



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 15-02103
)	
Applicant for Security Clearance)	

Appearances

For Government: Douglas Velvel, Esq., Department Counsel
For Applicant: *Pro se*

03/13/2017

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations) and E (Personal Conduct) Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on August 11, 2014. On November 6, 2015, the Department of Defense (DOD) sent her a Statement of Reasons (SOR), alleging security concerns under Guidelines F and E. 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 December 26, 2015, and requested a decision on the record without a hearing. Department Counsel submitted the Government's

written case on February 25, 2016, and 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 10, 2016, and did not respond.¹ The case was assigned to me on February 24, 2017.

Findings of Fact²

In her answer to the SOR, Applicant did not admit or deny the allegations. Instead, she described what she had done to resolve the debts alleged in SOR ¶¶ 1.a-1.n. She did not respond to the Guideline E allegation in SOR ¶ 2.a. I have treated her responses as denials.

Applicant is a 44-year-old administrative assistant employed by a federal contractor since September 2013. She served on active duty in the U.S. Navy from May 2002 to August 2013 and received a security clearance in February 2004. She was discharged with an honorable discharge as a petty officer second class (pay grade E-5.) She told a security investigator that she was not recommended for retention in the Navy because she was disciplined for using a government credit card for a personal vehicle rental. (Item 5 at 6.) The misuse of a government credit card is alleged as a financial issue in SOR ¶ 1.a and cross-alleged as personal conduct in SOR ¶ 2.a.

Applicant married in September 2002 and divorced in July 2013. She has no children. Since October 2006, she has been taking college-level courses at several institutions, but she has not received a degree.

The SOR alleges 14 delinquent debts totaling about \$40,651. Before Applicant was discharged from the Navy, she paid the \$882 rental fee improperly charged to a government credit card, alleged in SOR ¶¶ 1.a and 2.a, but she offered no explanation for her misuse of the card.

The debts alleged in SOR ¶¶ 1.b-1.n are reflected in her credit bureau reports (CBRs) from August 2014 and October 2015. (Items 3 and 4.) The evidence regarding these debts is summarized below.

¹ The FORM included Item 5, a summary of a personal subject interview (PSI) conducted on September 11, 2014. The PSI was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that she was entitled to comment on the accuracy of the PSI summary; make any corrections, additions, deletions or updates; or object to consideration of the PSI on the ground that it was not authenticated. Applicant's failure to respond to the FORM waived any objections to the PSI summary. 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. ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016).

² Applicant's personal information is extracted from her security clearance application (GX 1) unless otherwise indicated by a parenthetical citation to the record.

SOR ¶ 1.b: judgment for unpaid rent filed in May 2013. The August 2014 CBR reflects that this debt is disputed. It is not reflected in the October 2015 CBR. The judgment is too recent to have been deleted under the Fair Credit Reporting Act, indicating that the dispute was resolved in her favor.³

SOR ¶ 1.c: delinquent automobile loan charged off for \$19,837. In Applicant's answer to the SOR, she asserted that she is not responsible for the debt because her ex-husband kept the automobile after their divorce and agreed to make the payments. However, it is reflected in the CBRs as a joint debt, and there is no documentary evidence in the record making her ex-husband responsible for the debt.

SOR ¶ 1.d: personal loan charged off for \$3,790. In Applicant's answer to the SOR, she stated that she made arrangements to resolve the debt, but she has submitted no documentary evidence of payments or a payment agreement.

SOR ¶¶ 1.e-1.i: student loans referred for collection of \$3,497; \$3,432; \$3,319; \$1,245; and \$587. All five loans were reflected on the August 2014 CBR, with a notation that all five were disputed and a reinvestigation was in progress. In Applicant's answer to the SOR, she stated that she made payment arrangements for all five debts, but she submitted no documentary evidence of payments or payment agreements. The October 2015 CBR does not reflect the loans in SOR ¶¶ 1.f, 1.i, and 1.j, indicating that the dispute was resolved in Applicant's favor for those three debts.

SOR ¶¶ 1.j-1.m: delinquent medical bills for \$1,335; \$228; \$25, and \$979. In Applicant's answer to the SOR, she stated that these bills were covered by insurance, but her former employer failed to submit timely submit the proper paperwork to the insurance carrier. She stated that she was in the process of contacting the insurance carrier to resolve the debts. She did not provide any additional information about the status of these debts. They are unresolved.

SOR ¶ 1.n: cellphone debt placed for collection of \$223. In Applicant's answer to the SOR, she stated that she disputed this debt, because when she changed carriers she was informed that she had a zero balance with the former carrier. The CBRs do not reflect a dispute, and she submitted no documentary evidence of a dispute. The debt is not resolved.

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

³ Under the Fair Credit Reporting Act, a credit report may not list accounts placed for collection, charged off debts, or civil judgments that antedate the credit report by more than seven years, or until the statute of limitations has run, whichever is longer. The exceptions to this prohibition do not apply to this debt. 10 U.S.C. § 1681c.

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. 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 CBRs and her admissions during her September 2014 PSI establish three disqualifying conditions under this guideline:

AG ¶ 19(a): inability or unwillingness to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(d): deceptive or illegal financial practices such as . . . expense account fraud . . . and other intentional financial breaches of trust.

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 established. Applicant's divorce was a circumstance beyond her control, but she has not acted responsibly. She provided no information about any changes in her income as a result of her discharge from the Navy. She had no period of unemployment between her Navy service and her current job. She provided no documentary evidence of payment agreements, or payments, or contacts with creditors.

AG ¶ 20(c) is not established. Applicant presented no evidence of financial counseling and no documentary evidence that her financial problems are being resolved.

AG ¶ 20(d) is not established. Applicant submitted no documentary evidence of any payments on the delinquent debts alleged in the SOR.

AG ¶ 20(e) is established for the judgment in SOR ¶ 1.b, and the student loans in SOR ¶¶ 1.f, 1.i, and 1.j, which she appears to have successfully disputed. It is not established for the other delinquent debts alleged in the SOR.

Guideline E, Personal Conduct

The concern under this guideline is set out in AG ¶ 15: "Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. . . ." Applicant's admitted misuse of a government credit card establishes the following disqualifying condition under this guideline:

AG ¶ 16(d): credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to

comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of . . . a pattern of dishonesty or rule violations

The following mitigating conditions are potentially relevant:

AG ¶ 17(c): the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

AG ¶ 17(d): the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Neither mitigating condition is established. Applicant has the burden of proving mitigating conditions, but she has offered no explanation for her conduct and no information about the circumstances in which it occurred. When she misused her government credit card, she was a mature adult and an experienced petty officer. The amount charged was significant. Her misuse of the card was a serious breach of trust and raises doubt about her willingness or ability to comply with well-established rules.

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 Guidelines F and E 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 Guidelines F and E, 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 and her personal conduct. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with the national interest to continue 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

Subparagraph 1.b: For Applicant

Subparagraphs 1.c-1.e: Against Applicant

Subparagraph 1.f: For Applicant

Subparagraphs 1.g-1.h: Against Applicant

Subparagraph 1.i: For Applicant

Subparagraphs 1.j-1.n: Against Applicant

Paragraph 2, Guideline E (Personal Conduct): AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge