



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 23-01233
)
 Applicant for Security Clearance)

Appearances

For Government: John Lynch, Esq., Department Counsel
For Applicant: *Pro se*

05/15/2024

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 April 30, 2018, and received a clearance in March 2019. On June 26, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) sent her a Statement of Reasons alleging security concerns under Guideline F. The DCSA 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), which became effective on June 8, 2017.

Applicant answered the SOR on July 11, 2023, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on September 1, 2023,

and the case was assigned to me on February 29, 2024. On March 15, 2024, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on April 16, 2024. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or submit any documentary evidence.¹ I kept the record open until April 26, 2024, to enable her to submit additional documentary evidence. She timely submitted Applicant Exhibits (AX A, B, and C), which were admitted without objection. DOHA received the transcript (Tr.) on April 25, 2024. The record closed on April 26, 2024.

Findings of Fact

In Applicant's answer to the SOR, she admitted all the allegations. Her admissions are incorporated in my findings of fact.

Applicant is a 35-year-old security clearance background investigator employed by defense contractors since May 2018. (Tr. 22) She worked in non-federal jobs from December 2004 to April 2010, was unemployed from April 2010 to April 2012, employed in non-federal jobs from May 2012, unemployed from June 2013 to February 2014, and employed in non-federal jobs from March 2014 to May 2018. She married in July 2008 and divorced in July 2016. She has two children, ages 11 and 13. The father of her children pays child support "on and off," but enforcement of the court order is difficult because he moves frequently. (Tr. 23-24) She obtained a bachelor's degree in August 2010.

Before Applicant received a security clearance in March 2019, she was interviewed by a security investigator in May and August 2018 about several delinquent debts. The summary of the first interview noted that she "was unable to provide any necessary financial documents after the 5 day grace period to provide documents." The second interview also included questions about delinquent debts. (GX 4 at 4-7) She received a security clearance in March 2019. (Tr. 22)

The SOR alleges seven delinquent debts totaling about \$23,243, which are reflected in credit reports from May 2018 (GX 3) and February 2023 (GX 2). A credit report from April 2024 reflected that the total amount of past-due accounts had increased to about \$43,254. (GX 5)

In August 2022, Applicant signed a contract with a debt-negotiation law firm to resolve six of the seven debts alleged in the SOR. (SOR Answer) The debt alleged in SOR ¶ 1.b was not included in the contract. Pursuant to her contract, she has been paying \$481 per month to the law firm by direct debit from her credit-card account since she signed the contract. She has not missed any payments. The monthly payment includes a

¹The transcript exhibit list erroneously includes Applicant Exhibit A and B. Applicant did not submit any documentary evidence at the hearing. She submitted Applicant Exhibit (AX) A after the hearing adjourned on April 16, 2024; AX B on April 22, 2024; and AX C on April 26, 2024. They were admitted without objection.

\$100 retainer fee, a \$220 service fee, a \$59 legal administration fee, and a \$11 banking fee, with the remainder deposited in “settlement reserves.” The \$100 retainer fee ended after ten months, and the \$100 fee now is deposited in the settlement reserves. The \$220 service fee will end after 22 months in the program and the \$220 will be deposited in the settlement reserves. The contract provides for monthly payments for 51 months, with the last payment on October 30, 2026.

Applicant testified that she fell behind on her debt payments because she was helping her parents pay their home mortgage loan and giving cash to her mother. When she had insufficient funds in her checking account, she used credit cards for living expenses, and her amount of debt snowballed until she could not pay all her debts. (Tr. 26)

The evidence concerning the status of the debts alleged in the SOR is summarized below.

SOR ¶ 1.a: Bank debt charged off in January 2023 for \$9,016. This debt was incurred in January 2022. (GX 5 at 11) It is included in Applicant’s debt-resolution plan. She submitted an account statement reflecting that a payment plan was active, but it does not reflect the terms of the payment plan. (AX A at 14) On April 26, 2024, the day the record closed, she submitted a copy of an email stating that the debt had been settled, but that a settlement letter might not be available for up to 25 days. (AX C)

SOR ¶ 1.b: Car loan charged off in July 2022 for \$9,037. This debt was not included in Applicant’s plan. It was incurred in July 2021, when Applicant cosigned a loan for a casual friend whom she did not know well. She knew the friend had bad credit, and she offered to cosign a loan application. (Tr. 30-31) When the friend failed to make the payments, she made them for one or two months. After she became uncomfortable with the arrangement, she asked the friend for a written document reflecting their agreement. (Tr. 33-34) The friend gave her a written promise to hold her harmless if he failed to make the payments. He promised to refinance the car by March 2022, and he authorized her to repossess the car if he failed to make the payments. (Answer to SOR) She has lost contact with the friend and does not know where he lives. (Tr. 31) The debt is not resolved. She did not know that the debt was delinquent until she saw it on her credit report. (Tr. 29-30) She testified that she disputed the debt, but she did not provide documentary evidence of her dispute or the basis for it.

SOR ¶ 1.c: Credit-card account charged off in September 2022 for \$8,049. Applicant opened this account in August 2017. It is included in her payment plan. Her account statement from the plan does not reflect any payments, but it reflects that, as of April 16, 2024, the debt was in litigation and not resolved. (AX A at 1, 14).

