOR ¶¶ 1.a-b: two education loans placed for collection in the amounts of \$19,873 and \$11,905. The delinquent student loans were assigned to collection in August

2014 and August 2015. (GE 3 at 2.) In Applicant's Answer to the SOR, she admitted the debts. In her Answer she stated these debts were covered by the "CARES ACT of 2020" which negated the SOR allegations. She testified her loans went into default right at the time that the pandemic occurred. (Tr at 21.) She states this is "when the President came and put student loans on forbearance and froze. So I am not in default at this time." (Tr. at 21.) She added her student loans did not need to be repaid until this past year and that she has made steps to mitigate and to be prepared to pay when the freeze is lifted. (Tr at 21.) She stated she was applying for another program that would wipe away her debt, because under her master's degree, she had been told that her degree was going to make some money for her. (Tr. at 31.) She stated she pursued the additional certificate because it was her understanding repayment of the loans could be deferred while attending school even part-time. She acknowledged she did not have any documentation to support this testimony. (Tr. at 33.)

In her post hearing narrative, she stated had made payments towards the debt prior to the student loan repayment freeze citing two Department of Education (DoEd) Student Loan Interest Statements she had included in her post hearing submission. (AE D and AE E.) The statement for calendar year 2019 shows she paid \$6,476.07 in interest and the statement for calendar year 2020 show she paid \$1,767.28 in interest. (AE D and AE E.) She stated these exhibits rebutted the narrative painted by the Government that she had neglected her responsibilities. (AE J at 1.)

I have taken administrative notice that in March 2020, as a result of the COVID-19 pandemic, the President directed the DoEd to provide the following temporary relief on 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>.

After the SOR was issued she applied for the one-time student loan debt relief plan announced by the President on August 24, 2022. The DoEd issued an email to her on November 19, 2022, stating she had been approved for the program. (AE F.) A week prior to the hearing she "stumbled" upon an article about the Fresh Start Program and applied. (Tr. at 81.) The DoEd issued a letter on May 16, 2023, the same day as the hearing, reiterating that her delinquent student loans would soon be transferred to a new loan servicer and will no longer be in default. Once the payment pause ends her new loan servicer would send her a monthly bill and she would be required to make monthly payments. (AE G.) According to the letter, because these loans became delinquent more than seven years ago the new loan servicer will not report the new status of the loans to credit reporting agencies. (GE 3 at 2 and AE G.)

Since her student loans were assigned for collection, she traveled to Europe in 2020, Canada in 2018, a Caribbean island in 2017, Africa in 2015, Mexico in 2015, and a Caribbean island in 2014. (GE 1 at 32-40 and Tr. 69-70.) She used a loan from her

401K to fund her 2015 trip. One of the trips was a cruise with her adult children that she paid for out-of-pocket on a monthly payment plan. The flights for the other trips were gifted to her, and the remaining expenses were split with her traveling companion. (Tr. at 74-75.)

SOR ¶ 1.c: telecommunication account placed for collection in the amount of \$211. Applicant denied the allegation on basis she had "...a zero-dollar balance on the old account and [her] account is current." Her Answer included an email from the company stating, "Thanks for being our customer. Upon clearance of the payment, this account will be considered paid in full." She explained the delinquency was caused by equipment she turned in prior to her move that was not scanned properly by the staff, so it was marked as not being received and she was not aware of the problem until the security clearance process. One week after the hearing the company issued an email to her stating they had received her notification of dispute and reviewed the information she had provided. The company determined the account had been satisfied. (AE I.)

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; and

- (c) a history of not meeting financial obligations.

Applicant's federal student loans were assigned to collection beginning in 2014. A security clearance represents an obligation to the Federal Government for the protection of national secrets. Accordingly, failure to honor other obligations to the Government has a direct bearing on an applicant's reliability, trustworthiness, and ability to protect classified information. See ISCR Case No. 14-03358 at 2 (App. Bd. Oct. 9, 2015). While her student loans may no longer be considered delinquent since March 2020 because of the COVID-19 deferment, that action does not excuse previously delinquent student loans such as these. See ISCR Case No. 20-01527 at 2 (App. Bd. June 7, 2021). The above listed conditions are made applicable to SOR ¶¶ 1.a and 1.b, thereby shifting the burden to Applicant to provide evidence in mitigation.

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

(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) is established. Applicant in her Answer demonstrated she had been addressing the delinquent telecommunication account and in her post hearing submission provided confirmation the account had been resolved.

For Applicant's student loans, she has applied for and received deferment or forbearance on her student loans. She has established a repayment agreement. Prior to the SOR being issued she had made interest payments mitigating her past inaction. She has been employed since 2008. It is well-established that the timing of debt payments is a relevant consideration for a judge to deliberate whether an applicant has acted in a reasonable and responsible manner in addressing financial problems. For example, to receive full credit under Mitigating Condition 20(d), an applicant must initiate and adhere "to a good-faith effort to repay overdue creditors or otherwise resolve debts." Directive, Encl. 2, App. Her actions prior to the SOR and recent actions to resolve the student loans debts entitle her to mitigating credit. See ISCR Case No. 08-06058 at 5 (App. Bd. Sep. 21, 2009). Her employment history shows a steady upward trajectory of improved income, and she has added to it by establishing her own business. Her interest payments coincided with an increase in salaried income. She has made a good-faith effort to pay or resolve her debts. AG ¶¶ 20(a) and 20(d) apply.

For AG ¶ 20(b) to be applicable, Applicant must also provide sufficient evidence that she acted responsibly under the circumstances. Her post hearing submissions show she had made interest payments prior to the SOR being issued. While her student loans remained unpaid, she took expensive international vacations instead of addressing her financial responsibilities. She chose to fund her children's post high school education. These conditions were not beyond her control. Her children are now out of school. She has maintained employment since 2008. Her income has increased as she addressed a mitigating concern of underemployment. While she may not have immediately addressed her student loan debt as more disposable income became available, she did address her student loans with over \$8,000 in interest payments prior to the COVID related debt relief

options, and she has sought to improve her financial situation by starting her own business. AG ¶ 20(b) applies.

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.

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 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:	AGAINST APPLICANT
Subparagraphs 1.a-c:	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