



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



In the matter of:)
)
 [Name Redacted]) ISCR Case No. 24-00853
)
 Applicant for Security Clearance)

Appearances

For Government: A.H. Henderson, Esq., Department Counsel
For Applicant: *Pro Se*

01/29/2025

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 October 16, 2023. On July 29, 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 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 August 13, 2024, and requested a decision based on the written record in lieu of a hearing. On September 11, 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 8. She was given an

opportunity to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation to the Government's evidence. She received the FORM on September 19, 2024. She was given 30 days to submit a Response to the FORM. She did not submit a response. The case was forwarded to the DOHA Hearing Office on November 4, 2024, and assigned to me on December 5, 2024.

Evidentiary Matters

Item 1 contains the pleadings in the case and is part of the record. Items 2 through 8 are admitted into evidence.

Findings of Fact

Applicant, age 48, is an employee of a DOD contractor since 2023 who is seeking a security clearance. Her highest level of education is a bachelor's degree. She divorced in 2022 and has two children. (Item 2)

Applicant submitted a security clearance application (SCA) on October 16, 2023. (Item 2) A subsequent background investigation revealed the Applicant had three delinquent accounts, for an approximate total of \$34,822. The SOR debts include: a \$20,210 charged-off credit card account that was delinquent since 2017 (SOR ¶ 1.a: Item 4 at 2; Item 5 at 4; Item 6 at 3; Item 7 at 2); a \$920 medical account that was placed for collection in 2020 (SOR ¶ 1.b: Item 4 at 2; Item 5 at 4; Item 7 at 2); and a \$13,692 charged-off account that was delinquent since Fall 2017. (SOR ¶ 1.c: Item 5 at 6; Item 6 at 3)

In her response to the SOR, Applicant admits all the SOR allegations, but states the debts no longer appear on her credit report. (Item 1, Response to SOR)

Applicant was interviewed during a previous security clearance background investigation on January 9, 2019. She acknowledged the debts alleged in SOR ¶¶ 1.a and 1.c. She told that investigator that she would make arrangements to settle or close these debts as soon as she was able to afford it. (Item 4; Item 5 at 4, 6-7) She took no steps to resolve any of these accounts. Instead, she waited until they were removed from her credit report after seven years as required under the Fair Credit Reporting Act.

Applicant mentioned in response to a DOHA Interrogatory, dated March 15, 2024, that:

4. Please provide a detailed explanation describing the circumstances that caused the accounts listed above to become delinquent.

In 2016 my husband and I were late on a couple of our credit card payments which caused our minimum payment to increase to an amount that was unmanageable with our limited income. The medical debt went into collections before I even knew it existed. I had received several bills from various providers for one procedure and thought they were paid.

(Item 4 at 5)

5. Please provide any additional information, facts, or circumstances you believe could assist in if it is clearly consistent with the national interest to grant or continue your position of national security.

I would like to settle these debts, but I haven't been able to recently. Three years ago I decided to divorce my husband. In order to save my kids and I from more emotional abuse, I ended up giving him the house which he owned before we married. During our marriage, I was the only one with good enough credit to have credit cards, and so I retained all that when we separated. I plan on contacting these institutions soon in order to settle these debts as I was recently promoted and have received a raise that should enable me to do so.

(Item 4 at 5)

In response to the March 2024 interrogatories, Applicant provided a copy of her budget. Her net monthly income was \$3,070. Her net monthly expenses were \$2,724. She had \$144 left over each month after expenses. (Item 4 at 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." (*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 delinquent debts alleged in SOR ¶¶ 1.a – 1.g. The total approximate balance of the delinquent debt is over \$34,822.

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 in 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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) does not apply because Applicant's financial problems are ongoing.

AG ¶ 20(b) applies, in part, because Applicant divorced her husband around 2021. She allowed him to keep the house and she accepted responsibility for the credit cards, which does not appear to be a fair property settlement. The divorce was a circumstance beyond her control. However, the mitigating condition is given less weight because I cannot conclude she acted responsibly under the circumstances since she failed to show any attempt to resolve her delinquent debts.

AG ¶ 20(d) does not apply because Applicant did not initiate a good-faith effort to repay or resolve her delinquent debts. Instead, she passively waited until her debts were removed from her credit reports after seven years as required by the Fair Credit Reporting Act. The DOHA Appeal Board has long held that an Administrative Judge is not precluded from considering the security significance of an applicant's delinquent debts merely because those debts are barred by a statute of limitations. (ISCR Case No. 00-0423 (June 8, 2001). This also applies in cases where an applicant passively waits for their debts to be removed from their credit report after seven years rather than taking steps to resolve them.

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 2023. I considered her divorce and that she is a mother of two sons. However, she failed to show that she made any attempts to resolve her delinquent accounts. She no longer feels responsible for the debts because they are no longer on her credit report. 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.c: 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