



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 22-00555
)
 Applicant for Security Clearance)

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

06/28/2023

Decision

FOREMAN, LeRoy F., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on October 27, 2020. On May 3, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on May 4, 2022, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on July 29, 2022, and

the case was assigned to me on March 24, 2023. On April 3, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on May 8, 2023. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 8 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 May 19, 2023, to enable Applicant to submit additional documentary evidence. She timely submitted Supplemental Exhibits A through I, which were admitted without objection. I have relabeled her supplemental exhibits as AX G through O to avoid duplicative lettering. DOHA received the transcript (Tr.) on June 1, 2023.

Findings of Fact

In Applicant's answer to the SOR, she partially admitted SOR ¶¶ 1.a through 1.j, admitting that she owed each debt but denying that she deliberately did not pay them. She admitted SOR ¶¶ 2.a-2.c and denied SOR ¶¶ 2.d-2.f. Her admissions are incorporated in my findings of fact.

Applicant worked for a defense contractor as a logistics and inventory control technician from October 2020 to April 2021. She was unemployed from April to June 2021. She was hired by her current employer as a property analyst in March 2022. She currently is a part-time employee. She has never held a security clearance. (Tr. 5-6)

Applicant's current supervisor vouched for her performance as a property management analyst. Her supervisor noted that she "exhibited high levels of professionalism, attention to detail, and dependability." When the issue regarding her security clearance arose, her employer retained her as a part-time employee so that she could return to full-time employment if her application for a security clearance was granted. (Tr. 5-6; AX B; AX J) With the approval of her employer, Applicant also works part-time for a non-federal employer. (Tr. 33; AX I.)

Applicant has some college credits but has not received a degree. She married in December 2013, divorced in May 2016, married in May 2017, and separated in October 2020. (Tr. 20; AX A) She has two children, ages 6 and 7.

Applicant served on active duty in the U.S. Army from November 2012 to February 2016 and received a general discharge under honorable conditions. She has a 90% service-connected disability based on post-traumatic stress disorder and a work-related concussion. (Tr. 29-30) In her SCA, she characterized the basis for her discharge as "left by mutual agreement following charges or allegations of misconduct" and she identified the allegations as a "pattern of misconduct." (GX 1 at 17)

The SOR alleges nine delinquent debts that are reflected in credit reports from November 2020 (GX 5), July 2021 (GX 6), January 2022 (GX 7), and May 2023 (GX 8). The evidence concerning these debts is summarized below.

SOR ¶ 1.a: car loan charged off for \$13,643. In 2013, Applicant purchased a car from another soldier, but she did not enter her name on the title as the purchaser or file it with the local department of motor vehicles. She borrowed money from her credit union to finance the purchase. While she was training in a remote area, she allowed another soldier to use the car. The other soldier entered his own name on the title, registered the car in his name, and obtained a loan from a title-loan company. When he failed to make the payments, the car was repossessed by the title-loan company. (Tr. 34-40) On March 29, 2023, the credit union agreed to settle Applicant's debt for \$4,457.46, to be paid by 36 monthly payments of \$151.60 each. (AX C) The first payment was due on May 17, 2023. (Tr. 41) As of the date the record closed, Applicant had not made any payments.

SOR ¶ 1.b: credit union account charged off for \$2,236. Applicant negotiated an agreement to settle this account for \$894.65, to be paid in 36 monthly installments of \$24.85. (AX D) On May 18, 2023, she made a payment of \$705.50, to be applied to this account as well as the accounts alleged below in SOR ¶¶ 1.c and 1.d. (AX H)

SOR ¶ 1.c: credit union account charged off for \$1,432. Applicant negotiated an agreement to settle this account for \$573.12, to be paid in 36 monthly installments of \$15.92. (AX E) This debt was included in the lump-sum payment for the debt in SOR ¶ 1.b. The debt has been resolved. (AX N)

SOR ¶ 1.d: credit union account charged off for \$1,389. Applicant negotiated an agreement to settle this account for \$555.68, to be paid in 36 monthly installments of \$15.44. (AX F) This debt was included in the lump-sum payment for the debt in SOR ¶ 1.b. The debt has been resolved. (AX O)

SOR ¶ 1.e: educational loan placed for collection of \$613. This debt was incurred when Applicant dropped out of a class. She testified that she settled this debt, but she provided no documentation to support her testimony. (Tr. 43-44)

SOR ¶ 1.f, 1.g, and 1.h: collection account for \$2,176; jewelry store account charged off for \$3,742; and furniture store account charged off for \$3,742. Applicant has not contacted these creditors or made any payments on these debts. (Tr. 46)

SOR ¶ 1.i: credit-card charged off for \$1,407. The creditor cancelled this debt in December 2017 and issued an IRS Form 1099-C documenting the transaction. It is resolved. (AX G)

SOR ¶ 1.j: telecommunications account placed for collection of \$900. Applicant testified that she had resolved this debt and reestablished service with this credit. (Tr. 46-47) She did not submit any documentation to support her testimony.

