



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



In the matter of:)
)
) ISCR Case No. 23-01780
)
Applicant for Security Clearance)

Appearances

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

01/22/2024

Decision

FOREMAN, LeRoy F., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 11, 2023. On September 11, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (CAS) sent her a Statement of Reasons (SOR) alleging security concerns under Guidelines E and 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 October 2, 2023, and requested a decision on the written record without a hearing. Department Counsel submitted the Government’s written

case on October 24, 2023, and sent Applicant a complete copy of the file of relevant material (FORM), giving her an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. She received the FORM on November 8, 2023, and did not submit any additional information. The case was assigned to me on January 4, 2024.

Evidentiary Issue

The FORM included summaries of personal subject interviews conducted in April and May 2023. (FORM Item 8) The summaries were not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that she was entitled to comment on the accuracy of the summaries; make any corrections, additions, deletions, or updates; or object to consideration of the summaries on the ground that they were not authenticated. Applicant submitted a detailed response to the FORM but did not comment on the accuracy or completeness of the summaries, nor did she object to them. I conclude that she waived any objections to the summaries. 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 Applicant's answer to the SOR, she admitted all the allegations in the SOR. Her admissions are incorporated in my findings of fact.

Applicant is a 42-year-old program analyst employed by a defense contractor. She served on active duty in the U.S. Air Force from April 2002 to September 2022 and retired with an honorable discharge. She was employed by another defense contractor after her retirement until she was hired by her current employer in December 2022. Her SCA reflects that she underwent background investigations and received clearances in 2001, 2010, and 2020.

Applicant married in September 2003, divorced in June 2007, married in October 2011, and divorced in October 2015. Her January 2023 SCA reflects that she has three children, ages 3, 9, and 13. In her answer to the SOR, she stated that she "lost" the youngest child's father in February 2020. She has taken college courses since 2006 but has not earned a degree.

The SOR alleges two delinquent debts: SOR ¶ 1.a alleges a collection account for \$3,481; and SOR ¶ 1.b alleges an automobile finance loan charged off for \$34,991. SOR ¶ 2.a alleges that Applicant falsified her SCA by deliberately failing to disclose the two debts.

When Applicant was interviewed by a security investigator in April 2023, she told the investigator that she was unaware of her delinquent debts until she applied for a home mortgage loan in August 2022. In her answer to the SOR, she stated that she did not

disclose the two debts in her SCA because she “must have read the question wrong,” and she did not know about some of her debts until she was interviewed by a security investigator in April and May 2023.

The debt alleged in SOR ¶ 1.a was reflected in a February 2023 credit report. (FORM Item 7) When Applicant responded to the SOR, she submitted documentary evidence that this debt was resolved in September 2023. (FORM Item 4 at 3-5)

The debt alleged in SOR ¶ 1.b was an automobile loan. Applicant told the investigator that the loan was solely in her name, with the understanding that her husband would make the payments. When they separated, her husband stopped making the payments. In her answer to the SOR, she stated that she was working with the creditor, but she submitted no evidence of payments, a payment plan, or other resolution of the debt. (FORM Item 3 at 3) This debt is reflected in the February 2023 credit report as assigned for collection in May 2015. (FORM Item 7) It is not reflected in an August 2023 credit report. (FORM Item 6)

The security investigator’s summary of the interviews conducted in April and May 2023 reflects that Applicant’s net monthly income is about \$13,100. Her total living expenses and debt payments are about \$4,109, leaving a net monthly remainder of \$8,999. (FORM Item 8 at 4)

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 in the FORM are sufficient to 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 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; 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 were recent, frequent, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is not established. The failure of Applicant's ex-husband to keep his promise to make the payments on the auto loan was a condition largely beyond her control, even though it raises questions about her judgment. The breakup of her marriage was a condition beyond her control. The "loss" of her fiancé and the father of her third child may have been a condition largely beyond her control. However, she has not acted responsibly. She did not take action to resolve the two debts alleged in the SOR until she learned that they were impediments to continuing her security clearance. An applicant who waits until his or her clearance is in jeopardy before resolving debts may be lacking in the judgment expected of those with access to classified information. ISCR Case No. 16-01211 (App. Bd. May 30, 2018) *citing* ISCR Case No. 15-03208 at 5 (App. Bd. Mar. 7, 2017).

AG ¶ 20(c) is not established. Although Applicant stated that she has opened an account with a financial management service, she provided no evidence of the type of financial counseling contemplated by this mitigating condition.

AG ¶ 20(d) is established for the debt alleged in SOR ¶ 1.a, which is resolved. It is not established for the debt alleged in SOR ¶ 1.b. Although Applicant asserted in her answer to the SOR that she was “working with” the creditor alleged in SOR ¶ 1.b, she provided no evidence of payments, a payment agreement, or any other steps to resolve the debt. The fact that the debt alleged in SOR ¶ 1.b is not reflected in the August 2023 credit report does not establish any meaningful, independent evidence as to the disposition of the debt. Debts may fall off credit reports for various reasons, including the passage of time. See ISCR Case No. 18-01250 at 2 (App. Bd. Feb. 13, 2019).

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. . . .

When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004). An applicant's experience and level of education are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate. ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

An act of falsification has security significance independent of the underlying conduct. See ISCR Case No. 01-19278 at 7-8 (App. Bd. Apr. 22, 2003). The mitigation of the underlying conduct has little bearing on the security significance of the falsification, particularly where there are multiple falsifications. ISCR Case No. 08-11944 at 3 (App. Bd. Aug 15, 2011).

The relevant disqualifying condition is AG ¶ 16(a):

[D]eliberate 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.

Applicant failed to disclose her delinquent debts in her January 2023 SCA. When questioned by a security investigator in April 2023, she attributed the omissions to misreading the questions about delinquent debt. I find this explanation unpersuasive, because her January 2023 SCA was the fourth time in her career that she executed an SCA containing questions about delinquent debts. She admitted to the security investigator that she became aware of the delinquent auto loan alleged in the SOR ¶ 1.b when she applied for a mortgage loan in August 2022, several months before she submitted her SCA. I conclude that AG ¶ 16(a) is established.

The following mitigating conditions are potentially applicable:

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

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 disclose her delinquent debts until she was confronted with the evidence.

AG ¶ 17(c) is not established. Applicant's falsification was recent and did not occur under unusual circumstances. It was not "minor." Deliberate falsification of an SCA "strikes at the heart of the security clearance process." ISCR Case No. 09-01652 (App. Bd. Aug. 8, 2011.)

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). I have considered Applicant's military service and her service-connected disability. Because she requested a determination on the record without a hearing, I had no opportunity to evaluate her credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). after weighing the disqualifying and mitigating conditions under Guidelines F and E 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 falsification of her SCA.

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: For Applicant

Subparagraph 1.b: Against Applicant

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

Subparagraph 2.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