



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 23-02708
)	
Applicant for Security Clearance)	

Appearances

For Government: William H. Miller, Esq., Department Counsel
For Applicant: *Pro Se*

07/03/2024

Decision

HOGAN, Erin C., 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 February 15, 2023. On November 29, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline F. The CAS acted under Executive Order (EO) 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) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on February 6, 2024, and requested a decision based on the written record in lieu of a hearing. On March 7, 2024, the Government sent Applicant a complete copy of its written case, a file of relevant material (FORM), including pleadings and evidentiary documents identified as Items 1 through 7. He was given an

opportunity to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation to the Government's evidence. He received the FORM on April 16, 2024. He was given 30 days to submit a Response to the FORM. He did not submit a response. The case was forwarded to the Defense Office of Hearings and Appeals (DOHA) Hearing Office on May 28, 2024, and assigned to me on June 7, 2024.

Evidentiary Matters

Items 1 and 2 contain the pleadings in the case and are part of the record. Items 3 through 7 are admitted into evidence.

Findings of Fact

Applicant, age 28, is currently employed with a Department of Defense (DOD) contractor since February 2023. Her highest level of education is an associate's degree. She is unmarried and has three minor children. She has never served in the military. (Item 3)

The SOR alleges Applicant has 10 delinquent debts, an approximate total of \$49,481. The SOR debts include: a \$5,924 delinquent credit card account that was charged off (SOR ¶ 1.a: Item 6 at 2; Item 7 at 2); a \$2,105 delinquent credit account that was charged off (SOR ¶ 1.b: Item 6 at 7; Item 7 at 2); a \$1,570 delinquent credit card account that was charged off (SOR ¶ 1.c: Item 6 at 5; Item 7 at 2); a \$1,449 delinquent credit card account that was placed for collection (SOR ¶ 1.d: Item 7 at 3); and a \$1,170 delinquent account that was charged off. (SOR ¶ 1.e: Item 8 at 3)

Additional delinquent accounts include: a \$905 delinquent credit card account that was charged off (SOR ¶ 1.f: Item 6 at 5; Item 7 at 3); a \$30,024 automobile loan that was charged off (SOR ¶ 1.g: Item 6 at 3; Item 7 at 3); a \$3,664 delinquent account (SOR ¶ 1.h: Item 6 at 3; Item 7 at 3); a \$2,381 account owed to a university that was placed for collection (SOR ¶ 1.i: Item 6 at 2); and an outstanding state tax lien entered against Applicant in 2023 for tax year 2022. (SOR ¶ 1.j: Item 5)

In her response to the SOR, Applicant admits SOR ¶¶ 1.b, 1.c, 1.e, 1.f, and 1.h – 1.j. She denies SOR ¶¶ 1.a, 1.d, and 1.g. (Item 2) She disputes the largest debt which is a \$30,000 car loan that she and her then boyfriend received to purchase a car. The loan was in both of their names, both were jointly liable if the loan went into default. Her former boyfriend would come to get the car to use, but he would not make the car payments. After they split up, he possessed the car, but did not make payments. The car was repossessed. Applicant refuses to pay the debt because she did not have possession of the car. (Item 4 at 3)

Applicant did not provide receipts or other documentation showing the debts alleged in the SOR were resolved. They remain outstanding.

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.” (*Egan* 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.” (EO 10865 § 2)

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. 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.” (EO 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. (*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. 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. (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; AG ¶ 2(b))

Analysis

Guideline F: Financial Considerations

The 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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. 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. (ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

AG ¶ 19 notes several disqualifying conditions that could raise security concerns. The disqualifying conditions that are relevant to Applicant's case include:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

AG ¶ 19(a) and AG ¶ 19(c) apply to Applicant's case. The SOR alleges ten delinquent debts. The total approximate balance of the delinquent debt is over \$49,480.

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

- (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;

(c) the individual has received or is receiving financial counseling for the problems and from a legitimate and credible sources, such as a non-profit counseling service and there are clear indications that the problem is being resolved or under control;

(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.

None of the mitigating conditions apply. All of the alleged delinquent debts remain outstanding. Applicant provided no evidence of circumstances beyond her control adversely affected her ability to pay her debts. There is no evidence that she attended financial counseling. There is no evidence that she is making a good-faith effort to resolve her debts. For the debts she has disputed, there is no evidence that she has a reasonable basis to dispute the debts and she provided no evidence that she took steps to dispute any of the debts.

Overall, she failed to meet her burden of proof to mitigate the concerns raised under Financial Considerations.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the adjudicative guidelines, each of which is to be evaluated in the context of the whole person. 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 I have considered the factors in AG ¶ 2(d). I considered Applicant’s employment with a DOD contractor since February 2023. I considered Applicant is a single mother with three children. I also considered that Applicant incurred significant debt. There is nothing in the record indicating Applicant took any actions to resolve her debts. After weighing the disqualifying and mitigating conditions under Guideline F and evaluating all the evidence in the context of the whole person, I conclude that Applicant has not mitigated the security concerns raised under financial considerations.

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.j:	Against Applicant

Conclusion

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

Erin C. Hogan
Administrative Judge