



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



In the matter of:)	
)	
)	ISCR Case No. 24-00049
)	
Applicant for Security Clearance)	

Appearances

For Government: Cynthia Ruckno, Esq., Department Counsel
For Applicant: *Pro se*

04/10/2024

Decision

HALE, Charles C., Administrative Judge:

Applicant did not provide sufficient information to mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on October 18, 2023. On January 18, 2024, the Department of Defense (DoD) sent a Statement of Reasons (SOR) alleging security concerns under Guideline F (Financial Considerations). 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, National Security Adjudicative Guidelines (December 10, 2016).

Applicant answered the SOR on January 22, 2024, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on February 7, 2024. A complete copy of the file of relevant material (FORM) was sent to Applicant on February 7, 2024, who was given an opportunity to file objections

and submit material to refute, extenuate, or mitigate the Government's evidence. Applicant submitted a Response on February 21, 2024. The case was assigned to me on April 2, 2024.

The SOR, the Answer (Items 1 and 2), and Response, which included enclosures, are the pleadings in the case. FORM Items 3 through 5 and the Response enclosures are admitted into evidence without objection. Admission of FORM Item 5 is discussed below.

Evidentiary Issue

The FORM included a summary of a personal subject interview (PSI) conducted on October 27, 2023. (Item 5). The PSI summary was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that she was entitled to comment on the accuracy of the PSI summary; make any corrections, additions, deletions, or updates; or object to consideration of the PSI summary on the ground that it was not authenticated. She did not object to the PSI in her Response. I conclude that she waived any objections to the PSI summary by failing to object to the PSI in her Response. "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." See ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016). FORM Item 5 is therefore admitted.

Findings of Fact

In Applicant's Answer to the SOR she admitted all nine allegations under Guideline F and provided an explanation for each debt. Her admissions are incorporated in my findings of fact.

Applicant is 26 years old. She is married but has separated from her husband. They have two children. They are in the process of a divorce. (Item 3 at 26; Item 5 at 3.) She graduated high school in 2016 and earned her bachelor's degree in 2019. She has never held a security clearance. She currently works as a Human Resource (HR) manager.

Applicant discussed each debt with the investigator who conducted her PSI. The interview followed the Government's credit report. (Item 4; Item 5.)

SOR ¶ 1.a: past-due joint automobile loan that has been charged off in the amount of \$33,609. Applicant's credit report shows the date assigned as October 2021 and the last activity date as March 2023. (Item 4 at 2.) She told the investigator during her PSI the loan was for her car, which was in her and her husband's names, and he had been handling the payments. When they separated, she discovered the payments were three months delinquent. She told the creditor to come get the car. (Item 5 at 3-4.)

SOR ¶ 1.b: past-due individual credit card account that has been charged off in the amount of \$5,170. Applicant's credit report shows the date assigned as June 2018 and the last activity date as October 2023. (Item 4 at 3.) She told the investigator during

her PSI this was her credit card, which she had before her marriage. She stated she was aware of the account and had been contacted both by phone and mail about it. (Item 5 at 5-6.) She stated in a Response enclosure that this debt was “sent [with] bankruptcy paper” on March 30, 2023.

SOR ¶ 1.c: delinquent individual account that has been placed for collection by a bank in the amount of \$2,900. Applicant’s credit report shows the date assigned as January 2023 and the last activity date as October 2023. (Item 4 at 3.) She listed it on her SCA. (Item 3 at 44.) She told the investigator it was the debt she had discuss on her SCA and that it had been “purchased by another lender.” (Item 5 at 6.) She stated in a Response enclosure that this debt was “mailed back with bankruptcy paper [on] February 13, 2023.”

SOR ¶ 1.d: past-due individual account that has been placed for collection by a bank in the amount of \$1,393. Applicant’s credit report shows in the narrative “consumer dispute following resolution,” as well as the date assigned, November 2022, and the last activity date, September 2023. (Item 4 at 3.) She told the investigator she was aware of the debt and had explained it on her SCA. Her husband had opened the account in her name without her knowledge and had maxed-out the card. (Item 3 at 43-44; Item 5 at 6.)

SOR ¶ 1.e: past-due individual account that has been charged off in the amount of \$1,344. Applicant’s credit report shows it as charged off and closed by the grantor. The date assigned is October 2020, and the last activity date, September 2023. (Item 4 at 3.) She told the investigator during her PSI she had just become aware of the debt when she was being added as an authorized user on her boyfriend’s account. (Item 5 at 6.)

SOR ¶ 1.f: past-due individual credit card account that has been placed for collection by a bank in the amount of \$1,088. Applicant’s credit report shows the date assigned as August 2022 and the last activity date as October 2023. (Item 4 at 4.) She told the investigator she was not aware of this debt and initially thought it was one of the other debts. (Item 5 at 6.) In her Response she notes that this debt was “returned dispute” on January 1, 2023.

