



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 18-00414
)	
Applicant for Security Clearance)	

Appearances

For Government: Brittany Muetzel, Esq., Department Counsel
For Applicant: *Pro se*

08/20/2018

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on September 27, 2016. On February 26, 2018, 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 (Exec. Or.) 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) 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 March 8, 2018, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on April 9, 2018,

and the case was assigned to me on April 12, 2018. On May 22, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for June 14, 2018. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) 1 through 6, which were admitted without objection. I kept the record open until June 25, 2018, to enable her to submit additional documentary evidence. She timely submitted AX 7 through 10, which were received without objection. DOHA received the transcript (Tr.) on June 25, 2018.

Findings of Fact¹

In Applicant's answer to the SOR, she admitted the allegations in SOR ¶¶ 1.c, 1.e, 1.f, 1.i, and 1.o. She denied the allegations in SOR ¶¶ 1.a, 1.b, 1.d, 1.g, 1.h, and 1.j-1.n. Her admissions in her answer and at the hearing are incorporated in my findings of fact. Department Counsel withdrew SOR ¶ 1.d. (Tr. 16-17.)

Applicant is a 33-year-old project analyst employed by a defense contractor since August 2017. She was a civilian employee of the Navy from February 2014 to August 2017. She was employed by defense contractors from November 2007 to February 2014. She has held a security clearance in the past. (Tr. 6.)

Applicant has taken college courses but has not received a degree. She married in May 2003, divorced in February 2016, and married her current spouse in March 2016. She has four children from her first marriage, ages 17, 12, 7, and 3. Her oldest child suffers from asthma. In late 2017, she gave birth to twins, who both died shortly after their birth. (Tr. 24, 34.) In addition to the medical bills related to the birth and demise of her twins, she was required to take leave without pay while recovering. (Tr. 24, 34.)

The SOR alleges 15 delinquent debts. Department Counsel withdrew SOR ¶ 1.d at the beginning of the hearing. (Tr. 16.) The delinquent debts alleged in SOR ¶¶ 1.a-1.c and 1.e-1.o are reflected in credit reports from October 2016 (GX 3) and January 2018 (GX 2), and court records (GX 4, 5, and 6). The evidence regarding the 14 remaining allegations is summarized below.

SOR ¶ 1.a: deficiency after an automobile repossession, charged off for \$5,457. In May 2018, Applicant entered into a payment agreement providing for an initial \$50 payment followed by monthly \$150 payments. (AX 1, attachment 2.) She made the required payments in April and May 2018. (AX 7; AX 8.)

SOR ¶ 1.b: student loan more than 180 days past due for \$429, with a loan balance of \$1,934. Applicant has entered into a rehabilitation plan providing for \$5

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

payments for nine months. She made the required payments for May and June 2018 by automatic debit from her bank account. (AX 1, attachment 3; AX 8; AX 9.)

SOR ¶ 1.c: medical bill referred for collection of \$963. This debt was for three separate bills, one for Applicant and two for her children. (Tr. 25.) It was settled for \$675 and paid on June 2, 2018. (AX 1; AX 9 at 1.)

SOR ¶ 1.e: medical bill referred for collection of \$341. Applicant made a payment arrangement for this debt and paid \$41 on April 21, 2018; \$50 on May 11, 2018; and \$218 on June 4, 2018. (AX 7 at 1-2; AX 8 at 1; AX 9 at 2.)

SOR ¶ 1.f: medical bill referred for collection of \$225. This debt is paid in full. Applicant paid \$25 on April 20, 2018; and \$200 on April 29, 2018. (AX 7 at 1, 4.)

SOR ¶ 1.g: telecommunications bill charged off for \$225. This debt is paid in full. (AX 1, attachment 4; AX 7 at 1.)

SOR ¶ 1.h: medical bill referred for collection of \$200. This debt is paid in full. (AX 1 at 2; AX 9 at 2.)

