



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



In the matter of:)
)
) ISCR Case No. 14-06667
)
Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

10/30/2015

Decision

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F (financial considerations). Clearance is denied.

Statement of the Case

On February 26, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. DOD CAF took that action under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented by DOD on September 1, 2006.

The SOR detailed reasons why DOD adjudicators could not make the affirmative finding under the Directive that it is clearly consistent with the national interest to grant Applicant a security clearance. On April 10, 2015, Applicant answered the SOR and requested a hearing. The case was assigned to me on June 15, 2015. The Defense

Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on July 6, 2015, and the hearing was convened as scheduled on July 21, 2015.

At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 4. Applicant testified and submitted Applicant Exhibit (AE) A. The record of the proceeding was left open until August 4, 2015, to provide Applicant the opportunity to submit additional matters. Applicant timely submitted additional documents that were marked as AE B through O. All exhibits were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on July 27, 2015.

Preliminary Matters

Department Counsel made a motion to withdraw the allegation in SOR ¶ 1.a because it was a duplicate of the one in SOR ¶ 1.k. Applicant had no objection to that motion. The motion was granted and SOR ¶ 1.a was withdrawn.¹

Findings of Fact

Applicant is a 44-year-old administrative assistant who has been working for a defense contractor since December 2012. She graduated from high school in 1989 and earned a bachelor's degree in December 2014. She is married and has three children, ages 12, 13, and 17. She is seeking a security clearance for the first time.²

Excluding the withdrawn allegation, the SOR alleged that Applicant had 12 delinquent debts totaling \$8,068. In her Answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.b (\$681), 1.j (\$895), 1.k (\$2,621), and 1.l (\$1,287) and denied the remaining allegations. Her admissions are incorporated as findings of fact. With the exception of the debt in SOR ¶ 1.i, credit reports (GE 3 and 4) establish the alleged debts.³

Applicant attributed her debts to periods of unemployment. She worked at a bank from December 1998 to December 2009. She started at that bank in administrative positions, but later was promoted into security positions. In one of her security positions, she had access to the video equipment that recorded activities in and around the bank. When she was promoted to another security position, she no longer needed access to the video equipment, but informed her supervisor that she still had access to such equipment. At some point, a female coworker of hers, who was involved in an adulterous relationship, became aware of a threat supposedly made by the wife of the coworker's paramour to shoot certain people as they exited the bank. The coworker

¹ Tr. 11-12.

² Tr. 5-7, 24-29; GE 1.

³ Applicant's Answer to the SOR. Applicant admitted the debt in SOR ¶ 1.a. She did not admit or deny the debt in SOR ¶ 1.k, but noted it was a duplicate of the one in SOR ¶ 1.a.

informed Applicant of the threat and asked whether she had access to the video equipment. Applicant notified her supervisor and other security personnel of the threat. Applicant's supervisor informed Applicant that she would handle the response to the threat and the bank took steps to increase its security. The coworker involved in the adulterous relationship was later terminated for being involved in questionable banking activity with her paramour. After this incident, Applicant was investigated for "blowing the whistle" on the coworker. During that investigation, Applicant's continuing access to the video equipment after she switched jobs became an issue of concern. She told investigators that she informed her supervisor of her continuing access to the equipment in her new position, but her supervisor denied ever being informed of her continuing access. Due to this issue, Applicant left her position at the bank. In her Electronic Questionnaire for Investigations Processing (e-QIP), she reported that she left that job by mutual agreement following charges or allegations of misconduct. She was earning about \$40,000 annually at the time her employment at the bank ended.⁴

Following the termination of her employment at the bank, Applicant was unemployed from January 2010 to August 2010 and did not collect unemployment compensation. She then obtained a couple of temporary jobs, but was again unemployed from December 2010 to March 2012, and October to November 2012. Her periods of unemployment since January 2010 total about 25 months. She was the primary wage earner in her household. Her husband has a flooring business in which he earns about \$25,000 annually. His work and earnings are seasonal. They struggled financially when she lost her job at the bank.⁵

The status of the alleged debts is reflected in the following table:

SOR ¶	Amount	Comments and Status	Evidence
1.b	\$681	This was a credit card debt that had a date of last activity of February 2011. It was assigned for collection in May 2011. Applicant testified that she has been in contact with the creditor to establish a repayment plan, but that plan had not yet been finalized. This debt is unresolved.	Tr. 51-53; GE 2, 3, 4.
1.c	\$269	This was a department store charge card that had a date of last activity of June 2014. Applicant testified that this debt was paid in March 2015. However, she failed to provide proof that it was paid. Insufficient evidence was presented to show this debt was resolved.	Tr. 53-54; GE 4.

⁴ Tr. 27-40, 78-80; GE 1, 2.

⁵ Tr. 27-43; GE 1, 2.