Applicant has been consulting with a financial advisor from a military service agency since 2018. (Tr. 32) She began working at a second job in May 2023, earning \$14.00 per hour. (AX I.) She recently moved from a townhouse to a two-bedroom apartment to reduce her living expenses. (Tr. 47)

In April 2012, Applicant was charged with possession of marijuana and trespassing on posted property. She was a senior in high school at the time. She testified that she was with a group of girls, one of the girls had marijuana in a bag, and she was the only one who was arrested because she was the only one who was 18 years old. She performed eight hours of community service, and the charges were disposed of by *nolle prosequi*. (GX 3; Tr. 49-50) This incident is alleged in SOR ¶ 2.a.

When Applicant submitted her SCA, she disclosed that she was discharged from the Army because of a pattern of misconduct. (GX 1 at 19) When she was interviewed by a security investigator, she acknowledged that she received nonjudicial punishment and was reduced in rank because of multiple incidents of being late for duty and disobeying orders. (GX 2 at 6) At the hearing, she admitted receiving nonjudicial punishment for being late for duty, but she could not remember the details. (Tr. 51) The record does not contain any documentation of the action other than Appellant's disclosure in her SCA. The disciplinary action is alleged in SOR ¶ 2.b.

SOR ¶ 2.c combines several incidents that resulted in Applicant's discharge from the Army. A security investigator questioned Applicant about several incidents recited in a memorandum recommending that she be discharged. (GX 2) The memorandum was not included in the record, but the investigator's questioning reflects the following incidents:

First, Applicant was punished by her company commander for multiple military violations, such as being late for duty, missing formations, and wearing improper insignia on her uniform.

Second, Applicant was accused of impersonating a noncommissioned officer. She was talking with a loan officer about an overdue payment, and she gave her platoon sergeant's name as a person who could verify that she was late making the payment because she was sick. When the loan officer called again, she thought she was talking to the platoon sergeant. No disciplinary action was imposed for this incident, but it was included in the list of incidents recited as a basis for discharging Applicant from the Army.

Third, Applicant was involved in the use of a rental car that resulted in her being charged with wrongful appropriation of the car and making a false official statement. According to the law enforcement report, a former sergeant had rented a vehicle in May 2015, and he left the vehicle with Applicant when he was separated from the Army. The risk manager for the car rental agency told law enforcement authorities that she had contacted Applicant several times and that Applicant had agreed to return the vehicle. The rental agency they reported the vehicle as stolen when it was not returned. Applicant claimed that she gave the former sergeant money to extend the rental period, but he denied receiving any money from her. She knew that the return of the vehicle was overdue by about five weeks, but she denied being contacted by the rental agency. She told the law enforcement investigators that her cellphone was not working and that she did not receive any email from the rental agency. (GX 4) Applicant received nonjudicial punishment from her battalion commander for wrongful appropriation of the vehicle. Her

battalion commander determined that her denial that she was contacted by the rental agency was not a false official statement. (GX 2 at 7, 17; Tr. 58)

SOR ¶¶ 2.d, 2.e, and 2.f allege that Applicant deliberately falsified her SCA by failing to disclose the incidents in SOR ¶ 2.a and 2.c and that she deliberately omitted material facts during her interview with a security investigator in December 2020, prior to being confronted with the evidence. Applicant testified that she did not disclose the April 2012 marijuana incident alleged in SOR ¶ 2.a because she had been told that it would be expunged. She denied intentionally falsifying her SCA or intentionally failing to disclose information to the security investigator, but she admitted that she was careless when she did not fully disclose the basis of her discharge from the Army. (Tr. 64-65.)