SOR ¶ 1.i: judgment for past-due rent, entered in August 2014 for \$2,800. Applicant was evicted from her apartment when she fell behind in her rent payments. She was pregnant and separated from her husband, who was incarcerated. (Tr. 47.) She contacted the creditor in April 2018, who informed her that the company does not make payment agreements. The judgment is not satisfied. (AX 2.)

SOR ¶ 1.j: judgment for furniture, entered in October 2010 for \$1,003. This judgment was satisfied on February 7, 2011. (AX 3 at 2.)

SOR ¶ 1.k: cellphone bill referred for collection of \$553. Applicant paid this debt in full on March 20, 2017. (Answer to SOR, page 6 of attached partial credit report; AX 6.)

SOR ¶ 1.l: medical bill referred for collection of \$150. This debt was paid on March 3, 2017. (AX 6.)

SOR ¶¶ 1.m and 1.n: medical bills referred for collection of \$120 and \$50. Applicant testified that she paid these bills in March 2017. The amounts reflected in her account statement are for more than these two bills because she included other bills not alleged in the SOR. (Tr. 26, 45-46; AX 6.)

SOR ¶ 1.o: judgment for medical bill, entered in June 2017 for \$1,052. A default judgment was entered against Applicant. She was never served notice of the court hearing because it apparently was delivered to an address where she no longer lives. The return of service reflects that personal service was not made but that the notice was posted on the front door of the residence. (AX 4.) Applicant's divorce decree

requires her ex-husband to pay half of medical expenses for their children. (Answer to SOR, attached divorce decree.) Applicant testified that she contacted the creditor three days before the hearing, and the creditor agreed to accept monthly payments of \$214 for five months. She had not yet received documentation of the payment agreement when the record closed. (Tr. 48-49.)

When Applicant divorced, her husband was ordered to pay child support of \$600 per month. He was incarcerated from December 2014 to May 2016. (Tr. 31.) He owes an arrearage of \$97,616. (AX 5.)

Applicant's annual pay is \$65,000. Her ex-husband's pay has been garnished for child support, and she started receiving bi-weekly child-support payments of \$354 in March 2018. (Tr. 50-51.) She estimates that she has a net monthly remainder, after paying all her bills, of \$900-\$1,000. (Tr. 54.) She pays a law firm \$125 per month to assist her in removing paid debts from her credit record. (Tr. 27, 57-58.)

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 submitted at the hearing establish two disqualifying conditions: AG ¶ 19(a) ("inability to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations"). 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; 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 debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is established. Applicant's marital breakup, the unreliable conduct of her ex-husband, the medical needs of her children, her medical needs during a difficult childbirth and recovery, and the short periods when she was in a no-pay status with her employer were conditions beyond her control. She has acted responsibly by maintaining contact with her creditors, negotiating payment agreements, and making as many payments as her limited income has permitted.

AG ¶ 20(c) is partially established. Applicant's law firm is not providing the type of financial counseling contemplated by this mitigating condition, but there are clear indications that her financial problems are being resolved.

AG ¶ 20(d) is established. Applicant has resolved or is resolving all the debts alleged in the SOR except the judgments alleged in SOR ¶¶ 1.i and 1.o. However, the adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, pay the debts alleged in the SOR first, or establish resolution of every debt alleged in the SOR. An individual needs only to establish a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant has methodically resolved all her delinquent debts except for the two judgments. She has negotiated with

both creditors and appears to have made substantial progress toward resolving the judgment in SOR ¶ 1.o. She has sufficient income to eventually satisfy the judgments in SOR ¶¶ 1.i and 1.o.

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 I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d).

Applicant was candid, sincere, and credible at the hearing. She has worked as a government employee or an employee of a defense contractor since November 2007 and has held a security clearance in the past, apparently without incident. 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 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): FOR APPLICANT

Subparagraphs 1.a-1.c:	For Applicant
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Subparagraph 1.d:	Withdrawn
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Subparagraphs 1.e-1.o:	For Applicant
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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.

Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is granted.

LeRoy F. Foreman
Administrative Judge