



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 16-01869
)	
Applicant for Security Clearance)	

Appearances

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

10/23/2017

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 October 19, 2015. On September 3, 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 (2006 AG).

Applicant answered the SOR on October 4, 2016, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case and sent a complete copy of the file of relevant material (FORM) to Applicant, on December 22, 2016, including documents identified as Items 1 through 14. 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 January 17, 2017, and timely submitted her response after being granted extensions for good cause, to which the Government did not object. Items 1

through 3 contain the pleadings in the case. Items 4 through 14 are admitted into evidence. The case was assigned to me on October 2, 2017.

On June 8, 2017, the DOD implemented new AG (2017 AG).¹ Accordingly, I have applied the 2017 AG.² However, I have also considered the 2006 AG, because they were in effect on the date the FORM was completed. I conclude that my decision would have been the same under either version.

Findings of Fact³

Applicant, age 57, divorced her husband of 15 years in 2002. They have three adult children. She received her high school diploma in 1977. She had been employed full time for the U.S. Army since 2003, first as a civilian and, as of 2014, as a contractor, until she took a new position, in March 2017, with another contractor. The record is silent as to whether her new position still supports the Army. She previously served as an Army civilian for five years in the 1980s. She was granted a top-secret clearance in 1983, and a secret clearance in 2003 and 2011.⁴

The SOR alleged 17 delinquent debts totaling \$10,838. In her SOR answer, Applicant admitted only six debts totaling \$1,126 (SOR ¶¶ 1.f, 1.i, 1.j, 1.l through 1.n). The credit reports establish each of the denied debts.⁵

Among the debts alleged in the SOR were seven medical accounts (¶¶ 1.d, 1.f, 1.h, 1.l through 1.n, and 1.q) totaling \$939. Applicant attributed them to the costs associated with a 2011 medical diagnosis that were not covered by health insurance. She has “been working to pay” her medical debts, including an unspecified amount that was not reflected on the SOR. She resolved the debt alleged in SOR ¶ 1.n,⁶ and

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 January 2016 subject interview (Item 14). I considered that Item 14 was not authenticated as required by Directive ¶ E3.1.20. However, Applicant was informed by Department Counsel that she was entitled to make corrections, additions, deletions, and updates to Item 14. Applicant was also informed that she was entitled to object to consideration of Item 14 on the ground that it was not authenticated. Applicant did neither in her response to the FORM. Therefore, I conclude that she has waived any objection to Item 14.

⁴ See also Item 13.

⁵ Items 6 through 8.

⁶ Item 8 at 2.

arranged a payment plan to resolve the debt alleged in SOR ¶ 1.h. However, she did not provide proof of the payments made pursuant to that plan. Without providing corroborating documents, she claimed to have paid the debts alleged in SOR ¶¶ 1.f, 1.l, and 1.m. Applicant disputed the debts alleged in SOR ¶ 1.d on the basis that she could find no record of a “current” collection; and SOR ¶ 1.q on the basis that her medical provider “took complete responsibility” for the charge, which was for a service not covered by insurance.

The non-medical debts alleged in the SOR include a \$761 state tax lien (SOR ¶ 1.a), two court judgments totaling \$1,164 (SOR ¶¶ 1.b and 1.c), one \$425 charged-off account (SOR ¶ 1.i), and six collection accounts totaling \$7,459 (SOR 1.e, 1.g, 1.j, 1.k, 1.o, and 1.p). She resolved the tax lien. She arranged a payment plan to resolve the debts alleged in SOR ¶ 1.i, for which she made one payment, and SOR ¶ 1.j, for which she provided no proof of payments.⁷ She disputed the following debts:

- SOR ¶¶ 1.b and 1.c: she could not find “anything in [her] financial history” regarding either of them, and averred that the creditor had allegedly been involved in unfair and deceptive collection practices against unnamed consumers;
- SOR ¶¶ 1.e and 1.g: she could not find a record of either company, and neither debts appear on her current credit report;
- SOR ¶ 1.k: it relates to a service that she did not have, and the phone numbers associated with it do not belong to her;
- SOR ¶ 1.o: she had a \$0 balance when she terminated service with the creditor; and
- SOR ¶ 1.p: she has not had service with the creditor “in years,” the creditor found “no record of this debt” in its records, and it does not appear in her current credit reports.

Four new delinquent accounts appear on the most recent credit report provided in the record: a \$3,956 state tax lien, two collection accounts totaling \$1,455, and a past due auto-loan account.⁸ In her FORM response, without providing any corroborating documents, she claimed to have become current on the auto-loan account.

⁷ See also Item 8 at 2.