1.d	\$616	This was a medical debt that had a date of last activity of March 2012. Applicant testified this debt was incurred for one of her children who qualified for Medicaid. She did not know why Medicaid did not cover this debt. It remains unresolved.	Tr. 54-58; GE 2, 4.
1.e	\$470	This was a medical debt that had a date of last activity of March 2012. Applicant did not have health insurance when she incurred this debt. It remains unresolved.	Tr. 58-59; GE 2, 4.
1.f 1.g	\$306 \$110	These were medical debts that had dates of last activity of January and February 2010. No evidence was presented to establish these debts were resolved.	Tr. 58-59; GE 2, 4.
1.h	\$30	This was a medical co-pay that had a date of last activity of February 2010. No evidence was presented to establish this debt was resolved.	Tr. 59-60; GE 2, 4.
1.i	\$500	This was a credit card account that had a credit limit of \$500 and a date of last activity of February 2011. Comments in a credit report entry reflect that this account was charged off, was transferred or sold, and had a zero balance. Applicant testified that she did not have any knowledge of this account. No other credit report entries reflect the transfer or sale of this debt or the actual amount owed.	Tr. 60-61; GE 4.
1.j	\$895	This was a dental bill that had a high credit amount of \$895 and a date of last activity of November 2010. Comments in a credit report entry reflect that this account was charged off, was transferred or sold, and had a zero balance. No other credit report entries address this debt. Applicant testified this account is unresolved.	Tr. 61-62; GE 2, 4.
1.k	\$2,621	This was a judgment filed in January 2010 on a credit card account. As of November 2014, the amount of this debt had increased to \$4,273 because of accrued interest and court costs. In February 2015, Applicant was a defendant in a garnishment action for this debt and agreed to have \$200 of her monthly wages garnished. She provided two pay stubs reflecting the garnishment was being executed.	Tr. 62-64; GE 2, 4; AE A, D-H.
1.l	\$1,287	This was a charge card account from a retail store that was assigned for collection in May 2011. It remains unresolved.	Tr. 64; GE 2, 3.

1.m	\$283	This was a checking account that was reported in a collection status in March 2013. The date of last activity and the date it was assigned for collection are unknown. It is unresolved.	Tr. 64-68; GE 2, 3.
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In her post-hearing submission, Applicant submitted a personal financial statement (PFS) that reflected her total net monthly income was \$4,280, her total monthly expenses were \$2,015, and her monthly debt payments were \$2,263, leaving her a net monthly remainder of \$2. The garnishment of her wages for the debt in SOR ¶ 1.k was apparently factored into her reported total monthly income. One of the debt payments listed in the PFS was for \$25 to the creditor listed in SOR ¶ 1.c, but she provided no documentation establishing such payments. In her post-hearing submission, she provided proof of paying a \$249 debt to a department store, but that debt does not appear to correlate to any of the SOR debts. She and her husband own a home and are current on the mortgage payments. She testified that she had about \$100 in a savings account and \$150 in a checking account.⁶

In the email forwarding her post-hearing submission, Applicant indicated that she had contacted several of the collection agencies handling the alleged debts and expected to receive documentation in the near future for establishing payment agreements for three of the debts. She also indicated that a medical creditor was researching the process for filing Medicaid claims for her daughter’s medical bills.⁷

Applicant has about \$26,000 in student loans that were in forbearance. She testified that monthly payments on those loans would start becoming due in September 2015, and she did not know the amount of those upcoming payments.⁸

Applicant presented letters of reference attesting to her good character. Her supervisor stated that she is a hard worker who handles sensitive and personal information with the utmost professionalism. An Army staff sergeant stated that Applicant’s integrity is above reproach. Others described her as honest, reliable, trustworthy, and a great asset.⁹

Policies

The President of the United States 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. *Department of the Navy v.*

⁶ Tr. 44-48, 77-78; AE C, I.

⁷ AE B.

⁸ Tr. 48-49.

⁹ Tr. 68; AE J-O.

Egan, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant 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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in reaching a decision.

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 of potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “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. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or 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 and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No.

02-31154 at 5 (App. Bd. Sep. 22, 2005). “[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 for this guideline is set out in AG ¶ 18 as follows:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

The evidence established that Applicant accumulated delinquent debts that she was unable to pay for an extended period. AG ¶¶ 19(a) and 19(c) apply in this case.

The past-due amount of the debt in SOR ¶ 1.i has not been established by substantial evidence. I find in favor of Applicant on SOR ¶ 1.i.

Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable:

- (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;
- (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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(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.

Insufficient evidence was presented to establish that Applicant's financial problems are under control or will be resolved within a reasonable period. Her delinquent debts are recent and ongoing. She testified credibly that her employment was terminated in 2009 due to circumstances beyond her control and resulted in significant periods of unemployment. However, she has been steadily employed for almost the last three years and, since then, has been doing little to resolve the debts, including some relatively minor debts. Her pay is being garnished to resolve the debt is SOR ¶ 1.k, but such action does not amount to a "good-faith" resolution of that debt. Applicant is barely living within her means and soon after the hearing was scheduled to become responsible for making payments (amount unknown) on her student loans. Insufficient evidence was presented to conclude her delinquent debts do not cast doubt on her current reliability, trustworthiness, and good judgment. No documentation was presented to show she has a legitimate basis for disputing any of the debts. AG ¶¶ 20(a), 20(c), 20(d), and 20(e) are not applicable. AG ¶ 20(b) is partially applicable. Financial security concerns remain despite the presence of some mitigation.

Whole-Person Concept

Under the whole-person concept, the 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. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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.

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.

My comments under Guideline F are incorporated in this whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a valued employee. Her supervisor and others hold her in high regard. Nonetheless, her financial status is unstable. Her delinquent debts remain unresolved, and she presented no realistic plan for resolving them.

Overall, the record evidence leaves me with questions and doubts as to her eligibility and suitability for a security clearance. Applicant failed to mitigate the security concerns under the financial considerations guideline.

Formal Findings

Formal findings as required by Section E3.1.25 of Enclosure 3 of the Directive are:

Paragraph 1, Guideline F:	For Applicant
Subparagraph 1.a:	Withdrawn
Subparagraphs 1.b-1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraphs 1.j-1.m:	Against Applicant

Decision

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Clearance is denied.

James F. Duffy
Administrative Judge