



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 16-03057
)	
Applicant for Security Clearance)	

Appearances

For Government: Benjamin R. Dorsey, Esq., Department Counsel
For Applicant: Rocco Columbus, Esq.

12/13/2017

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 on June 28, 2013. On November 17, 2016, the Department of Defense (DOD) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F. 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, 2006.¹

¹ Security Executive Agent Directive 4 (SEAD 4), was issued on December 10, 2016, revising the 2006 adjudicative guidelines. The SEAD 4 guidelines apply to all adjudicative decisions issued on or after June 8, 2017. The changes resulting from issuance of SEAD 4 did not affect my decision in this case.

Applicant answered the SOR on February 17, 2017, and requested a hearing before an administrative judge. She denied the allegation in SOR ¶ 1.h, but she did not expressly admit or deny any of the other allegations. Department Counsel was ready to proceed on March 29, 2017, and the case was assigned to an administrative judge on May 12, 2017, and scheduled for hearing on August 1, 2017. The hearing was postponed when Applicant retained counsel, and it was reassigned to me on August 9, 2017. On August 15, 2017, DOHA notified Applicant that the hearing was rescheduled for September 13, 2017. I conducted the hearing as rescheduled. Department Counsel submitted Government Exhibits (GX) 1 through 5, which were admitted without objection. Applicant testified and submitted Applicant's Exhibit (AX A), which was admitted without objection. DOHA received the hearing transcript on September 22, 2017.

Findings of Fact²

Applicant is a 60-year-old program director employed by a defense contractor since November 2015. (Tr. 12.) She has worked for defense contractors since December 1997. She married in September 1982, divorced in March 2002, and married again in April 2002. She and her second husband separated in December 2010 and reconciled in the fall of 2013. (Tr. 15, 23-24.) Her second husband has been disabled and unable to work since 2007. She has held a security clearance for about 30 years. (Tr. 13.)

Applicant and her first husband filed a petition for Chapter 13 bankruptcy in November 1999 and received a discharge in April 2002 after completing the payment plan. The record does not reflect the nature, number, or value of the debts that were resolved under the bankruptcy plan. The bankruptcy was caused by a failed business venture. Applicant's then husband and a former employer started a heating and air conditioning company, and Applicant's husband agreed to take a substantial pay cut and forego overtime pay. The business failed after about a year, leaving her husband unemployed. The bankruptcy is alleged in SOR ¶ 1.a.

The SOR ¶¶ 1.b-1.j reflects nine delinquent accounts that are reflected in credit reports from July 2013, April 2015, and March 2017. (GX 3, 4, and 5.) The evidence concerning these debts is summarized below.

SOR ¶ 1.b: second mortgage on marital home, charged off for \$102,635. Applicant's name was not on the first mortgage for the marital home, but she was included in a second mortgage. The first mortgage was foreclosed in 2010, after her husband was laid off in 2006 and they fell behind on the loan payments. Her husband has been disabled and unable to work since 2007. Applicant disagreed with her husband's decision to allow foreclosure instead of trying to renegotiate the terms of the mortgage loan, but her husband prevailed. (Tr. 35.) The foreclosure sale was sufficient to pay off the balance on the first mortgage loan, but not the second mortgage loan, on which Applicant was a co-debtor. In a personal subject interview (PSI) in August 2013, Applicant told a security

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

investigator that she believed the debt was paid because her online statement reflects that it was paid. (AX A at 4.) However, the credit reports from July 2013 and April 2015 reflect that it was charged off. (GX 4 at 1; GX 5 at 11.) It apparently has “aged off” and is not reflected in the March 2017 credit report.³ (GX 3.) Applicant testified that she has not been contacted by the lender or any collection agencies about this debt. (Tr. 17.) She has not contacted the lender or attempted to make any payment arrangement for the debt. (Tr. 34.) It is not resolved.

SOR ¶ 1.c: deficiency after repossession of recreational vehicle, referred for collection of \$25,423. Applicant and her second husband purchased the vehicle but could not afford the payments after her husband was laid off. They surrendered the vehicle rather than have it involuntarily repossessed. In the August 2013 PSI, Applicant stated that she intended to resolve the debt after negotiations by a credit-counseling service were completed. (AX A at 4.) At the hearing, she testified that she has not been contacted by the creditor or any collection agency about this debt. (Tr. 20.) She has not attempted to contact the creditor or make a payment arrangement. (Tr. 36.)

SOR ¶¶ 1.d, 1.e, and 1.f: delinquent credit-card accounts, one charged off for \$18,261 and another referred for collection of \$5,062; and a cellphone account referred for collection of \$1,236. After Applicant and her husband separated in 2010, the separation agreement did not allocate responsibility for marital debts, but they informally agreed that each would pay some of the joint debts. Her husband agreed to resolve these three debts, but he reneged on the agreement. (Tr. 38.) She testified that she worked with two credit-counseling companies, who were not helpful, but she has never contacted these three creditors or attempted to make payment arrangements. Tr. 40-41.)

SOR ¶ 1.g: medical bill, referred for collection of \$527. Applicant testified that she has not tried to determine the nature of this debt or otherwise resolve it. (Tr. 43-44.)

