



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 23-02159
)
 Applicant for Security Clearance)

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: *Pro se*

10/04/2024

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 June 23, 2022. On February 20, 2024, 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 March 14, 2024, and requested a decision on the written record in lieu of a hearing. Department Counsel submitted the Government's

written case on May 13, 2024. On May 16, 2024, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. She received the FORM on July 9, 2024, but did not submit any comments or additional information. The FORM consists of seven items. FORM Items 1 and 2 are the pleadings in the case. FORM Items 3 through 7 are the evidence submitted by Department Counsel in support of the allegations in the SOR. FORM Items 3 through 7 are admitted in evidence. The case was assigned to me on September 9, 2024.

Findings of Fact

In Applicant's answer to the SOR, she admitted the allegations in SOR ¶¶ 1.a-1.h and 1.j-1.-o. She denied the allegations in SOR ¶¶ 1.i, 1.p, and 1.q. Her admissions are incorporated in my findings of fact.

Applicant is a 30-year-old senior technician employed by a federal contractor since June 2022. She attended college from August 2012 to October 2015 but did not receive a degree. She married in June 2019 and has a four-year-old son and a two-year-old daughter. (FORM Item 3; FORM Item 4) She has never held a security clearance.

Applicant was employed as a live-in nanny from July 2015 to April 2017, and as a retail sales associate from October 2014 to October 2017. She worked as a live-in nanny from October 2017 until June 2019, when her husband, an active-duty soldier, was transferred to a duty station in another state. She was unemployed from June 2019 to November 2021. She worked for a non-federal government agency from November 2021 to June 2022, when she was hired by her current employer.

The SOR alleges 17 delinquent debts. The debts are reflected in credit reports from February 2024 (FORM Item 5), May 2023 (FORM Item 6) and July 2022 (FORM Item 7). Applicant was questioned about some of the debts during interviews with a security investigator in September and October 2022. (FORM Item 4) During the September 2022 interview, she stated that her financial problems were improving because she was employed by a federal contractor and her husband had received financial counseling from the Army, which they apparently shared. (FORM Item 4, subject interview at 6)

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

SOR ¶ 1.a: medical debt placed for collection of \$757. This debt became delinquent in December 2021 and was referred for collection in September 2022. (FORM Item 6 at 3) Applicant was not questioned about it during her security interviews. This debt is not resolved.

SOR ¶¶ 1.b-1.h and 1.j: credit cards and consumer debts charged off for \$15,844; \$476; \$282; \$1,237; \$1,573; \$66; \$1,573; and \$1,329, respectively. The record reflects no action to resolve any of these debts. They are not resolved.

SOR ¶ 1.i: private student loan placed for collection of \$4,270. The May 2023 credit report reflects that this debt was placed for collection in April 2016. (FORM Item 6 at 2) In her answer to the SOR, Applicant denied this debt, asserted that it was transferred to a federal loan servicer that offers repayment options, and she was current with her payments. She submitted no documentation to support her assertion.

SOR ¶ 1.k: fee for damage to an apartment placed for collection of \$757. During Appellant's interview by a security investigator in September 2022, she claimed that the amount of damage was less than claimed by the landlord. She did not submit any documentation to support her claim. This debt is not resolved. (Interview at 6)

SOR ¶¶ 1.l-1.o: credit-cards and consumer debts placed for collection of \$681; \$522; \$456; and \$345, respectively. The record reflects no action to resolve these debts.

SOR ¶ 1.p: delinquent federal student loans totaling \$15,270. Applicant stopped paying her student loans in 2017 because her income was too low. (Interview at 8) The February 2024 credit report reflects a zero balance for all her student loans and that they were transferred or sold. Her student loans were delinquent before the COVID forbearance went into effect.

SOR ¶ 1.q: federal income tax debt for tax years 2018, 2019, 2021, and 2022, totaling \$18,156. During Applicant's September 2022 interview by a security investigator, she explained that she did not know how to handle her federal income taxes for her employment as a live-in nanny. (Interview at 4-5) In her answer to the SOR, Applicant denied this allegation and stated that she was on a payment plan. IRS records reflect that she owes federal taxes of \$8,188 for tax year 2018, no taxes for 2019 and 2020, and \$4,364 for tax year 2021. Her federal tax return for 2022 reflects that she owes \$5,604 for that tax year. An IRS record reflects that in June, October, and November 2023, she made three payments of \$125 for tax year 2018, and four more \$125 payments were being processed. (FORM Item 4)

In Applicant's response to DOHA interrogatories in December 2023, Applicant submitted a personal financial statement (PFS) reflecting net family income of \$10,225; monthly expenses of \$8,600; and monthly debt payments of \$841, leaving a net monthly remainder of \$784. The monthly debt payments include payment of \$100 per month for student loans and \$125 per month on the federal tax debt. There is no evidence that Applicant has begun making the monthly student-loan payments. However, the IRS records reflect that she is making the monthly \$125 payments. (FORM Item 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* at 531. Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” *See* ISCR Case No. 17-04166 at 3 (App. Bd. Mar. 21, 2019) It is “less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “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. 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 in the FORM establish 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(f): failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

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(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶ 20(a) is not established. Applicant's delinquent debts are numerous, ongoing, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is not fully established. Applicant encountered disruption of her employment and subsequent unemployment when her active-duty husband was reassigned. However, she has not acted responsibly. She presented no evidence of contacts with creditors or exploring ways to resolve the debts.

AG ¶ 20(c) is not fully established. Applicant's husband received financial counseling while on active duty that they apparently shared, but, except for the tax debt, there are no "clear indications" that the financial delinquencies are being resolved.

AG ¶¶ 20(d) and 20(g) are established for the tax debt. The record reflects that Applicant has a payment agreement for \$125 per month and has made several of the agreed payments.

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 question her or 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 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.p: **Against Applicant**

Subparagraph 1.q: **For 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