



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



In the matter of:)	
)	
)	ISCR Case No. 22-01396
)	
Applicant for Security Clearance)	

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: *Pro se*

04/25/2023

Decision

HESS, Stephanie C., Administrative Judge:

Applicant’s past financial difficulties were due to circumstances largely beyond her control, are unlikely to recur, and do not cast doubt on her current reliability, trustworthiness, or judgment. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on December 1, 2021. On October 25, 2022, the Department of Defense (DOD) sent her a Statement of Reasons (SOR), alleging security concerns under Guideline F (Financial Considerations). The DOD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6 (Directive), *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended; and the adjudicative guidelines (AG) effective June 8, 2017.

Applicant submitted her Answer to the SOR, with attachments, on November 19, 2022, and requested a decision on the record without a hearing. Department Counsel submitted the Government’s written case on December 28, 2022. On that same day, a complete copy of the file of relevant material (FORM,) which included Government

Exhibits (GX) 1 through 7, was sent to Applicant. The DOHA transmittal letter informed Applicant that she had 30 days after her receipt to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. She received the FORM on January 18, 2023 and submitted a timely response to which the Government did not object. The DOHA transmittal letter and receipt are appended to the record as Administrative Exhibit (Admin. Ex.) 1. The case was assigned to me on April 6, 2023. Government Exhibits 1 through 7 are admitted without objection.

Findings of Fact

Applicant, 46, is an enterprise resource planning business analyst employed by a federal contractor since December 2009. She received her bachelor's degree in 1998. She married in 2009 and divorced in 2022. She has two children who reside with her. This is her first application for a security clearance. (GX 3; GX 4.)

The SOR alleges eight delinquent debts totaling \$16,535. The debts are comprised of three credit-card debts totaling \$5,306; four medical debts totaling \$3,295; and a federal-tax debt in the amount of \$7,934. The SOR also alleges that Applicant failed to timely file her 2019 federal-tax return and that it remains unfiled. In her answer to the SOR, Applicant admitted the credit-card debts and three of the medical debts, but denied one medical debt in the amount of \$100. She also denied the federal-tax debt, stating that she was in a repayment plan. She admitted that she failed to timely file her 2019 federal-tax return. The delinquent credit-card and medical debts are reflected in Applicant's September 2022 and December 2021 credit-bureau reports (CBR). (GX 5; GX 6.) She also listed her delinquent debts on her e-QIP and discussed them during her August 2022 personal subject interview (PSI). (GX 4.) Applicant's admissions are incorporated in my findings of fact.

In her response to the FORM, dated February 6, 2023, Applicant amended her responses to the allegations in the SOR. She admitted the \$100 medical debt she had previously denied, denied the federal-tax debt stating that she had satisfactorily completed her repayment plan in December 2022, and denied that she had failed to file her 2019 federal tax return, stating that she filed it in February 2023. She provided documentation in support of her denials. (Response.)

For an unspecified period of time, Applicant's husband suffered from multiple health-related issues that frequently rendered him unable to work. During the times he was out of work, he sometimes would receive short-term-disability payments, but not always. The short-term-disability payments were significantly less than his regular pay. Applicant and her husband were dependent on both their regular incomes to pay their monthly obligations, and the decreased household income caused them financial strain. Additionally, despite having health insurance, Applicant incurred unanticipated medical debts from giving birth to their second child in 2017. These combined factors caused Applicant and her husband to be unable to maintain three of their credit-card accounts (SOR ¶¶ 1.a-1.c). They also became delinquent on their unanticipated medical debts (SOR ¶¶ 1.d-1.g). However, they were able to maintain their monthly payments on their

mortgage loan, their vehicle loans, and multiple other credit cards. (GX 4; Response; GX 6; GX 5.)

Throughout their marriage, Applicant's husband was responsible for filing their joint federal-tax returns. Applicant was initially unaware that her husband did not do so for tax year 2019. Ultimately, Applicant prepared the 2019 return herself and filed it on February 6, 2023. She did not owe any taxes. (GX 3; GX 4; Response.)

Applicant timely filed her 2021 federal-tax return with a payment of \$2,604. However, she owed an additional \$9,621. She received notice from the IRS sent on June 6, 2022, of the additional taxes owed and immediately contacted them. She entered a short-term payment plan and submitted the first payment in July 2022. She made all the required payments and satisfied her federal-tax debt for 2021 (SOR ¶ 1.h) in December 2022. (GX 4; Answer; Response.)

Applicant and her husband began their divorce proceedings in May 2021, at which time all their marital assets were frozen. She had custody of their two children and was primarily financially responsible for all of their care. She did not have the financial resources to resolve any of her delinquent accounts. The final divorce decree was not entered until July 2022. (GX 3; GX 7.)

The final divorce decree delineates 10 marital debts for which Applicant was held personally liable. Four of the debts assigned to Applicant in the divorce decree are SOR debts. One of the listed debts is a medical debt owed to a creditor to whom Applicant owes two debts (SOR ¶¶ 1.d and 1.e). She contacted the creditor and in September 2022, Applicant received a letter from the creditor that contained an itemized statement of charges for the 2017 delivery of her son. The creditor combined Applicant's two debts and the total remaining balance owed by Applicant, after insurance payments, is \$2,331.

