



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 23-00909
)	
Applicant for Security Clearance)	

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: *Pro se*

06/13/2024

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 (SCA) on October 14, 2022. On June 8, 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 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 June 23, 2023, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on September 26,

2023. On a date not reflected in the record, Department Counsel amended the SOR by adding an allegation that Applicant filed a Chapter 13 bankruptcy petition in June 2023. Applicant admitted the additional allegation on October 27, 2023.

The case was assigned to me on April 2, 2024. On April 8, 2024, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on May 7, 2024. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 8 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or submit any documentary evidence. I kept the record open until May 17, 2024, to enable her to submit documentary evidence. She timely submitted AX A through GG, which were admitted without objection. On May 20, 2024, she submitted AX HH. Department Counsel did not object to the untimely submission, and it was admitted in evidence. DOHA received the transcript (Tr.) on May 16, 2024. The record closed on May 20, 2024.

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 46-year-old deployment coordinator employed by a federal contractor since May 2021. She has a high school education. She married in May 1997 and has no children. She received a security clearance in December 2016. Her SCA reflects unemployment from June to November 2006, February to April 2009, November 2010 to January 2011, April to June 2013, January to March 2016, and June 2020 to May 2021.

In February 1999, Applicant and her husband filed a Chapter 7 bankruptcy petition and received a discharge in May 1999. (GX 5) The record does not reflect the dollar amount of debts that were discharged. Applicant testified that this bankruptcy was the result of immaturity and being "stupid kids." (Tr. 18)

In January 2009, Applicant and her husband filed a Chapter 7 bankruptcy petition and received a discharge in April 2009. (GX 4) Debts totaling about \$46,538 were discharged. (GX 8 at 2.) Applicant testified that the delinquent debts that were discharged were incurred because Applicant and her husband were both employed by a mortgage company that failed. Her SCA reflects that she was unemployed from June to November 2006. She testified that her husband was unemployed for about another year after she returned to the workforce. (Tr. 18)

Applicant was employed by a defense contractor when the COVID pandemic began. She testified that she became seriously ill at the beginning of the pandemic. (Tr. 15) Her SCA reflects that she was unemployed from June 2020 to May 2021, that she left her job by mutual agreement following notice of unsatisfactory performance, and that her unsatisfactory performance was the result of absences from work due to illness. (GX 1 at 12) She testified that she was hospitalized for a month after being laid off with serious

issues involving her kidneys and liver. (Tr. 15) She submitted no documentary evidence reflecting her medical issues. However, Department Counsel did not challenge her testimony regarding the medical issues, and I have accepted her testimony regarding her medical issues in my findings of fact.

During a personal subject interview in November 2022, Applicant told a security investigator that she took a \$45,000 cut in annual pay when she began working for her current employer. She told the investigator that she had depleted her savings and was already delinquent on numerous debts at the time of the interview. (GX 8 at 3)

On June 30, 2023, Applicant and her husband filed a petition for Chapter 13 bankruptcy. She submitted no evidence of contacts with creditors or actions to attempt resolution of her debts before resorting to bankruptcy. The petition listed six healthcare debts for \$100 or less and totaling \$510; one healthcare debt for \$961; sixteen credit-card debts totaling \$77,472; two personal loans totaling \$28,655; and four collection accounts totaling \$6,793. It also reflects a charged-off debt of \$3,034 for a travel trailer. The debt worksheet submitted by Applicant to the bankruptcy attorney reflects that all the credit cards were Applicant's and were not her husband's accounts or joint accounts. (GX 6 at 27-30) Applicant and her husband indicated in their petition that they would continue payments on their home mortgage loan and two vehicles (model years 2015 and 2018). They reported their combined monthly net income of \$7,250 and monthly expenses of \$5,337, leaving a net monthly remainder of \$1,913. (GX 3 at 36)

Their bankruptcy petition was granted and a five-year payment plan was approved. Applicant and her husband began making monthly payments of \$1,905 in July 2023. The payments increased to \$2,255 in November 2023. (AX G; AX H) They had made ten payments as of the date of the hearing. (Answer to SOR; Tr. 23)

Applicant submitted an updated personal financial statement after the hearing. It reflects net family income of \$8,930 per month; monthly expenses of \$2,505; and debt payments of \$4,515 per month, leaving a net monthly remainder of \$1,910. The debt payments include \$1,350 for the home mortgage loan, \$420 and \$480 for two car payments, and \$2,265¹ to the bankruptcy trustee. (AX D; AX H) They have been making these payments as agreed. (AX I-GG)

Three of Applicant's coworkers submitted statements supporting her application to continue her security clearance. The letters reflect that she is considered as a compassionate, sincere, trustworthy, and hard-working member of their team. (AX E; AX F; AX HH)

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

¹ This amount is inconsistent with the court records, which reflect a monthly payment of \$2,255.

“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).

Applicant's admissions and the evidence submitted at the hearing 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 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; 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 are recent and numerous. Applicant provided no evidence of the specific circumstances that caused her to accumulate the delinquent debts reflected in her most recent bankruptcy petition.

AG ¶ 20(b) is not established. Applicant has been employed since May 2021. She submitted no evidence of conditions beyond her control that have occurred since she returned to work.

AG ¶ 20(c) is not established. Applicant completed the financial counseling required by the bankruptcy court, but she has completed only ten months of a five-year plan. Her track record of three bankruptcy filings does not inspire confidence. The fact that she has been employed since May 2021 but accumulated more than \$116,000 in delinquent consumer debt strongly suggests that she has not been living within her means. While her ten months of timely payments is encouraging, it falls short of "clear indications" that her financial problems are under control. I am not confident that she will adhere to the bankruptcy payment plan if the pressure of qualifying for a clearance is lifted.

AG ¶ 20(d) is not established. Applicant filed her bankruptcy petition on June 30, 2023, shortly after she answered the SOR on June 23, 2023. The timing of her bankruptcy petition indicates that it was prompted by receipt of the SOR. Payment of debts mitigated by the pressure of qualifying for a security clearance is not a "good faith effort." Applicants who begin to address their security-significant conduct only when their personal interests are at stake may be lacking in judgment and reliability. ISCR Case No. 16-01211 (App. Bd. May 30, 2018).

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 history of 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.ii:

Against 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