SOR ¶ 1.d: Credit-card account past due for \$420, with a balance of \$2,080, charged off in October 2022 for \$2,080. Applicant opened this account in June 2021. It was charged off in October 2022. It is included in her payment plan. (AX A at 14) On January 2, 2024, she settled this debt for \$980, agreeing to make monthly payments of

\$27 until December 2026. (AX B at 7-8) The April 2024 credit report reflects that the last payment was made in March 2024, indicating that she is complying with her payment agreement. (GX 5 at 6)

SOR ¶ 1.e: Credit-card account 120 days past due for \$1,180, with balance of \$6,954. Applicant opened this account in February 2017. It was charged off for \$6,954 in September 2022. (GX 5 at 5) It is reflected in Applicant's payment plan under another creditor's name. Her account statement reflects, "offer under review." (AX A at 14) It is not resolved.

SOR ¶ 1.f: Bank debt 120 days past due for \$1,061, with balance of \$8,264. Applicant opened this account in February 2022. It was charged off for \$8,264 in September 2022. (GX 5 at 11) It is included in Applicant's payment plan under another creditor's name. Her account statement reflects that the debt is in "pre-settlement." (AX A at 14) It is not resolved.

SOR ¶ 1.g: Bank debt 120 days past due for \$442, with balance of \$2,009. Applicant opened this account in February 2022. It was charged off for \$2,037 in September 2022. (GX 5 at 7) It was included in Applicant's plan. (AX A at 14) On May 1, 2023, Applicant settled this debt for \$1,121, agreeing to make monthly payments of \$70 until August 2024. (AX B at 5-6) The April 2024 credit report reflects that the last payment was made in February 2024, indicating the she is complying with her payment agreement. (GX 5 at 7)

Applicant's gross salary for 2023 was about \$87,135, which was a substantial raise from her salary in 2022, which was \$50,595. (Tr. 25) She has lived with her parents since January 2019, and pays them monthly rent of \$1,000. She has about \$2,000 in savings. (Tr. 41) She pays her mother's cellphone bill and helps with other household expenses. Both of her parents are employed. (Tr. 27-28) She did not provide any further information about her recurring living expenses or her family's financial needs. She does not have a written budget. (Tr. 43)

Applicant has taken vacations out of the country four times in the last five years. (Tr. 41) The record does not reflect the costs or dates of those vacations. She testified that she recently purchased a new compact SUV when her 13-year-old vehicle was no longer serviceable, and her new car loan is for about \$34,000. (Tr. 42-43) This debt is not reflected on the credit reports admitted in evidence.

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* 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* 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 establishes the following 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(e): consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators.

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(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's delinquent debts are recent, numerous, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is not established. Applicant's finances appear to have been under control until she opened the credit-card account alleged in SOR ¶ 1.d in June 2021; cosigned the friend's car loan application alleged in SOR ¶ 1.b in July 2021, opened the account alleged in SOR ¶ 1.f in February 2022; and opened the account alleged in SOR ¶ 1.g in February 2022. The debt in SOR ¶ 1.b was charged off in July 2022. She hired the debt-negotiation firm in August 2022. The debts in SOR ¶¶ 1.e, 1.f, and 1.g were charged off in September 2022. The debt alleged in SOR ¶ 1.d was charged off in October 2022, and the debt alleged in SOR ¶ 1.a was charged off in January 2023.

The delinquent car loan alleged in SOR ¶ 1.b was not the result of a condition largely beyond her control. It was the product of a foolish and deliberate decision to cosign a loan for a friend with bad credit. It was not the type of situation contemplated by this mitigating condition. Applicant submitted no evidence of any other conditions largely beyond her control. Her financial assistance to her parents, who are both gainfully employed, was voluntary and well-meaning, but not a condition beyond her control.

AG ¶ 20(c) is not established. Applicant submitted no evidence that the debt-negotiation law firm provides the type of financial counseling contemplated by this mitigating condition.

AG ¶ 20(d) is established for the debts alleged in SOR ¶¶ 1.d and 1.g, which are being resolved. Although Applicant asserted in a post-hearing email that the debt alleged in SOR ¶ 1.a has been settled, she provided no documentary evidence of the settlement. An applicant who claims that a debt has been resolved is expected to provide documentary evidence to support that claim. See ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016).

This mitigating condition is not established for the debt alleged in SOR ¶ 1.b, which is not included in her debt-negotiation plan and is not being resolved by any means outside the plan. It is not established for the debts alleged in SOR ¶¶ 1.c, 1.e, and 1.f,

which are included in the debt-negotiation plan but have not been settled or included in any payment plans.

Even if the debt alleged in SOR ¶ 1.a is eventually settled, as Applicant claimed, that fact will not be sufficient to mitigate her long history of irresponsible spending. The establishment of some mitigating evidence does not compel a favorable security-clearance decision. ISCR Case No. 11-14784 (App. Bd. Jan. 17, 2014). Even if delinquent debts are eventually settled, the circumstances underlying the debts are relevant for what they may reveal about the applicant's eligibility for a clearance. ISCR Case No. 14-02394 (App. Bd. Aug. 17, 2015) In this case, the evidence reveals a pattern of irresponsible conduct that began almost three years ago and resulted in the debts alleged in the SOR.

AG ¶ 20(e) is not established. Although Applicant testified that she disputed the debt alleged in SOR ¶ 1.b, she submitted no documentation of a dispute, and she did not articulate a reasonable basis for disputing the debt.

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). 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 delinquent debts.

Formal Findings

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

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

Subparagraphs 1.a-1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e and 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to continue Applicant's eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman
Administrative Judge