⁸ Because these new delinquent debts were not alleged in the SOR, I will consider them only to evaluate mitigation and whole person.

Applicant resolved previous financial indebtedness through bankruptcy discharges in 1995 (chapter 7) and 2006 (chapter 13).⁹ The record is silent as to the reason she filed the first bankruptcy. Because her ex-husband failed to pay court-ordered child support and alimony, she became delinquent with her mortgage payments and elected to resolve it by filing the second bankruptcy.¹⁰ As of March 2017, her ex-husband owed approximately \$111,000 in child support and alimony arrearages. The record is silent as to what, if any, efforts Applicant has made to collect the arrearages that she “will never see.”

Applicant was initially confronted with the debts alleged in the SOR, to which she claimed no prior knowledge, during her January 2016 subject interview. At that time, she promised to investigate and, as appropriate, resolve them. However, there is no evidence that she did so until after she received the SOR in September 2016. In her FORM response, Applicant provided documents evincing that she resolved one additional debt since her SOR answer: a \$53 medical debt that was not alleged in the SOR. She did not provide any new documents in support of the payment or resolution of her admitted SOR debt, but rather re-submitted copies of such documents that had already been provided in her SOR answer.

Applicant’s 2011 security clearance was granted with a warning that “failure to resolve your delinquent debts or other subsequent unfavorable information may result in the suspension of your security clearance.”¹¹ Applicant claimed, however, that she never received this warning. Despite her earlier bankruptcy filings, Applicant reported, in January 2016, that she had not had any financial counseling. Her salary “increased substantially” in conjunction with the position she started in March 2017. The record is otherwise silent as to specific details about her relevant income and expense history and any particulars concerning the financial impact that her past or present circumstances have had on her ability to pay her delinquent debt.

Policies

“[N]o one has a ‘right’ to a security clearance.”¹² 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.”¹³ The President has authorized the Secretary of Defense or his designee

⁹ Because Applicant’s bankruptcies were not alleged in the SOR, I will consider them only to evaluate mitigation and whole person.

¹⁰ Items 9 through 12.

¹¹ Item 13.

¹² *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹³ *Egan* at 527.

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.”¹⁴

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.”¹⁵ 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.¹⁶ “Substantial evidence” is “more than a scintilla but less than a preponderance.”¹⁷ The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.¹⁸ Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.¹⁹ An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.²⁰

¹⁴ EO 10865 § 2.

¹⁵ EO 10865 § 7.

¹⁶ See *Egan*, 484 U.S. at 531.

¹⁷ See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

¹⁸ See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

¹⁹ Directive ¶ E3.1.15.

²⁰ 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.”²¹ “[S]ecurity clearance determinations should err, if they must, on the side of denials.”²²

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.²³

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 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,

²¹ ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

²² Egan, 484 U.S. at 531; See also AG ¶ 2(b).

²³ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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; 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.

Given her past history and the appearance of new delinquent accounts on her recent credit report, AG ¶ 20(a) is not established.

While her 2002 divorce and 2011 medical diagnosis were circumstances beyond her control, Applicant did not meet her burden to establish that the non-medical debts alleged in the SOR resulted therefrom. AG ¶ 20(b) is not fully established.

Applicant is credited with tackling her previous debts through bankruptcy, with resolving two SOR debts (¶¶ 1.a. and 1.n), and with initiating action to resolve the debts alleged in SOR ¶¶ 1.h, 1.i, and 1.j. via payment plans. Due to the lack of documentary evidence, I cannot conclude that Applicant has made any payments in accordance with the plans established for SOR ¶¶ 1.h and 1.j, more than one payment per the plan for SOR ¶ 1.i, or that she paid the debts alleged in SOR ¶¶ 1.f, 1.l, and 1.m. Moreover, Applicant did not establish any progress in resolving her admitted SOR debts between October 2016 and March 2017. Even if I were to assume that Applicant may have received financial counseling during her bankruptcies, I cannot conclude that there are clear indications that her financial problems are under control. AG ¶ 20(c) and (d) are not fully established.

Applicant articulated a reasonable basis to dispute the legitimacy of the debts alleged in SOR ¶ 1.k, 1.o, and 1.q, and she provided sufficient evidence of actions taken to resolve those disputes. She did not provide a reasonable basis to dispute the legitimacy of the debts alleged in SOR ¶¶ 1.b through 1.e, 1.g, and 1.p. AG ¶ 20(e) is not fully established.

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 history of financial indebtedness. 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:	For Applicant
Subparagraphs 1.b – 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraphs 1.l – 1.m:	Against Applicant
Subparagraphs 1.n – 1.o:	For Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	For Applicant

Conclusion

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

Gina L. Marine
Administrative Judge