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 submitted at the hearing 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 not established. Applicant's delinquent debts are recent, numerous, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is partially established. The delinquent car loan was the result of fraudulent conduct, which was a condition largely beyond her control. Her marital separation was largely beyond her control. Her unemployment was not largely beyond her control, but was due to her repeated misconduct. She has acted responsibly regarding the debts alleged in SOR ¶¶ 1.b-1.d and 1.j, which she has resolved. She has not acted responsibly regarding the debt alleged in SOR ¶ 1.a, for which she has negotiated a settlement but has not made any payments. She claimed that she settled the debts alleged in SOR ¶¶ 1.e and 1.j, but she submitted no evidence supporting her claim. She submitted no evidence of responsible conduct regarding the debts alleged in SOR ¶¶ 1.f, 1.g, and 1.h.

AG ¶ 20(c) is partially established, because Applicant sought and received financial counseling at a family assistance center at the military installation where she was employed. However, she has not yet reached the point where there are "clear indications" that the financial problems are being resolved.

AG ¶ 20(d) is established for the debts alleged in SOR ¶¶ 1.g-1.d and 1.j. It is not established for the debts alleged in SOR ¶ 1.e and 1.j, because she has not submitted any evidence supporting her claim that these debts were resolved. When an applicant claims that a debt is resolved, he or she is expected to present documentary evidence supporting that claim. See ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016). This mitigating condition is not established for the debts alleged in SOR ¶¶ 1.f, 1.g, and 1.h, because Applicant admitted that she had done nothing to resolve these debts.

Guideline E, Personal Conduct

The security concern under this guideline is set out in AG ¶ 15:

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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

The following disqualifying conditions are potentially relevant:

AG ¶16(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 national security eligibility or trustworthiness, or award fiduciary responsibilities;

AG ¶16(b): deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative;

AG ¶ 16(c): credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information;

AG ¶ 16(d): credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of . . . a pattern of dishonesty or rule violations.

AG ¶ 16(a) is established for Applicant's failure to disclose that she had been charged with possession of marijuana in April 2012. Section 22 of her SCA clearly directed her to report information even if her arrest had been expunged.

AG ¶ 16(b) is established by Applicant's failure to fully disclose the basis for her discharge from the Army in her SCA and during an interview by a security investigator. She disclosed only that it was based on a "pattern of misconduct," but she did not disclose that it was also based on criminal conduct such as wrongful appropriation of an automobile and impersonating a military noncommissioned officer with intent to defraud. Her mischaracterization of her discharge as "left by mutual agreement following charges or allegations of misconduct" was not alleged in the SOR, but I have considered it for the limited purpose determining which AGs are applicable and as part of my whole person analysis. See ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006).

AG ¶¶ 16(c) is established by Applicant's repeated failures to follow Army rules, thereby demonstrating unwillingness to follow rules and regulations.

The following mitigating conditions are relevant:

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

AG ¶ 17(c): the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

AG ¶ 17(a) is not established. Applicant did not correct the omissions until she was confronted with the facts.

AG ¶ 17(c) is established for Applicant's arrest for possession of marijuana in April 2012, alleged in SOR ¶ 2.a. which is mitigated by the passage of time without recurrence. It is not established for the military disciplinary offenses alleged in SOR ¶ 2.b or the fraudulent conduct alleged in SOR ¶ 2.c. The offenses alleged in SOR ¶ 2.b are almost ten years old, but they were the beginning of a long record of inability or unwillingness to follow rules and regulations that continued until Applicant was discharged from the Army.

AG ¶ 17(c) is not established for the falsifications during the security-clearance adjudication process, alleged in SOR ¶¶ 2.d-2.f, because they are not "minor." The government has a compelling interest in protecting and safeguarding classified information. That compelling interest includes the government's legitimate interest in being able to make sound decisions, based on complete and accurate information, about who will be granted access to classified information. An applicant who deliberately fails to give full, frank, and candid answers to the government in connection with a security clearance investigation or adjudication interferes with the integrity of the industrial security program. ISCR Case No. 01-03132 at 3 (App. Bd. Aug. 8, 2002)

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 F and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under those guidelines, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by her delinquent debts and personal conduct.

Formal Findings

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

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

Subparagraph 1.a: Against Applicant

Subparagraphs 1.b-1.d: For Applicant

Subparagraphs 1.e-1.h: Against Applicant

Subparagraph 1.i: For Applicant

Subparagraph 1.j: Against Applicant

Paragraph 2, Guideline E (Personal Conduct) **AGAINST APPLICANT**

Subparagraphs 2.a and 2.b: For Applicant

Subparagraphs 2.b-2.e: Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman
Administrative Judge