The other SOR debts listed in the divorce decree are the \$4,122 credit-card debt owed to a home-improvement store for the purchase of a lawnmower (¶ 1.a); the \$407 credit-card debt owed to a department store (¶ 1.b); and the \$777 credit-card debt owed to a furniture store for the purchase of a couch (¶ 1.c). None of the other six debts delineated in the divorce decree have ever become delinquent. (GX 7; GX 5; GX 6; Response.)

In her response to the FORM, Applicant stated:

The divorce awarded debts in excess of what I could pay off immediately. I have contacted the collection agencies requesting itemized details and have received only those for the medical debt related to my son's 2017 birth. I have a two-year plan I am working through to resolve the outstanding debts including in the SOR. I prioritized debt to the government and current debt pay-off over collection debt. I provide all food, shelter, and clothing for my two sons with no child support for my former spouse.

Applicant incurred the delinquent debts alleged in the SOR between 2017 and 2019. She lives within her means, is current on all of her ongoing financial obligations, is closely monitoring her expenses, and has not had any additional delinquent accounts since. She understands that she is responsible for repaying her debts and considers resolving them a priority. (GX 5; GX 6; GX 4; Response.)

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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant’s meeting the criteria contained in the AG. 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.” See 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. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

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; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

The concern under this guideline is set out in AG ¶ 18:

Failure or inability 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 risk of having to engage in illegal or otherwise questionable acts to generate funds.

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).

The record evidence establishes three disqualifying conditions under this guideline:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(f): failure to file . . . annual Federal . . . income tax returns or failure to pay annual Federal . . . income tax as required.

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

AG ¶ 20(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's financial issues primarily arose between 2017 and 2019 when her husband's income was not reliable and from unanticipated medical expenses related to her son's 2017 birth. These combined circumstances caused Applicant to be unable to maintain payments on the three credit-card accounts and the four medical debts alleged in the SOR. Additionally, without Applicant's knowledge, her husband failed to file their 2019 federal tax return.

When Applicant and her husband began divorce proceedings in May 2021, all of their marital assets were frozen. Applicant had the increased financial obligation of being primarily responsible for her two minor children. When Applicant's final divorce decree was entered in July 2022, the decree allocated 10 of the marital debts to Applicant personally. With her increased financial obligations and no access to any of her marital assets, she did not have the financial resources to resolve the SOR debts. Additionally, Applicant was informed by the IRS that she owed approximately \$9,600 for her 2021 taxes.

However, Applicant acted responsibly under the circumstances. Despite her husband's fluctuating income and her significant medical bills, Applicant maintained the majority of her monthly financial obligations including her mortgage loan, her vehicle loans, and numerous credit cards. Although her marital assets were frozen after filing for divorce in May 2021, and she had the increased financial obligation of primary support for her two children, she continued to maintain her ongoing monthly financial obligations and did not incur any additional delinquent debt. After her divorce was finalized in July 2022 and she was assigned 10 of the marital debts, Applicant prioritized how she would repay or otherwise resolve the debts.

After learning of the additional amount of taxes due for 2021 in June 2022, Applicant immediately contacted the IRS and entered a repayment plan. She made her first payment under the plan in July 2022 before the SOR was issued. She fully satisfied the tax debt in December 2022. Resolving her tax debt was Applicant's first priority.

Throughout their marriage, Applicant's husband was responsible for filing their tax returns. However, unbeknownst to Applicant until much later, her husband failed to file the 2019 federal-tax return. Despite her lack of experience with the process, Applicant filed her 2019 federal-tax return in February 2023.

Applicant has contacted each of the six creditors of the SOR debts. She requested statements from each creditor itemizing the balances due. She received a letter from the creditor of two of the medical debts that are owed as unanticipated expenses for the 2017 birth of her son. Applicant accepts responsibility for each of her remaining SOR debts, which total \$8,601, and is determined to repay or otherwise resolve each of them as she is able.

"Good faith" means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). A security clearance adjudication is an evaluation of a person's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) A person is not required to establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. The adjudicative guidelines do not require that a person make payments on all delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). While those granted access to classified information are held to a high standard of conduct, they are not held to a standard of perfection.

There is nothing in the record that suggests Applicant's financial habits are reckless or irresponsible or that she is likely to disregard her financial obligations in the future. She had executed repayment plan and begun paying the 2021 federal-tax debt alleged in the SOR, listed as \$7,934, prior to the issuance of the SOR. She accepts responsibility for her remaining delinquent accounts and has established a plan to resolve them. She lives within her means and has not incurred any recent delinquent debt. Applicant's past financial issues do not cast doubt on her current reliability, trustworthiness, or good judgment. AG ¶¶ 20(a), 20(b), 20(e), and 20(g) apply.

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(a).

I have considered the factors in AG ¶ 2(a) and incorporated my comments under Guideline F in my whole-person analysis. 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 mitigated the security concerns raised by her past financial issues. Accordingly, I conclude she has carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

Formal Findings

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

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

Subparagraphs 1.a through 1.h: For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Stephanie C. Hess
Administrative Judge