



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 18-01150
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrea Corrales, Esq., Department Counsel
For Applicant: *Pro se*

12/27/2018

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations) and E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on July 18, 2016. On April 25, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. 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 June 21, 2018, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on July 27, 2018,

and the case was assigned to me on September 11, 2018. On September 20, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for October 25, 2018. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through I, which were admitted without objection. I kept the record open until November 16, 2018, to enable her to submit additional documentary evidence. She submitted AX J,¹ K, and L, which were received without objection. DOHA received the transcript (Tr.) on November 2, 2018.

Findings of Fact²

In Applicant's answer to the SOR, she admitted the allegations in SOR ¶¶ 1.a-1.f, 1.h-1.l, 1.n, 2.a, and 2.b.³ She denied the allegations in SOR ¶¶ 1.g and 1.m. Her admissions in her answer and at the hearing are incorporated in my findings of fact. I granted Department Counsel's motion to withdraw the allegation in SOR ¶ 1.i as a duplicate of SOR ¶ 1.b. (Tr. 17.)

Applicant is a 57-year-old information technology (IT) technician employed by federal contractors since April 2011, with a period of unemployment and intermittent employment from November 2015 to March 2016. She has held a security clearance since March 2012.

Applicant married in April 1990 and separated in April 1998. Her spouse is incarcerated. She has three children, ages 35, 28, and 26. She is a high-school graduate and is attending a community college, working toward a professional certification. (Tr. 34-35.)

Applicant served on active duty in the U.S. Army from November 1980 to March 1997 and was honorably discharged based on family hardship. She worked in the private sector from May 1997 to July 2010 and was unemployed from July 2010 until she began working for a federal contractor in April 2011.

Applicant testified that she left her job in November 2015 and moved to another state to get away from a difficult customer of her employer. She testified that everyone in her family was debt-free, she was intrigued by another city, and she wanted to get away and be alone for a while. (Tr. 39.) She supported herself with income from intermittent employment, a substantial inheritance, and her military disability pay. (Tr. 41.) She

¹ AX J indicates that it is one of two pages, but Applicant sent only the first page.

² Applicant's personal information is extracted from her SCA (GX 1) unless otherwise indicated by a parenthetical citation to the record.

³ Applicant admitted that she incorrectly answered "No" to two financial questions in her SCA, but she denied that she was aware of the judgment alleged in SOR ¶ 1.e and the delinquent debts alleged in SOR ¶¶ 1.a-1.d and 1.f-1.k. I have treated her responses to SOR ¶¶ 2.a and 2.b as denials.

returned to her current state of domicile and began working for her current employer in August 2017. (Tr. 36.).

The SOR alleges that Applicant failed to timely file her federal and state tax returns, that she owes federal and state taxes totaling about \$7,000, and that she has 11 other delinquent debts totaling about \$19,720. Her delinquent debts are reflected in credit reports from September 2016 (GX 2) and February 2018 (GX 3). The evidence concerning the allegations in the SOR is summarized below.

SOR ¶¶ 1.a, 1.b, 1.d, 1.g, and 1.k: medical bills placed for collection of \$2,495; \$202; \$10; \$268; and \$28. Applicant testified that she disputed these bills because she was hospitalized for only two hours and she had medical insurance. She testified that she contacted the medical provider and disputed the bills by telephone, but she did not reduce her dispute to writing. (Tr. 44-45.)

SOR ¶ 1.c: cable-service bill placed for collection of \$71. Applicant has taken no action to resolve this debt. (Tr. 46-47.)

SOR ¶ 1.d: collection account for \$10. Applicant has taken no action to resolve this debt. (Tr. 47.)

SOR ¶ 1.e: judgment for medical debt filed in 2015 for \$289. Applicant was unaware that this judgment was entered, because she was living in another state when it was filed. She paid it in full in November 2015. (AX A.)