SOR ¶ 1.h: telecommunications bill, referred for collection of \$414. Applicant testified that this bill was incurred when she changed service providers and the previous provider continued to bill her for two months. She refused to pay the bill because “it is the principle of it.” She testified that she has not tried to resolve the debt, but she has resumed service with the original provider. (Tr. 44-45.)

SOR ¶ 1.i: credit-card account, referred for collection of \$4,726. Applicant testified that she negotiated a settlement of this debt, but she did not submit any documentation to support her testimony. (Tr. 46-47.)

³ Under the Fair Credit Reporting Act, a credit report may not list accounts placed for collection or charged off that antedate the credit report by more than seven years. The exceptions to this prohibition do not apply to this debt. 10 U.S.C. § 1681c.

SOR ¶ 1.j: satellite television service bill, referred for collection of \$1,004.

This debt arose when Applicant moved into a townhouse in a community that did not allow satellite dishes. She told the provider that she could not continue the service. In the August 2013 PSI, she told the investigator that she intended to pay this debt. At the hearing, Applicant testified that she has not contacted the provider about resolving this debt, but she still has satellite service with the same provider. (Tr. 48-49.)

Applicant's take-home pay each month is about \$9,400. Her husband receives Social Security disability pay of \$1,400 per month. (Tr. 22.) She has about \$5,000 in savings and about \$22,000 in her checking account. She has two retirement accounts totaling about \$200,000. (Tr. 25-26.) She and her husband bought a house in March 2017, and their mortgage payments are about \$2,300 per month. (Tr. 26.) She bought a new car in 2016, and her car payments are \$843 per month. Her husband has a new car, for which he is paying about \$300 per month, and an older truck on which there is no debt. (Tr. 27-28.) She testified that she and her husband took online counseling courses in 2009, when they were attempting to obtain a loan modification on the home mortgage loan that was eventually foreclosed. (Tr. 50.) She hired a credit-counseling service in 2013. She paid an initial fee of \$1,000, followed by monthly \$100 payments. (AX A at 3.) She testified that she terminated her contract with the credit-counseling service because it was not helpful. (Tr. 37, 41.)

Applicant was diagnosed with breast cancer in 2013 and incurred medical bills in 2013 and 2014. Most of the medical expenses were covered by insurance, and she was not sure how much she spent on co-payments. (Tr. 30.)

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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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.” See 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 security 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 testimony and the evidence submitted at the hearing establish the following disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"); AG ¶ 19(b) ("unwillingness to satisfy debts regardless of the ability to do so"); and AG ¶ 19(c) ("a history of not meeting financial obligations"). The following mitigating conditions are potentially relevant:

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 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.

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 fully established. Applicant encountered several conditions beyond her control: the failure of her first husband's business, her second husband's loss

of employment in 2006 and subsequent disability in 2007, her marital separation in 2010, and her second husband's failure to keep his informal promise to resolve several joint debts. She provided no information about the circumstances of the medical debt alleged in SOR ¶ 1.g, and she provided no information connecting her diagnosis of breast cancer in 2013 with any of the debts alleged in the SOR. Although the evidence regarding the bankruptcy alleged in SOR ¶ 1.a is sparse, it appears that Applicant and her first husband acted responsibly and successfully completed the Chapter 13 payment plan. However, Applicant has not acted responsibly regarding the debts alleged in SOR ¶¶ 1.b-1.j. She admitted that she has not contacted her creditors, attempted to resolve the debts, or disputed them. She has elected to buy a home and new cars instead of resolving her old debts.

AG ¶ 20(c) is established for the bankruptcy alleged in SOR ¶ 1.a but not for the delinquent debts alleged in SOR ¶¶ 1.b-1.j. Applicant received credit counseling in connection with the 1999 bankruptcy and those debts were resolved. She also received online counseling in 2009. However, the credit-counseling firm hired by Applicant in 2013 was in the business of disputing or negotiating settlement of debts, and there is no evidence that it provided the financial counseling contemplated by this mitigating condition. Furthermore, Applicant's current financial situation is not under control.

AG ¶ 20(d) is not established. The record does not reflect the extent to which creditors were made whole by the 1999 bankruptcy. Thus the evidence is insufficient to show that completion of the bankruptcy payment plan constituted a good-faith effort to resolve the debts included in the bankruptcy. See ISCR Case No. 15-00682 at 3 (App. Bd. Jul. 13, 2016). Applicant presented no evidence showing that she negotiated payment agreements or resolved any of the debts alleged in SOR ¶¶ 1.b-1.j. She claimed that she resolved the debt alleged in SOR ¶ 1.i, but she provided no documentary evidence to support her claim.

AG ¶ 20(e) is not established. Applicant submitted no evidence that she disputed any of the debts alleged in the SOR.

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 and applying the adjudicative factors in AG ¶ 2(d).⁴

⁴ The factors are: (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 applied the adjudicative factors in AG ¶ 2(d). I have considered Applicant's lengthy service as an employee of defense contractors and the multiple conditions that contributed to her financial problems. On the other hand, she has not addressed her numerous delinquent debts, and she provided no documentary evidence reflecting responsible conduct. 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 delinquent debts that arose after her bankruptcy discharge. 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:	For Applicant
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Subparagraphs 1.b-1.j:	Against Applicant
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Conclusion

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

LeRoy F. Foreman
Administrative Judge