



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



In the matter of:)	
)	
)	ISCR Case No. 23-02861
)	
Applicant for Security Clearance)	

Appearances

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

09/16/2024

Decision

CERVI, Gregg A., 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 May 17, 2023. On March 18, 2024, the Defense Counterintelligence and Security Agency, Consolidated Adjudication Services (DCSA CAS) (now known as the DCSA Adjudication and Vetting Services (AVS)), sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DCSA AVS 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 (SEAD) 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR and requested a decision on the written record without a hearing. Department Counsel submitted the Government’s written case on April

26, 2024. On the same date, 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 May 2, 2024, but did not submit a response or object to the Government's exhibits. The case was assigned to me on September 9, 2024. The FORM identified the SOR and Applicant's Answer to the SOR as GE 1 and 2. Government Exhibits (GE) 3-7 are admitted into evidence without objection.

Findings of Fact

Applicant is a 41-year-old contract administrator, formerly employed by a defense contractor from 2018 to March 2023. She is currently unemployed and sponsored for a security clearance by another defense contractor. She earned a bachelor's degree in 2006 and a master's degree in 2007. She married in 2014 and has two children.

The SOR alleges under Guideline F that Applicant is delinquent on 10 credit card and collection accounts totaling about \$21,000. In her answer to the SOR, Applicant admitted the SOR allegations and provided an explanation. The alleged debts are supported by evidence in the record. In her October 2023 response to Government interrogatories, Applicant confirmed that she has not resolved the SOR debts and she has a negative net monthly remainder after expenses. (Item 4)

Applicant stated in her answer to the SOR that she incurred debts over six years ago as a result of irresponsible behavior. She experienced financial hardship when she left her employment due to a high-risk pregnancy that required her to be on bedrest for a substantial period of time. In approximately 2017 or 2018, she used all of her resources and stopped paying on credit cards. Although she secured new employment in January 2018, she did not earn enough to meet her expenses. She argues that since 2018, she rebuilt her credit worthiness and credit score. She asserts that if she is hired by her current sponsor, she will be able to provide for her family and resolve her financial obligations. (Item 2)

I am not aware of any financial counseling Applicant may have received or professional assistance with debt resolution, although Applicant stated that she is following a budget. (Item 7)

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 a 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. . . .

The relevant disqualifying conditions under AG ¶ 19 include:

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

Applicant incurred delinquent debts and collection accounts totaling about \$21,000. The documentary evidence in the record and Applicant's admissions are sufficient to establish the disqualifying conditions in AG ¶¶ 19(a) and (c).

The following mitigating conditions under AG ¶ 20 are potentially 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;
- (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;
- (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 above mitigating conditions are fully established. Applicant accumulated delinquent debts, largely due to circumstances outside of her control. However, she has neither taken action to address her debts nor shown that they are resolved or in the process of being resolved.

The Appeal Board has often stated that a security clearance adjudication is not a proceeding aimed at collecting an applicant's debts. Rather, it is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness. *E.g.*, ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). The scope of Guideline F encompasses not only an Applicant's current financial situation, but also extends to his or her financial history. As a general rule, an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. *E.g.*, ISCR Case No. 09-08462 at 4 (App. Bd. May 31, 2011). However, an applicant must act responsibly given his or her circumstances and develop a reasonable plan for repayment, accompanied by concomitant conduct even if it may only provide for the payment of debts one at a time. ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008). Moreover, intentions to resolve financial problems in the future are not a substitute for a track record of debt repayment or other responsible approaches. ISCR Case No. 11-14570 at 3 (App. Bd. Oct. 23, 2013).

Applicant's inability or reluctance to address her long past-due accounts raise questions about her overall financial responsibility. There is insufficient evidence to determine that Applicant's financial problems are being resolved or that she can obtain and maintain a measure of financial responsibility. No evidence of formal financial counseling was submitted. Her financial issues continue to cast doubt on her current reliability, trustworthiness, and good judgment. No mitigating conditions fully apply.

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). I have considered Applicant's health concerns that substantially impacted her ability to maintain employment and contribute toward financial security. Because she requested a determination on the record without a hearing, I had no opportunity to evaluate her credibility and sincerity based on demeanor or to question her about the circumstances that led to her debts or any action she may have taken to address them. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). However, the evidence persuasively shows that Applicant has not made substantial efforts to resolve her past-due debts and allowed them to remain unpaid for a significant period of time.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person, including exceptions available under Appendix C of SEAD 4. I conclude Applicant has not mitigated the security concerns raised by her financial delinquencies.

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.j:

Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to grant Applicant's eligibility for access to classified information. Clearance is denied.

Gregg A. Cervi
Administrative Judge