



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 15-07225
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

07/20/2017

Decision

MARINE, Gina L., 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 February 12, 2015. On June 6, 2016, 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 (EO) 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.

Applicant answered the SOR on July 5, 2016 (SOR Answer), and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on a date not specified in the record. On September 26, 2016, a complete copy of the file of relevant material (FORM) was sent to Applicant, including documents identified as Items 1 through 7. 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 October 4, 2016, and did not respond. Items 1 through 3 contain the pleadings in the

case. Items 4 through 7 are admitted into evidence. The case was assigned to me on June 30, 2017.

On June 8, 2017, the DOD implemented new AG.¹ Accordingly, I have applied the June 2017 AG.² However, because the September 2006 AG were in effect on the date the FORM was completed, I have also considered the September 2006 AG. Having considered both versions of the AG, I conclude that my decision would have been the same had I applied the September 2006 AG.

SOR Amendment

I *sua sponte* amended the SOR to correct an apparent typographical error with respect to the numbering of subparagraphs. As drafted, the SOR alleged ¶¶ 1.a through 1.f, and 1.c. through 1.f. The SOR, as amended, replaces ¶¶ 1.c. through 1.f with 1.g. through 1.j.

Findings of Fact³

Applicant, age 41, divorced her first husband of a year in 2002 and her second husband of three years in 2007. She has no children. She received a bachelor-of-science degree in April 2014 and a master's degree in business administration in May 2015. She has been employed full time by a defense contractor since March 2015. Prior to that, she was unemployed for almost four years, beginning May 2011. She served honorably in the U.S. Navy from August 1993 through May 2011. She was previously granted a security clearance in 1998.⁴

The SOR alleges ten delinquent debts totaling \$27,942. Applicant admitted seven debts totaling \$25,996. She denied the debts alleged in SOR ¶¶ 1.e (state tax lien/\$1,031), 1.f (federal tax lien/\$771), and 1.i (phone bill placed for collection/\$144). SOR ¶ 1.e is established by her credit report dated March 2015.⁵ It does not appear on

¹ On December 10, 2016, the Security Executive Agent issued Directive 4 (SEAD-4), establishing a "single, common adjudicative criteria for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position." (SEAD-4 ¶ B, *Purpose*). The SEAD-4 became effective on June 8, 2017 (SEAD-4 ¶ F, *Effective Date*). The National Security Adjudicative Guidelines (AG), which are found at Appendix A to SEAD-4, apply to determine eligibility for initial or continued access to classified national security information. (SEAD-4 ¶ C, *Applicability*).

² ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DOD policy and standards).

³ Unless otherwise indicated by citation to another part of the record, I extracted these facts from the SOR Answer (Item 3), Applicant's SCA (Item 4), and the summary of her May 2015 subject interview (Item 7). Because Applicant did not respond to the FORM and affirmatively waive any objection to Item 7, I will consider only those facts in Item 7 that are not adverse to Applicant, unless they are contained in other evidence or based upon her admissions in the SOR Answer.

⁴ Tr. at 7, 8, 38, 41, 64, 91, and 96; GE 3 at 21 and 34.

⁵ GE 5 at 3.

her credit report dated September 2016.⁶ She claimed, without providing corroborating documentation, that the state tax lien was resolved after being issued in error based on a residency-status issue. The debt alleged in SOR ¶ 1.i is a duplicate of the debt alleged in SOR ¶ 1.j,⁷ and the federal tax lien was resolved by involuntary garnishment as of May 2015.⁸

In the SOR Answer, without providing any specific details, Applicant attributed her delinquent debt to having “separated unexpectedly” from active duty in May 2011. During her 2015 interview, she explained that she “voluntarily left” at the end of her enlistment obligation. Following her Navy discharge, Applicant’s annual income decreased from a salary of \$70,000 to unemployment benefits of \$13,000. Beginning in June 2011, she began accumulating the SOR debts because she prioritized paying the necessities. Because she was deemed unqualified for the positions to which she applied in the three months following her discharge due to lack of a college degree, in August 2011, Applicant enrolled full time in college. Although she continued to actively seek employment during college, she was deemed unqualified due to lack of experience for the positions to which he applied. Applicant became gainfully employed in March 2015.

Since March 2015, Applicant has struggled to get her “head above water,” due to car-loan payments and student-loan payments. However, as of July 2016, she believed that she was able to begin proactively addressing her delinquent debt. To that end, she was researching bankruptcy options to resolve the debts alleged in SOR ¶¶ 1.a through 1.d, 1.g through 1.h, and 1.j. Applicant has not received credit counseling. Although she scheduled an appointment with a credit-counseling company in January 2015, she never used its services.

Policies

“[N]o one has a ‘right’ to a security clearance.”⁹ 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.”¹⁰ 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.”¹¹

⁶ GE 6.

⁷ GE 5 at 11.

⁸ The only proof substantiating the federal tax lien is Applicant’s self-report about it in her SCA because it does not appear in either credit report (GE 5 or 6). As such, I find credible Applicant’s self-report about it being resolved by garnishment in 2015.

⁹ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹⁰ *Egan* at 527.

¹¹ 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."¹² 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.¹³ "Substantial evidence" is "more than a scintilla but less than a preponderance."¹⁴ The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability.¹⁵ Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.¹⁶ An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.¹⁷

¹² EO 10865 § 7.

¹³ See *Egan*, 484 U.S. at 531.

¹⁴ See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

¹⁵ See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

¹⁶ Directive ¶ E3.1.15.

¹⁷ 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.”¹⁸ “[S]ecurity clearance determinations should err, if they must, on the side of denials.”¹⁹

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. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by her credit reports, establish two disqualifying conditions under this guideline: AG ¶ 19(a) (inability to satisfy debt) and AG ¶ 19(c) (a history of not meeting financial obligations).

The security concerns raised in the SOR have not been mitigated by any of the following applicable factors:

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, a death, divorce or separation,

¹⁸ ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

¹⁹ Egan, 484 U.S. at 531; See also AG ¶ 2(b).

clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(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;

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

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; and

AG ¶ 20(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶ 20(a) is not established. Applicant's numerous delinquent debts remain unresolved.

AG ¶ 20(b) is not established. Applicant did not meet her burden to establish that her separation from the Navy and the unemployment that ensued were largely beyond her control. However, even if they were so deemed, she has also not met her burden to establish that she acted responsibly to address the resulting debts.

AG ¶ 20(c) and 20(d) are not established. Applicant did not receive financial counseling. Because she did not respond to the FORM, the record is silent as to what, if any, progress she made in researching her bankruptcy options. The record is also silent as to her current ability to repay delinquent debts, the reasons that they have persisted in the years since she became gainfully employed, or her plan to resolve them. I cannot conclude that her financial problems are under control at this time.

AG ¶ 20 (e) is not established. Applicant articulated a reasonable basis to dispute the legitimacy of her state tax lien (SOR ¶ 1.e). However, she did not provide documented proof to substantiate that basis or sufficient evidence to demonstrate actions taken to resolve the lien.

AG ¶ 20 (g) is not established. Because she did not provide any corroborating documents, I cannot conclude that the debt in SOR ¶ 1.e has been resolved. Her federal tax lien was resolved passively by an involuntary garnishment.

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 common sense judgment based upon careful consideration of the following 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). 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 by her failure to pay delinquent debt. Accordingly, Applicant 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.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g – 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	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.

Gina L. Marine
Administrative Judge