



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 15-01827
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

11/28/2016

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 November 7, 2012. On September 10, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF 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) implemented by the DOD on September 1, 2006. The adjudicative 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 in an undated document and requested a hearing before an administrative judge. Department Counsel was ready to proceed on June 17,

2016, and the case was assigned to me on September 7, 2016. On September 9, 2016, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for September 28, 2016. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant testified but did not submit any documentary evidence or present the testimony of any other witnesses. I kept the record open until October 14, 2016, to enable her to submit documentary evidence, but she did not submit anything further. DOHA received the transcript (Tr.) on October 11, 2016.

Findings of Fact¹

In her answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a-1.d and 1.j-1.s. She neither admitted nor denied the debts in SOR ¶¶ 1.e-1.j, but she commented that they were the same debt. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 39-year-old painter employed by a defense contractor at a shipyard since September 2012. She has never held a security clearance.

Applicant married in October 1996. Her husband left her and their three children in November 2008. Their children are now ages 22, 21, and 19. Applicant and her husband already had several delinquent debts when he left. (Tr. 22.) Her husband was obligated to pay child support of \$217 per month, but he rarely paid it, and he owes an arrearage of about \$13,000. (Tr. 41.)

When Applicant submitted her SCA, she disclosed a vehicle repossession and several medical debts. Her credit bureau reports (CBRs) from November 2012 and February 2015 reflect the debts alleged in the SOR.

Around March 2016, Applicant consulted with a bankruptcy attorney but did not pursue this course of action further. Instead, she hired an attorney who provides debt-resolution services. She testified that she paid the attorney \$1,200 to resolve her debts, and she pays about \$250 per month to the attorney toward her delinquent debts. (Tr. 53-55.) She did not provide any documentation of her payments to the attorney, a listing of the debts being resolved by him, or any documentation showing disbursements to creditors. The status of the debts alleged in the SOR is summarized below.

SOR ¶ 1.a: judgment filed in 2012 for a deficiency of \$4,705 after a vehicle repossession. Applicant testified that she incurred this debt when she bought a vehicle in 2010, after her husband left, but she could not afford the payments. She testified that the debt was paid through garnishment of her wages, and she received a document reflecting satisfaction of the judgment. She provided no documentation to support her testimony. (Tr. 23, 31-33.)

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

SOR ¶ 1.b: deficiency of \$3,822 after a vehicle repossession. Applicant testified that she purchased another vehicle after the first repossession and kept it for about four years before she fell behind and the vehicle was repossessed. (Tr. 27-28.) She testified that she started making payments on this debt in March 2016. (Tr. 35-36.) She did not provide documentation of any payments.

SOR ¶ 1.c: unpaid rent for \$3,160, placed for collection in August 2012. Applicant testified that she was evicted from an apartment for non-payment of rent. She has not made any payments or reached any payment agreements to resolve this debt. (Tr. 37-38.)

SOR ¶ 1.d: unpaid rent for \$2,373, placed for collection in January 2013. Applicant moved to another apartment, at a higher rent, after she was evicted from the apartment in SOR ¶ 1.c. She was also evicted from this apartment for non-payment of rent. She has not resolved this debt. (Tr. 38-39.)

SOR ¶¶ 1.e-1.i and 1m-1.o: multiple medical bills. Applicant testified that her debt settlement attorney has started to handle these debts, but she was unaware of any payments on the debts as of the date of the hearing. (Tr. 40-41.)

SOR ¶ 1.j: judgment for deficiency of \$5,112 after a vehicle repossession, filed in January 2012. This judgment includes the debt in SOR ¶ 1.b. (Tr. 41.)

SOR ¶¶ 1.k and 1.l: judgments for unpaid rent of \$394 and \$710, filed in July and August 2012. The creditor for these debts is the same landlord as the creditor for the debt in SOR ¶ 1.c. However, it is unclear whether the judgments apply to the same rental periods as the debt alleged in SOR ¶ 1.c. Applicant testified that her attorney has not yet determined how much she actually owes this creditor. (Tr. 42-43.) The debts are not resolved.

SOR ¶ 1.p: installment sales contract, placed for collection of \$98 in May 2008. Even though Applicant admitted this debt in her answer to the SOR, she testified at the hearing that she had never had an account with this creditor. (Tr. 43.) There is no evidence that she disputed this debt or otherwise resolved it.

SOR ¶ 1.q: telecommunications bill for \$649, placed for collection in October 2006. Applicant testified that this bill was for equipment that was not turned in after service was terminated, but that the amount due should be around \$248, because she turned in the equipment. She did not provide any documentation to support her testimony.

SOR ¶ 1.r: telephone bill for \$455, placed for collection in February 2009. Even though Applicant admitted this debt in her answer to the SOR, she testified that she knew nothing about it. (Tr. 44.) It is unresolved.

SOR ¶ 1.s: insurance bill for \$127, placed for collection in September 2012.

Applicant testified that she paid this bill, but she submitted no documentation of payment. (Tr. 45.)

Before Applicant began working at the shipyard, she was a correctional officer, earning about \$26,000 per year. She now earns about \$40,000 per year. (Tr. 28.) She testified that her cousin recently died, and her cousin's three children are now living with her, in addition to one of her own children. Applicant's mother provides day care for the children, but Applicant is incurring additional expenses to feed and clothe them. (Tr. 56-57.)

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).

Applicant’s admissions in her answer to the SOR, her testimony at the hearing, and her CBRs 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 evidence indicates that the debt alleged in SOR ¶ 1.b is included in the judgment alleged in SOR ¶ 1.j. 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.b for Applicant.

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 recent, numerous, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not fully established. Applicant's marital breakup and her husband's abandonment of the family and failure to pay child support were conditions largely beyond her control. Her decision to assume responsibility for her deceased cousin's children was compassionate and understandable, but it was a voluntary decision within her control. She provided no information about the circumstances under which her medical debts were incurred, making it impossible to determine whether they were conditions largely beyond her control. She described several actions that would constitute reasonable steps to resolve her debts, but she failed to provide documentary evidence of any of them, even after she was given additional time to do so. See ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016) ("[I]t is reasonable for a Judge to expect applicants to present documentation about the resolution of specific debts.").

AG ¶ 20(c) is not fully established. Applicant has received legal advice, but she has not provided "clear indications" that her financial problems are being resolved.

AG ¶ 20(d) is not established. Although Applicant testified that several debts were resolved or were in the process of being resolved, she provided no documentation to support her testimony.

AG ¶ 20(e) is not established. Although Applicant denied the debt in SOR ¶ 1.p, claimed that she had no knowledge of the debt in SOR ¶ 1.r, and asserted that she had paid several debts alleged in the SOR, she submitted no evidence that any debts had been disputed with the original creditors, the collection agencies, or the credit 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. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant was sincere and candid at the hearing, but she is financially unsophisticated. She does not have a clear understanding of her overall financial situation. She promised at the hearing to provide documentation to support her testimony (Tr. 59-61), but she submitted nothing.

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. 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

Subparagraph 1.a:	Against Applicant
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Subparagraph 1.b:	For Applicant
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Subparagraphs 1.c-1.s:	Against 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