



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



In the matter of:)	
)	
)	ISCR Case No. 22-01015
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison P. O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

07/24/2023

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 November 13, 2019. On August 4, 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 September 9, 2022, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on November 16, 2022, and the case was assigned to me on June 1, 2023. On June 7, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for July 8, 2023. I convened the hearing as scheduled. Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant incorporated

scene shots with her Answer, testified, and submitted Applicant's Exhibits (AE) A through K at the hearing, which were admitted without objection. Applicant's organization of her Answer and Exhibits was commendable.

I kept the record open to enable Applicant to submit additional documentary evidence, which were received and marked AE L through O. DOHA received the transcript (Tr.) on July 18, 2023. The record closed on July 18, 2023.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a through 1.e and 1.i and denied SOR ¶¶ 1.f through 1.h.

Applicant is a 28-year-old employee of a defense contractor. She has been employed by her sponsor since November 2018. She served honorably in the U.S. Marine Corps from March 2014 through March 2018. After leaving active duty she attended a university for a few months before joining her employer. She was unemployed for about eight to nine months while in school. She held a security clearance while on active duty. She married in 2014 and separated from her spouse in 2020. There are no children from the marriage. (Tr. at 17-20, GE-1 at 7, 15-16, 21, 24, 32.)

SOR ¶ 1.a: delinquent credit card charged off in the approximate amount of \$10,226. In her Answer, Applicant admitted the debt and stated she had set up a payment arrangement. She included AE A showing her regular monthly payments for this debt on the first of every month. (Tr. at 28-29.) AE N, her post-hearing submission, shows the payments from her checking account through her June 30, 2023 payment.

SOR ¶ 1.b: delinquent automobile loan charged off in the approximate amount of \$10,122. In her Answer, Applicant admitted the debt and stated she had set up a payment arrangement in September 2022. The debt resulted from a co-signed loan for her former spouse's vehicle that had been totaled. (Tr. at 30-31.) She included AE B showing her regular monthly payments for this debt on the first of every month and that the debt had been settled on June 12, 2023. (Tr. at 32.)

SOR ¶ 1.c: delinquent credit card loan charged off in the approximate amount of \$5,104. In her Answer, Applicant admitted the debt and stated she had set up a payment arrangement. The debt resulted from a credit card she had co-signed with her former spouse, who did not have a credit rating to obtain a credit card on her own. (Tr. at 33-34.) She included AE C showing her monthly payments and scheduled monthly payments through November 2025. AE O, her post-hearing submission, shows the payments from her checking account through her July 2023 payment.

SOR ¶ 1.d: delinquent loan charged off in the approximate amount of \$10,122. In her Answer, Applicant admitted the debt and stated she had set up a payment arrangement. The debt resulted from a loan she took out while she was going through

her marital issues. (Tr. at 35.) She included AE D showing her regular monthly payments for this debt on the first of every month since October 2022 and that she was following the agreement. AE N, her post-hearing submission, shows the payments from her checking account through her June 30, 2023 payment.

SOR ¶ 1.e: delinquent account placed in collection in the approximate amount of \$1,820. In her Answer, Applicant admitted the debt and stated she had set up a payment arrangement. The debt resulted from a loan she took out while she was going through her marital issues. (Tr. at 36-37.) She included AE E, email confirmations, showing her regular monthly payments for this debt from December 2022 through July 2023. AE M, her post-hearing submission, shows the payments from her bank account and includes her July 2023 payment.

SOR ¶ 1.f: delinquent automobile loan charged off in the approximate amount of \$1,684 In her Answer, Applicant denied the debt and stated she had been paying this debt. Her car had been totaled and despite maintaining gap insurance through the dealer she still had a debt on the loan after the insurance settlement. (Tr. at 49-50.) She included AE F showing her regular monthly payments from December 2022 through July 2023, the scheduled payments through October 2023, as well as a singular payment in August 2022 before the agreement.

SOR ¶ 1.g: delinquent account charged off in the approximate amount of \$450. In her Answer, Applicant denied the debt and stated she had paid it in full. She included AE G, an email dated March 4, 2020, showing her account was paid in full. (Tr. at 40.)

SOR ¶ 1.h: delinquent utility account charged off in the approximate amount of \$394. In her Answer, Applicant denied the debt on the basis the amount was incorrect. She included AE H showing her monthly payments and that the account had been paid in full in March 2023. (Tr. at 41-42.)

SOR ¶ 1.i: delinquent consumer account charged off in the approximate amount of \$5,798. In her Answer, Applicant admitted the debt and stated she had established a monthly payment plan with the creditor. She incurred the debt during her marriage when she purchased a pet for her spouse. (Tr. at 42.) She included AE I, which showed payment history from September 2022 through June 2023 and AE L, her post-hearing submission, shows the payments from her bank account and includes her July payment.

Applicant testified she started falling behind financially in approximately 2017 just before leaving the Marine Corps. Her spouse got into legal trouble resulting in her having to pay for her spouse's court expenses, which were approximately \$2,000. (Tr. at 23, 24.) She was also covering her spouse's education expenses. (Tr. at 25, 46.) The period she was having difficulties with her spouse coincided with her period of unemployment while she was attending school. (Tr. at 23-26.) Her spouse was employed during the marriage, and they filed their tax returns jointly. (Tr. at 46-47.) With her marriage failing and both

cars totaled, she fell behind. (Tr. at 23-25.) She also incurred some additional medical expenses when her health insurance did not start as planned with her new employer. (Tr. at 26.) When the debts initially started to become delinquent, she did not have the income to make the monthly payments that she has now been making. She would make random payments on debts when funds were available. (Tr. at 28-29 and AE F.) With her 2020 separation and receiving a veteran's disability rating in November 2022, which entitled her to monthly disability payments, she had the additional income to make monthly payments on her debts. (Tr. at 27-29.) The regular debt payments she initiated coincide with her increase in income in November 2022. (Tr. at 29.)

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 admissions and the evidence admitted 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".

Applicant accrued delinquent debts, during a period of unemployment or underemployment and while going through a divorce. 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 established. Applicant's delinquent debts occurred as she was dealing with a failing marriage and leaving the military. These are circumstances that are unlikely to recur. She has established her reliability, trustworthiness, and good judgment by providing evidence that all the debts are being paid off on a regular monthly basis or resolved.

AG ¶ 20(b) applies because Applicant's debts occurred due to circumstances beyond her control. Her documentation corroborates her marital issues. She has demonstrated that she has acted responsibly under the circumstances by taking her increase in income from her veteran's disability rating and using it to resolve her financial issues. She has provided sufficient evidence to show that she acted responsibly under the circumstances to resolve them. AG ¶ 20(b) is established.

AG ¶ 20(d) is established. Applicant provided substantial evidence that as soon as she had additional income she initiated and has adhered to a good-faith effort to repay overdue creditors or otherwise resolve debts.

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.

Formal Findings

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

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a-i:	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