



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 22-02291
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

07/12/2023

Decision

HOGAN, Erin 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 22, 2022. On December 1, 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) promulgated in Security Executive Agent Directive 4, establishing in Appendix A the National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position (AG), effective on June 8, 2017.

Applicant answered the SOR on January 18, 2023, and requested a decision based on the administrative record. Department Counsel submitted the Government's

written case, also known as a File of Relevant Material (FORM) on March 7, 2023. On May 22, 2023, a complete copy of the FORM 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 April 5, 2023, and did not respond. The case was assigned to me on June 20, 2023.

Evidentiary Issue

FORM Item 4 is a summary of a personal subject interview conducted by a background investigator on June 24, 2022. The summary of the personal subject interview was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant the personal subject interview was being provided to the Administrative Judge for consideration as part of the record evidence in this case, and she was entitled to comment on the accuracy of the summary of the personal subject interview; make any corrections, additions, deletions, and updates necessary to make the summary clear and accurate; and object on the ground that the reports are unauthenticated. I conclude that Applicant waived any objections to the summary of the personal subject interview by failing to respond to the FORM. "Although pro se applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive." ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016).

Findings of Fact

In her Answer to the SOR, Applicant admits the allegations in SOR ¶¶ 1.a - 1.d; 1.f - 1.h, and denies the allegations in 1.e; and 1.i – 1.k.

Applicant is a 54-year-old employee of a Department of Defense (DoD) contractor seeking a security clearance. She has worked for the same employer since 2009. She received a bachelor's degree in 2017. She has never held a security clearance. She is divorced and has three adult children. (Item 3)

SOR ¶¶ 1.a – 1.d and 1.f – 1.h are student loans placed for collection totaling approximately \$21,742. The delinquent loans were placed for collection between July 2015 and July 2016. (Item 5 at 2-4) In her security clearance application, dated April 22, 2022, Applicant stated the reason for the delinquency was the financial challenges of being a single mother of three teenagers. She just kept getting further behind paying her bills. She mentioned she sent in paperwork to rehabilitate the student loans to get them back in good standing. (Item 3 at 40) In her Answer to the SOR, she indicates that she sent in paperwork for her student loans to be on a new schedule of payments. (Item 2) She did not provide any documents regarding her attempts to resolve or rehabilitate her delinquent student loan accounts.

The SOR also alleges the following debts:

SOR ¶ 1.e: A \$2,750 owed to a former landlord for alleged repairs needed after she moved out. (Item 5 at 3) In her answer to the SOR, Applicant claims she disputed this debt with the credit bureau. She claims a new property manager took over her lease mid-way through the year. They charged her for items that were in disrepair when she moved into the property. She did not receive her \$2,750 security deposit when she moved out. (Item 2 at 1-2) A May 2022 credit report, lists this debt, but it does not indicate that the debt is being formally disputed. (Item 5 at 3)

SOR ¶ 1.i: \$955 satellite television account placed for collection. (Item 5 at 3) This account was resolved on June 24, 2022. Applicant provided proof of resolution in response to the SOR. (Item 2 at 4) In the unsworn summary of the personal subject interview, the investigator indicated the debt was paid and that a receipt was provided. The debt is resolved. (Item 4 at 5, 8)

SOR ¶ 1.j: \$643 cable television account placed for collection. (Item 5 at 4) Applicant claims this debt was paid on June 27, 2022. Applicant provided proof the debt was resolved. (Item 2 at 5) In the unsworn summary of the personal subject interview, the investigator indicated the debt was paid and that a receipt was provided. The debt is resolved. (Item 4 at 6, 8)

SOR ¶ 1.k: \$794 account that was charged off. (Item 5 at 4) Applicant claims this debt was paid on June 27, 2022. (Item 2 at 6) In the unsworn summary of the personal subject interview, the investigator indicated the debt was paid and that a receipt was provided. The debt is resolved. (Item 4 at 5, 8)

In March 2020, as a result of the COVID-19 pandemic, the President directed the Department of Education (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>. Congress recently barred any further extensions and student loan repayments will resume in October 2023. See <https://studentaid.gov/debt-relief-announcement>.

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. . . .

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).

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.

AG ¶¶ 19(a) and 19 (b) apply to Applicant's case. The SOR alleged four delinquent consumer accounts (SOR ¶¶ 1.e, 1.i. – 1.k) and seven delinquent federal student loans (SOR ¶¶ 1.a – 1.d and 1.f – 1.h), a total approximate balance of \$21,742, which were assigned for collection between 2015 to 2016.

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 be considered in a deferred status since March 2020 because of the COVID-19 deferment, that action does not excuse previously delinquent student loans that have been delinquent for several years. See ISCR Case No. 20-01527 at 2 (App. Bd. June 7, 2021).

The Government's substantial evidence and Applicant's admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (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. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties under AG ¶ 20. The following mitigating conditions potentially apply:

(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;

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

(e): the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

AG ¶ 20(a) does not apply. Applicant's financial issues are ongoing, and she has not provided proof that she has taken steps to rehabilitate her delinquent student loans. Her student loans became delinquent well before the COVID relief moratorium took effect.

AG ¶ 20(b) is not fully established. While Applicant's single-motherhood of three children caused financial problems, I cannot conclude she acted responsibly under the circumstances because she has not provided documentary evidence of her attempts to rehabilitate her delinquent student loans nor evidence of the disputed debt owed to her former landlord. Applicant's lack of action towards resolving her delinquent student loan debts prior to any COVID relief options shows that she has not acted responsibly under the circumstances. The Appeal Board in ISCR Case No. 20-01527 at 2 (App. Bd. June 7, 2021) addressed this factual situation noting in that case "the Judge addressed this issue by concluding that, while the President's action effectively places Applicant's student loans in a deferment status, "it does not excuse Applicant's past inactions in the context of security clearance eligibility." Decision at 9.

AG ¶ 20(d) is established with regard to the debts alleged in SOR ¶¶ 1.i -1.k. Applicant provided documentary evidence that these three debts are resolved. AG ¶ 20(d) does not apply with regard to Applicant's delinquent student loans or the debt owed to the landlord as alleged in SOR ¶ 1.e. Applicant states she intends to consolidate all of her delinquent student loans, no documentation showing her attempts to rehabilitate the delinquent student loans was provided.

AG ¶ 20(e) potentially applies regarding Applicant's dispute of the \$2,750 debt owed to her former landlord (SOR ¶ 1.e). However, she did not provide documented proof substantiating the basis of the dispute or evidence of the actions she has taken to resolve the dispute. This mitigating condition does not apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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.

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.

I considered Applicant's employment with the same DoD contractor since 2009. I considered that she raised three children as a single mother. I considered that Applicant resolved the three consumer debts alleged in the SOR. The major concern in this case is Applicant's delinquent student loan accounts which have remained delinquent since 2015 and 2016. While Applicant claimed she was in the process of resolving or rehabilitating the delinquent student loans, she provided no documentation of the steps taken so far to achieve this goal. Overall, the record evidence leaves me with doubts about Applicant's eligibility and suitability for a security clearance. Applicant has not mitigated the financial considerations security concerns.

Formal Findings

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

Subparagraphs 1.a-1.h: **Against Applicant**

Subparagraphs 1.i – 1.k: **For 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.

Erin C. Hogan
Administrative Judge