



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



In the matter of:)
)
) ISCR Case No. 23-00558
)
Applicant for Security Clearance)

Appearances

For Government: Mark. D. Lawton, Esq., Department Counsel
For Applicant: *Pro se*

01/11/2024

Decision

FOREMAN, LeRoy F., 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 on May 4, 2022. On March 23, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F. The CAS acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (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 March 28, 2023, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on April 25, 2023, and the case was assigned to me on November 10, 2023. On November 20, 2023, the

Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted on December 18, 2023. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified, presented the testimony of one witness, and submitted Applicant's Exhibits (AX) A through F, which were admitted without objection. I kept the record open until January 5, 2024, to enable her to submit additional documentary evidence. She timely submitted AX G through L, which were admitted without objection. DOHA received the transcript (Tr.) on January 4, 2024.

Findings of Fact

Applicant is a 63-year-old administrative specialist employed by a defense contractor since October 2021. She has been employed by various federal contractors since November 2009. She has three adult children. She was cleared for a public trust position in May 2016.

Applicant immigrated to the United States in April 1979, when she was 18 years old, unmarried, and had two daughters. She became a U.S. citizen in May 1993, attended a trade school, earned an associate degree from a community college in 1991, and was employed in the private sector until she began working for federal contractors. An Air Force major general for whom Applicant worked from January 2021 through June 2023 submitted a letter attesting to Applicant's competence and trustworthiness in her handling of the records of sensitive investigations. (AX F)

Applicant's two daughters both became U.S. citizens and graduated from college. The older daughter is a senior project manager for a major U.S. corporation, and the younger daughter is a senior employee of a DOD agency and has held a security clearance since 2001. The younger daughter submitted a letter attesting to her mother's intelligence, trustworthiness, and motivation. (AX G)

The SOR alleges a single delinquent debt to a credit union that was charged off for \$34,606. The debt was a consolidation loan and is reflected in credit reports from June 2022 and December 2023. Applicant obtained the loan in July 2018, and her last payment on the loan was in December 2018. (GX 2 and 3) In her answer to the SOR, Applicant denied the allegation, because she believed that she owed a lesser amount. (Tr. 32)

Applicant testified that she leased an automobile in 2018. Shortly thereafter, she realized that she was paying more on her debts than she was earning. When she was interviewed by a security investigator, she attributed her delinquent debts to overspending for furniture and preparing to move to a new residence. She hired a debt-resolution company in 2017 or 2018 that resolved some of her delinquent debts. Her credit report from June 2022 reflected four delinquent debts (three credit card debts and one debt to the credit union alleged in the SOR) that were settled for less than the full balance. (GX 2 at 3-4) She testified that she fired the debt-resolution company because it was not paying all her creditors. The company explained to her that it could not pay all her

creditors because she had insufficient funds in her account with them to resolve all her debts. (Tr. 55)

Applicant testified that she contacted the creditor alleged in the SOR several times, beginning in 2019, but received no response. After she was interviewed by a security investigator several times in June, July, August, and September 2022, she sent the creditor a letter in May 2023. She did not have a copy of the letter. (Tr. 44)

On November 20, 2023, Applicant wrote another letter to the credit union proposing a payment plan with the following conditions: (1) reduce the amount of the debt to \$20,000; (2) deduct payments automatically from her checking account for 60 months, without any interest added, beginning in January 2024; (3) assess no penalty for an early payoff; and (4) notify credit bureaus that the debt is being resolved. (AX B) As of the date of the hearing, she had not received a response from the credit union.

In Applicant's post-hearing submission, she explained she contacted the credit union again and learned that the credit union could not respond to her letters and telephone calls because the credit-repair company was listed as her representative, and a "cease and desist notification" precluded the credit union from contacting her. She notified the credit union that the debt-resolution company was no longer her representative. (AX I and J) She stated that she had negotiated an agreement with the credit union to pay \$380 per month by automatic deduction from her checking account, beginning on January 17, 2024. She did not submit documentary evidence of the agreement, but she submitted evidence that she made a \$200 payment to the credit union on December 21, 2023. (AX H; AX K)

Applicant's long-time friend and companion testified on her behalf. He testified that he and Applicant travel together and exchange gifts. The last trip he could remember was in 2018 (Tr. 69). He also testified that he was a cosigner on a debt-consolidation loan from the creditor alleged in the SOR, and that monthly payments of about \$550 were deducted from his bank account from 2019 until this year. (Tr. 72) It was unclear which bank accounts he cosigned, because the December 2023 credit report reflects three debt-consolidation loans from the same creditor, as well as two joint credit-card accounts. (GX 3 at 7, 11, 13, 14)

Applicant currently earns \$49,000 per year. (Tr. 27) At the hearing, she estimated that she had about \$1,000 in her checking account and about \$15,000 in her retirement account. (Tr. 47-48) She bought her personal vehicle in 2018 car and owes about \$9,000 on the car loan. (Tr. 47-49) She and her children went on a seven-day cruise to celebrate her birthday in November 2023. She and her daughter paid about \$1,200 each for the cruise. (Tr. 50-51) She has not sought or received any financial counseling. (Tr. 51)

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).

The evidence submitted at the hearing establishes 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 relevant:

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;

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(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) is not established. Applicant has only one delinquent debt, but it was incurred in an effort to resolve an accumulation of multiple delinquent debts. The debt is recent and was not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is not established. Applicant presented no evidence of circumstances largely beyond her control. Her delinquent debts were the result of spending more than she earned.

AG ¶ 20(c) is not established. Applicant presented no evidence of financial counseling. There is no evidence that the debt-resolution company provided the type of financial counseling contemplated by this mitigating condition.

AG ¶ 20(d) is not fully established. Although Applicant stated in her post-hearing submission that she had reached an agreement with the credit union, she provided no documentary evidence of an agreement. An applicant who claims that a debt is being resolved is expected to provide documentary evidence to support that claim. See ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016). At this point, Applicant has promised to resolve the debt but her promise is not a substitute for a track record of paying debts in a timely manner. ISCR Case No. 17-04110 (App. Bd. Sep. 26, 2019).

AG ¶ 20(e) is not established. Although Applicant denied the debt in her response to the SOR, she explained that her denial applied only to the amount of the debt and not to its validity.

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). Applicant was candid and sincere at the hearing. She has commendably overcome significant obstacles since her immigration to the United States. However, she did not take responsible actions to resolve the debt alleged in the SOR until she realized that it was an impediment to obtaining a security clearance. Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance. ISCR Case No. 16-01211 (App. Bd. May 30, 2018). She may well qualify for a security clearance in the future, but she has not yet reached that point. 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 not mitigated the security concerns raised by her financial situation.

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

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