SOR ¶ 1.g: past-due individual credit card account that has been charged off in the amount of \$590. Applicant’s credit report shows the date assigned as December 2021 and the last activity date as September 2023. (Item 4 at 4.) She told the investigator she was not familiar with this debt and no action had been taken on it. (Item 5 at 6.)

SOR ¶ 1.h: past-due account that has been charged off in the amount of \$317. Applicant’s credit report shows the date assigned as April 2020 and the last activity date as January 2022. (Item 4 at 4.) She was not aware of this account and could only speculate that she had been added to it as an authorized user, which is what the credit report shows. (Item 4 at 4; Item 5 at 6.) SOR ¶ 1.h is mitigated.

SOR ¶ 1.i: past-due joint auto loan that has been charged off in the amount of \$7,253. Applicant’s credit report shows it as a voluntary surrender, with a date assigned

as July 2021, and the last activity date as July 2022. (Item 4 at 5.) She acknowledged to the investigator during her PSI that the debt was for her car. She stated she was 8 months pregnant and could not work for why she voluntarily surrendered the vehicle. (Answer and Response,) She offered no evidence of attempting to resolve the debt after she surrendered the vehicle. (Item 5 at 7.)

Applicant wrote in her Answer she has been the victim of identity theft and fraud. She acknowledged her mistake in allowing her husband to manage their financial matters and not taking an active role until the marriage started to fail. She cited to her numerous attempts to document the actions of her husband both with law enforcement and for the divorce proceedings. (Answer at 1, 2.) With her Response she submitted an email exchange with a state law enforcement officer regarding her estranged husband forging her signature. The emails are from later in February 2024, just over two weeks after she had received the FORM. (Response.) She has moved in with her parents and shares a vehicle with her grandmother. Her financial situation was made more difficult by being out of work because of her second pregnancy. She notes she has been proactive in trying to keep appropriate parties informed and has been open and honest during the security clearance process. (Answer at 1-2.) She indicated in her Answer and Response that she was going to resolve her delinquencies through bankruptcy. No bankruptcy filings were provided with her Answer or Response. In her Response she states she has not incurred any further debts since February 2022. Her Response includes a memorandum for the record, which includes a summary of an exchange between her and her estranged husband, where he agrees to deal with the credit card debts to pay them off.

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 Government's documentary evidence establish the following 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 under AG ¶ 20 are relevant:

(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) is not established. Applicant's delinquent debts are recent, numerous and ongoing. She has not resolved a debt. She told the investigator she had contacted law enforcement, but the only evidence of law enforcement involvement was after the FORM was issued. The evidence provided is insufficient to extenuate or mitigate the facts established by the Government. She has not met her burden of proving this mitigating condition to show her current reliability, trustworthiness, or good judgment.

AG ¶ 20(b) is not established. Applicant states she is going through a divorce and that her estranged husband had used her personal information to establish the accounts in her name without her knowledge. She states in Answer she has notified different parties of his actions. Her Response shows only notes on debt notices and annotations to the Government exhibit. She has not resolved any debts or made payments on debts that are not tied to the actions alleged to her estranged husband. Aside from one debt which is listed as in dispute, she did not establish that she maintained contact with her creditors; that she has attempted to establish payment plans with them; file for bankruptcy; or dispute the other debts. She was out of work because of her pregnancy and has taken

steps to be financially responsible by moving in with her parents and sharing a vehicle. The evidence was consistent with her explanation for SOR ¶ 1.d and is mitigated. However, there is insufficient evidence to show that she acted responsibly to mitigate financial problems largely beyond her control under AG ¶ 20(b) for the remaining debts.

AG ¶¶ 20(d) and 20(e) are not established. Applicant did not provide corroborating documentary evidence to support her assertions in her Answer or Response of trying to limit her financial obligations. The only evidence of her engaging law enforcement for the acts she alleged that her estranged husband had committed is dated after the FORM was issued.

The evidence is insufficient to mitigate the security concerns. I am unable to find that Applicant acted responsibly under the circumstances. Her financial issues are recent and ongoing. They continue to cast doubt on her current reliability, trustworthiness, and good judgment. None of the other mitigating conditions are applicable.

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). Because Applicant 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). Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant has not mitigated the financial considerations security concerns. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards establishment of a track record of paying or resolving her debts, she may well be able to demonstrate persuasive evidence of her eligibility and suitability for a security clearance.

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 did not mitigate the financial considerations security concerns.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.c, 1.e-1.g, 1.i:	Against Applicant
Subparagraphs 1.d, 1.h:	For Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Charles C. Hale
Administrative Judge