SOR ¶ 1.f: debt for time-share property charged off for \$15,811. Applicant testified that she contacted the property manager and indicated that she wanted to dispose of this property, but she has taken no further action to sell it or resolve the debt. (Tr. 48-49.)

SOR ¶¶ 1.h and 1.j: utility bill placed for collection of \$204 and cable bill placed for collection of \$140. Applicant testified that she incurred these bills while living in another state. She has not contacted the creditors or made any effort to resolve these debts. (Tr. 45-46.)

SOR ¶ 1.i: failure to timely file federal income tax returns for 2014, 2015, and 2016). Applicant timely filed her federal returns for 2013 and 2014. (AX B at 5-7.) She filed her federal income tax returns for 2015 and 2016 in August 2018. (AX B at 9-11; AX E; AX F.)

SOR ¶ 1.m: failure to file state income tax returns for 2014, 2015, 2016.⁴ As of the date the record closed, Applicant had not filed her past-due state income tax returns

⁴ I granted Department Counsel's motion to amend SOR ¶ 1.m to add an allegation of failure to file a state income tax return for tax year 2013, delete the allegation of failure to file for 2015 and 2016, and amend the state for which returns were required. (Tr. 65-68.)

for 2013 and 2014. (Tr. 31-32.) A state tax lien for \$3,428 was filed against her in September 2018 for taxes due for tax years 2010, 2011, and 2013. (AX H.) The lien has not been satisfied.

SOR ¶ 1.n: tax debt totaling \$7,000 for federal and state income taxes for 2014, 2015, and 2016. Applicant's IRS tax transcript for tax year 2013 reflects a tax debt of \$7,475. (AX B at 5.) In January 2018, she told a security investigator that the IRS calculated her tax debt based on her receipt of an inheritance. (GX 4 at 4.) She did not produce any documentation from the IRS stating the specific basis for recalculating her tax debt for 2013. The IRS tax transcript for 2014 reflects that she owed \$1,634 for that year. (AX B at 7.) The transcript for 2015 reflects a zero balance, and the transcript for 2016 reflects a balance of \$2,671. In October 2018, she wrote two letters to the IRS, challenging the computation of her federal income tax for 2013. (AX C; AX D; AX G.) There is no response from the IRS in the record.

Applicant's father passed away in September 2011, and she was the appointed to administer his estate. She opened the estate in January 2012 and completed the distribution of assets by the end of 2012. (Attachment to SOR answer.) She received about \$250,000. She distributed part of her inheritance by giving her mother \$42,000, giving her sons \$10,000 each, and spending a substantial sum (an amount not specifically reflected in the record) on renovating and improving her home. (Tr. 53-54.) Although she hired an accountant and an attorney to help her administer the estate, she has not sought professional help in resolving the dispute with the IRS. (Tr. 54-57.) She has never sought or received financial counseling. (Tr. 76.)

Applicant's take-home pay is about \$3,500 per month. She receives \$1,100 per month in disability pay related to her military service. Her monthly expenses are about \$3,280. She has no retirement accounts and no savings. (Tr. 71-72.) She testified that she has a net monthly remainder of about \$1,500. (Tr. 73.) She submitted a budget sheet after the hearing, reflecting monthly expenses of about \$3,320. (AX I.)

In Applicant's answer to the SOR, she stated that she was unaware of the judgment for the medical debt alleged in SOR ¶ 1.e, because she was living in another state when it was filed. At the hearing, she testified that she was unaware of the delinquent debts alleged in SOR ¶¶ 1.a-1.d and 1.f-1.k when she submitted her SCA, because she does not review her credit reports, she had sufficient money, she was not borrowing or opening credit accounts, and she "thought that everything was fine." (Tr. 79.)

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 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;

AG ¶ 19(c): a history of not meeting financial obligations; and

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.

