



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 15-01239
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

10/28/2016

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 12, 2014. On August 27, 2015, the Department of Defense (DOD) sent her a Statement of Reasons (SOR), alleging security concerns under Guideline F. The DOD acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by DOD on September 1, 2006. The guidelines are codified in 32 C.F.R. § 154, Appendix H (2006), and they replace the guidelines in Enclosure 2 to the Directive.

Applicant answered the SOR on November 24, 2015, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on February 11, 2016. On the same day, 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. The FORM included the SOR (Item 1), Applicant's answer to the SOR (Item 4), Applicant's SCA (Item 5), court records documenting the judgment entered against Applicant and alleged in SOR ¶ 1.a (Item 6), two credit bureau reports (CBRs) from August 2015 (Item 7) and July 2014 (Item 8), documents pertaining to Applicant's Chapter 7 bankruptcy (Item 9), and a summary of Applicant's personal subject interviews (PSI) by a security investigator in July and August 2014 (Item 10). She received the FORM on February 16, 2016, and did not respond. The case was assigned to me on October 19, 2016.

Evidentiary Issue

Item 10, the summary of three interviews conducted during Applicant's background investigation, was not authenticated as required by Directive ¶ E3.1.20. However, she was informed by Department Counsel that she was entitled to make corrections, additions, deletions, and updates to Item 10. She was also informed that she was entitled to object to consideration of Item 10 on the ground that it was not authenticated. Her failure to respond to the FORM constitutes a waiver of any objection to Item 10. See ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016) ("Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive.")

Findings of Fact¹

In her answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a, 1.c, and 1.f. She denied SOR ¶¶ 1.b, 1.d, and 1.e. Her admissions are incorporated in my findings of fact.

Applicant is a 46-year-old project administrator employed by a federal contractor since July 2008. She has a high school education. She married in July 1989 and has four adult children. She has never held a security clearance.

Applicant and her husband filed a Chapter 7 bankruptcy petition in April 2000. One of their daughters was bitten in the face by a neighbor's dog. The neighbor did not have homeowner's insurance, and they could not afford to pay their daughter's medical expenses. (Item 10 at 7.) The bankruptcy petition included the fees for an emergency physician, a plastic surgeon, a hospital bill and several related medical expenses. It also included several credit card accounts that were about 60 days delinquent. It did not include their residence or their two automobiles. (Item 9; Item 10 at 7.) They received a discharge in July 2000. (Item 9.) The bankruptcy is alleged in SOR ¶ 1.f.

¹ Applicant's personal information is extracted from her security clearance application (Item 5) unless otherwise indicated by a parenthetical citation to the record.

In addition to the bankruptcy alleged in SOR ¶ 1.f, the SOR alleges five delinquent debts that are reflected in her CBRs. The evidence concerning these debts is summarized below.

SOR ¶ 1.a: unsatisfied judgment for \$11,895. In the winter of 2007, Applicant and her family were asked by the owner of their home to move out, after one of their sons was involved in an altercation and was stabbed. The owner claimed that the altercation occurred on the rental property, but Applicant claimed that it happened in a nearby park. A few days later, the owner sent an eviction notice, ordering them to vacate the property within 30 days. Applicant and her family stayed in the home until February 2008. (Item 10 at 5.) In June 2008, the owner sued Applicant and her husband for unpaid rent and damage to the property. Applicant did not appear in court to contest the owner's claims. A default judgment was entered against Applicant and her husband in August 2008. (Item 6.) In her PSI, Applicant stated that the judgment was satisfied by garnishment of her husband's pay. (Item 10 at 6.) In her answer to the SOR, she stated that she is paying \$400 per month on this debt and has reduced the balance to less than \$5,000. She did not submit any evidence of payments.

SOR ¶¶ 1.b and 1.e: telephone bill charged off for \$127 and placed for collection of about \$176. Applicant denied this debt. The July 2014 CBR reflects that the debt was charged off in September 2007 and sold to a factoring company in December 2007. There is no evidence that the debt has been resolved.

SOR ¶ 1.c: car loan charged off in April 2008 and placed for collection of about \$4,000. The July 2014 CBR reflects that a car loan was obtained by Applicant and her husband in August 2006. (Item 8 at 7.) In the PSI, Applicant stated that she became delinquent on her car payments after being laid off, the car was repossessed, and there was a deficiency after the car was sold. (Item 10 at 8.) Applicant listed a layoff in her SCA as the reason for a job change in 2008, but she did not list any periods of unemployment. (Item 5 at 11.) The debt is not resolved.

SOR ¶ 1.d: debt to drug store placed for collection of \$274 in December 2007. This debt is reflected in the July 2014 CBR. Applicant denied this debt, but she submitted no evidence that she had contacted the creditor, disputed the debt, or otherwise resolved it.

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 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." 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. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

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*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

The concern under this guideline is set out in AG ¶ 18:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal 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).

The same delinquent telephone bill is alleged in SOR ¶¶ 1.b and 1.e. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005). Accordingly, I have resolved SOR ¶ 1.e in Applicant's favor.

Applicant's admissions and the documentary evidence in the FORM establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations"). The following mitigating conditions under this guideline 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

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

AG ¶ 20(b) is not fully established. Applicant has encountered several circumstances largely beyond her control. Her daughter's dog-bite injury was a circumstance beyond her control. Although Applicant already had delinquent consumer debts when her daughter was injured, the medical expenses triggered the Chapter 7 bankruptcy. Applicant attributed the repossession of her car to being laid off in July 2008. She listed a layoff as a reason for a job change in her SCA, but she did not list any periods of unemployment. Her son's involvement in an altercation was a condition beyond her control, but it does not justify the non-payment of rent and property damage that resulted in a judgment against her. She claimed that she was making payments on the judgment, but she submitted no documentary evidence of payments on any of the debts alleged in the SOR.

AG ¶ 20(c) is not established. In her PSI, Applicant stated that she did not participate in the financial counseling associated with her Chapter 7 bankruptcy. Her financial problems are not under control.

AG ¶ 20(d) is not established. Although Applicant claimed that she had made payments on some of the debts alleged in the SOR, she submitted no documentary evidence of payment.

AG 20(e) is not established. In her answer to the SOR, Applicant disputed the validity of the telephone debt and the drug store debt, but she submitted no evidence that she had disputed the debts with the creditors, collection agencies, or credit reporting bureaus.

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(a):

(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(a). Because Applicant requested a determination on the record without a hearing, I had no opportunity to 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 financial history. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

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.d:	Against Applicant
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Subparagraphs 1.e and 1.f:	For Applicant
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Conclusion

I conclude that it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman
Administrative Judge