



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 17-03386
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

02/14/2018

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.

History of the Case

Applicant submitted a security clearance application (SCA) on December 9, 2016. On October 13, 2017, 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), for all adjudicative decisions on or after June 8, 2017.

Applicant answered the SOR on November 10, 2017, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on November 30, 2017. On December 1, 2017, 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 December 11, 2017, and submitted a written statement in response to the FORM. The case was assigned to me on February 14, 2018.

Findings of Fact¹

In Applicant's answer to the SOR, she admitted the allegations in SOR ¶¶ 1.a, 1.e-1.h, 1.j, 1.k, 1.o-1.q, and 1.s. She denied the allegations in 1.b-1.d, 1.i, 1.l-1.n, 1.r, and 1.t. Her admissions are incorporated in my findings of fact.

Applicant is a 47-year-old conference planner employed by a defense contractor since October 2016. She worked for another defense contractor from November 2006 to October 2016. She has never held a security clearance.

Applicant's SCA does not reflect any periods of unemployment, but she indicated that her previous employment ended because of lack of work. (GX 3 at 14) In her response to the FORM, she reported two periods of unemployment, one for about a month and the other for an unspecified time.

Applicant married in August 2009 and separated in June 2010. The record does not reflect whether she is now divorced. Her SCA lists four adult children.

Applicant filed a petition for Chapter 7 bankruptcy in June 2012 and received a discharge in August 2013. Her petition listed assets of \$15,291 and liabilities of \$56,815. The liabilities consisted of \$20,115 in secured debts and \$36,700 in unsecured debts. (GX 5.) The record reflects that she completed the financial counseling required by the bankruptcy court.

The SOR alleges the Chapter 7 bankruptcy (SOR ¶ 1.a) and 19 delinquent debts totaling about \$33,000 (SOR ¶¶ 1.b-1.t). She admitted the bankruptcy and 10 debts totaling about \$25,000. The debts alleged in the SOR are reflected in a credit report from March 2017. The evidence concerning these debts is summarized below.

SOR ¶ 1.b: tax lien filed in 2015 for \$3,537. Applicant denied this debt but provided no information about it. The lien has not been satisfied.

SOR ¶¶ 1.c and 1.d: judgments for medical debts of \$103 and \$308, filed in April and August 2015. Applicant denied these debts but provided no information about them.

SOR ¶ 1.e: judgment for unpaid rent of \$1,508, filed in December 2014. Applicant and her landlord made a payment agreement in December 2014, and Applicant

¹ Applicant's personal information is extracted from her security clearance application (GX 3) unless otherwise indicated by a parenthetical citation to the record.

made one payment of \$200 shortly thereafter. (Answer to SOR.) There is no evidence that she made any further payments.

SOR ¶ 1.f: cellphone bill for \$1,811, referred for collection. Applicant attributed this debt to being laid off. It is not resolved.

SOR ¶¶ 1.g, 1.p, and 1.q: medical bills for \$88, \$87, and \$150, referred for collection. In her answer to the SOR, Applicant stated she had made arrangements to pay these bills, but she submitted no documentation of payments or a payment agreement.

SOR ¶¶ 1.h and 1.j: deficiencies of \$6,929 and \$14,251, after repossession and sale of vehicles in March 2016 and August 2016. Applicant attributed these two repossessions to being laid off. There is no evidence that she has attempted to resolve these debts. They are not resolved.

SOR ¶ 1.i: cellphone bill for \$682, referred for collection. In her answer to the SOR, Applicant claimed that this debt was included in her bankruptcy. However, this creditor was not listed in her bankruptcy petition, and the March 2017 credit report reflects that she had a delinquent account with this creditor in February 2017, well after the bankruptcy discharge. The account was referred for collection in March 2017. (GX 4 at 6.) It is not resolved.

SOR ¶ 1.k: insurance bill of \$182, referred for collection. Applicant admitted this debt and promised to make arrangements to pay it. She submitted no evidence of payments or a payment agreement. It is not resolved.

SOR ¶ 1.l: collection account for \$875. The December 2017 credit report reflects that this debt was included in Applicant's bankruptcy. (GX 4 at 6.)

SOR ¶ 1.m: credit-card account for \$235, referred for collection. In her answer to the SOR, Applicant claimed that this debt was included in her bankruptcy. However, the December 2017 credit report reflects that she disputed this debt and the dispute was resolved against her and referred for collection in March 2017. (GX 4 at 7.) It is not resolved.

SOR ¶¶ 1.n and 1.r: telecommunications bills for \$757 and \$1,071, both referred for collection. Applicant denied these debts but gave no reasons for denying them.

SOR ¶ 1.o: medical bill for \$86, referred for collection. This debt was included in Applicant's bankruptcy. (GX 4 at 9.)

SOR ¶ 1.s: utility bill for \$848, referred for collection. Applicant admitted this debt and promised to make arrangements to pay it. She submitted no evidence of payments or a payment agreement. The debt is not resolved.

SOR ¶ 1.t: collection account for \$346. This debt was included in Applicant's bankruptcy. (GX 4 at 12.)

The record reflects that Applicant disputed the debt alleged in SOR ¶ 1.m and that the dispute was resolved against her. There is no evidence that she has filed disputes with the original creditors, collection agencies or credit bureaus regarding the debts she has denied.

In Applicant's response to the FORM, she stated that she recently received a promotion and a substantial pay raise. However, she has submitted no specific evidence of her income and expenses.

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 § 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. 15-01253 at 3 (App. Bd. Apr.20, 2016).

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.

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. . . . 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 and the documentary evidence in the FORM establish three disqualifying conditions: 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”). AG ¶ 19(f) (“failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state,

or local income tax as required”) is not established because the record does not reflect that the basis for the tax lien alleged in SOR ¶ 1.b was an income-tax debt.

The following mitigating conditions 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, 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 established. Applicant indicated in her SCA that she was laid off twice, but she has provided no specific information about the timing and duration of the layoffs, and she has not acted responsibly. She has attributed the two vehicle repossessions, the judgment for unpaid rent, and a delinquent cellphone bill to her periods of unemployment. She contacted her landlord and negotiated a payment agreement, but she submitted evidence of only one \$200 payment. She has submitted no evidence that she contacted her other creditors.

AG ¶ 20(c) is not established. Applicant received financial counseling as part of her bankruptcy, but her financial problems are not under control.

AG ¶ 20(d) is not established. In Applicant's response to the SOR, she promised to make payment arrangements for the debts alleged in SOR ¶¶ 1.g, 1.k, 1.p, and 1.q, but she has submitted no evidence of payments or payment agreements. The evidence

reflects that the debts alleged in SOR ¶¶ 1.i, 1.o, and 1.t were included in her bankruptcy, but a Chapter 7 bankruptcy discharge does not constitute a good-faith effort to resolve delinquent debts. See ISCR Case No. 07-16427 (App. Bd. Feb. 4, 2010.) However, because the bankruptcy alleged in SOR ¶ 1.a included the debts alleged in SOR ¶¶ 1.i, 1.o, and 1.t, I have resolved them in Applicant's favor. When the same conduct is alleged more than once in the SOR under the same guideline, the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005).

AG ¶ 20(e) is not established. Applicant disputed the debt alleged in SOR ¶ 1.m, but the record does not reflect the basis for her dispute. She submitted no evidence that she has disputed any of the other 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).²

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 Guideline F, 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.

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.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraphs 1.m-1.n:	Against Applicant

² 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.

Subparagraph 1.o:	For Applicant
Subparagraphs 1.p-1.s:	Against Applicant
Subparagraph 1.t:	For Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman
Administrative Judge