



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 16-01155
)	
Applicant for Security Clearance)	

Appearances

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

10/26/2017

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 May 15, 2015. On November 28, 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 December 15, 2016, and requested a decision on the record without a hearing. On a date not specified in the record, Department Counsel submitted the Government's written case and, on March 7, 2017, sent a complete copy of the file of relevant material (FORM) to Applicant, including documents identified as Items 1 through 9. She was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. She received the FORM on March 17, 2017, and did not respond. Items 1 through 3 are the

pleadings in the case. Items 4 through 9 are admitted into evidence. The case was assigned to me on October 2, 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. I conclude that my decision would have been the same under either version.

Findings of Fact³

Applicant, age 34, is unmarried and does not have any children. Applicant received two associate's degrees in 2006 and 2010, and a bachelor's degree in 2012. She served honorably in the U.S. Navy, on active duty between 2001 and 2005, and on reserve duty between 2005 and 2010. She has been employed full time with a defense contractor since June 2008. She was granted a secret clearance in 2001 and a top secret clearance in 2009.

Applicant admitted each of the 12 SOR allegations, including: a mortgage-loan account that was \$3,995 past due with a total balance of \$176,697 (SOR ¶ 1.a), a \$8,751 charged-off auto-loan account that was placed for collection by a creditor who was later granted a \$12,373 court judgment (SOR ¶¶ 1.b and 1.k), five credit-card accounts in charge-off or collection status totaling \$10,765 (SOR ¶¶ 1.c, 1.e, 1.f., 1.g., and 1.i), a \$10,653 federal student-loan account (SOR ¶ 1.d) and two medical accounts totaling \$946 (SOR ¶¶ 1.h and 1.j) in collection status. The debts alleged in SOR ¶¶ 1.h through 1.j have been resolved.⁴

Wage garnishments were issued against Applicant to collect the auto-loan and the student-loan debts, in December 2014 and November 2015, respectively. In her SOR answer, Applicant averred, without providing any corroborating documentary evidence, that the garnishment for the auto-loan debt would be satisfied in February 2017, and the student-loan debt in March 2017. One of Applicant's federal tax refunds was intercepted to collect the student-loan debt. Another wage garnishment was issued

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 Applicant's SOR answer (Item 3), her SCA (Item 4), and the summary of her February 2016 security clearance interview (Item 9). Because Applicant did not respond to the FORM and affirmatively waive any objection to Item 9, I will consider only those facts in Item 9 that are not adverse to Applicant, unless they are contained in other evidence or based upon her admissions in the SOR answer.

⁴ Item 7 at 2.

and satisfied in September 2014 to collect a \$463 delinquent debt owed for an unspecified delinquent account (SOR ¶ 1.i).⁵

In her SOR answer, Applicant claimed, without providing any corroborating documentary evidence, that she was “on track with a repayment plan” to get caught up with her mortgage-loan payments, that she was adhering to the terms of the payment plans she arranged to resolve the debts alleged in SOR ¶¶ 1.e. and 1.g (the latter of which she expected would be completed in approximately March 2017). She intended to negotiate payment plans to resolve the debts alleged in SOR ¶¶ 1.c and 1.f, and to pay the debt alleged in SOR ¶ 1.i in December 2016.

In her SOR answer, Applicant attributed her delinquent debts to a reduction in income associated with an involuntary change in her position with her current employer on a date not specified in the record. In that new position, there was no opportunity for overtime. In her prior position, she was able to work overtime, which resulted in a “higher level” of income for almost four years. After a year in that new position, on a date not specified in the record, Applicant transferred to another position with her current employer that “paid more” but required a longer commute, which resulted in “extra costs” that “exacerbated” her “already strained” finances.

Applicant further averred, in her SOR answer, that she had been “making positive moves towards getting [her] finances back on track” in 2016, including receiving financial assistance from two family members who moved in with her to help pay rent, utilities, and food expenses, and rental income from a renter living with them. She anticipated that “the added income should allow [her] to be able to pay off” her delinquent debts “much more quickly.” Applicant has not had any financial counseling.

In the FORM, the Government argued that Applicant had not provided documentary evidence sufficient to establish mitigation, and advised her of the opportunity to do so in her response to the FORM.

Policies

“[N]o one has a ‘right’ to a security clearance.”⁶ 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.”⁷ 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.”⁸

⁵ See also Item 8.

⁶ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁷ *Egan* at 527.S

⁸ 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."⁹ 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.¹⁰ "Substantial evidence" is "more than a scintilla but less than a preponderance."¹¹ The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability.¹² Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.¹³ An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.¹⁴

⁹ EO 10865 § 7.

¹⁰ See *Egan*, 484 U.S. at 531.

¹¹ See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

¹² ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

¹³ Directive ¶ E3.1.15.

¹⁴ 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.”¹⁵ “[S]ecurity clearance determinations should err, if they must, on the side of denials.”¹⁶

Analysis

The concern under Guideline F (Financial Considerations) 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.¹⁷

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 may be mitigated by any of the following potentially 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, clear victimization by predatory lending practices, or identity theft), and the

¹⁵ ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

¹⁶ *Egan*, 484 U.S. at 531; See also AG ¶ 2(b).

¹⁷ ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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; and

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

AG ¶ 20(a) is not established. Applicant's numerous delinquent debts remain unresolved. I cannot conclude that Applicant's financial indebtedness is unlikely to recur or does not cast doubt on her current reliability, trustworthiness, or good judgment.

AG ¶ 20(b) is not established. The record is insufficient to establish that her delinquent debts are largely attributable to the reduction in income that followed her involuntary employment change, which was a circumstance beyond her control. However, even if they were, Applicant did not meet her burden to establish that she has acted responsibly to address them.

AG ¶ 20(c) is not established. Applicant has not received any financial counseling.

AG ¶ 20(d) is not established. I credit Applicant with resolving the debts alleged in SOR ¶¶ 1.h through 1.j, and with initiating action to resolve the debts alleged in SOR ¶¶ 1.a, 1.e. and 1.g. via payment plans. However, due to the lack of documentary evidence, I cannot conclude that Applicant has made any payments in accordance with those plans. Moreover, resolution of debt through garnishment does not establish good-faith effort. Because she did not respond to the FORM, the record is silent as to what, if any, progress she made in resolving her delinquent debts since her SOR answer, or her current ability to repay them.

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 debts. 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

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: For Applicant

Subparagraphs 1.c – 1.g: Against Applicant

Subparagraphs 1.h – 1.j: For Applicant

Subparagraph 1.k – 1.l: 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