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;

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; and

AG ¶ 20(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

AG ¶ 20(a) is not established. Applicant's delinquent debts are numerous, recent, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) may be applicable to the federal tax debt alleged in SOR ¶ 1.n, if it is based on a miscalculation by the IRS of Applicant's income. She procrastinated in challenging the IRS calculation until she realized in January 2018 that it raised security concerns. She eventually acted responsibly by challenging the IRS decision in October 2018.

This mitigating condition is not established for the other debts alleged in the SOR. Applicant's unemployment and intermittent employment from November 2015 to March 2016 were voluntary, motivated by her desire for a change of environment. Her separation from her husband and his incarceration were conditions beyond her control, but they occurred in 1998, well before her financial problems began. Furthermore, she has not acted responsibly. She returned to full-time employment in March 2016, but she has taken no significant action to resolve the debts alleged in SOR ¶¶ 1.a-1.d and 1.f-1.k.

AG ¶ 20(c) is not established. Applicant has not sought or received financial counseling, and her financial situation is not under control.

AG ¶ 20(d) is established for the judgment alleged in SOR ¶ 1.e. It is not established for the other debts alleged in the SOR.

AG ¶ 20(e) is established for the federal tax debt alleged in SOR ¶ 1.n, but not for the other debts alleged in the SOR. Although she admitted the multiple medical debts in her answer to the SOR, she disputed them at the hearing. However, she has not filed disputes with the medical providers, her insurance company, the collection agencies, or the credit bureaus.

AG ¶ 20(g) is not fully established. Applicant filed the past-due federal returns for 2015 and 2016 in August 2018, after she received the SOR, but she has not filed her state returns for 2013 and 2014. She has not resolved the state tax debt. The fact that Applicant has filed her past-due federal returns for 2015 and 2016 “does not preclude careful consideration of Applicant’s security worthiness based on longstanding prior behavior evidencing irresponsibility.” ISCR Case No. 12-05053 (App. Bd. Oct. 30, 2014).

Guideline E, Personal Conduct

The SOR alleges that Applicant falsified her SCA by answering “No” to a question whether she had a judgment entered against her in the previous seven years and failing to disclose the judgment alleged in SOR ¶ 1.e. It also alleges that she falsified her SCA by answering “No” to questions whether, in the past seven years, she had any bills or debts turned over to a collection agency and whether she had any accounts or credit cards suspended, charged off, or cancelled for failing to pay as agreed, and failing to disclose the delinquent debts alleged in SOR ¶¶ 1.a-1.d and 1.f-1.k.

The concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . . .

The relevant disqualifying condition is AG ¶ 16(a):

[D]eliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant’s answer to the SOR, explaining that she was unaware of the judgment alleged in SOR ¶ 1.e because she was living in another state at the time it was filed, is plausible and consistent with her overall inattention to financial matters. Her explanation for not disclosing the debts alleged in SOR ¶¶ 1.a-1.d and 1.f-1.k also is plausible and persuasive. While she is financially careless and disorganized, she was candid, sincere, and persuasive at the hearing. I am satisfied that she did not intentionally falsify her SCA. No disqualifying conditions under this guideline are established.

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).⁵ I have incorporated my comments under Guidelines F and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). I have considered Applicant's military service and the fact that she has held a security clearance for many years, apparently without incident.

After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has refuted the allegation under Guideline F that she failed to timely file her federal income tax return for 2014, and she has refuted the allegations under Guideline E that she falsified her SCA. However, she has not mitigated the security concerns raised by her delinquent debts, her failures to timely file her federal returns for 2015 and 2016, and her failures to timely file her state returns for 2013 and 2014.

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.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f-1.h:	Against Applicant
Subparagraph 1.i:	Withdrawn
Subparagraphs 1.j-1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraphs 1.m (as amended):	Against Applicant
Subparagraph 1.n:	For Applicant

⁵ 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.

Paragraph 2, Guideline E (Personal Conduct): FOR APPLICANT

Subparagraphs 2.a and 2.b: For Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge