



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



Appearances

For Government: John Renahan, Esq., Department Counsel
For Applicant: *Pro se*

01/23/2025

Decision

GOIDSTEIN, Jennifer I., 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 (SCA) on May 17, 2023. On March 19, 2024, 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; 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).

Applicant answered the SOR on September 11, 2024, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on September 26, 2024. A complete copy of the file of relevant material

(FORM) was received by Applicant on October 14, 2024. She was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. Applicant submitted an undated letter as a response. The case was assigned to me on January 8, 2025.

The SOR and Answer (Items 1-2) are the pleadings in the case. FORM Items 2 through 8 are admitted into evidence without objection. Applicant's letter is admitted into evidence without objection and marked as Applicant Exhibit (AE) A.

Findings of Fact

The SOR alleged that Applicant is indebted on seven delinquent accounts in the total amount of \$19,991. She admitted SOR ¶¶ 1.a-1.e, and 1.g. She denied SOR ¶ 1.f, with explanation.

Applicant is 63 years old and is divorced since 2001. She has two adult sons and is "legally responsible" for her granddaughter and great-grandson. She is a high school graduate. She has worked as an administrative technician for a federal contractor since February 2023. From September 2022 to February 2023, she was unemployed. From May 2012 to September 2022, she worked as a floor supervisor in a casino. She was terminated from that position in September 2022. (Items 3 and 5; AE A)

Applicant's Response, her answers to government interrogatories, and her subject interview detail the difficult circumstances that have led to her financial problems. She acknowledged that she prioritized caring for her alcoholic son, her now-deceased mother, her granddaughter, and her great-grandson over resolving her delinquent accounts. She indicated that her alcoholic son has attempted suicide, contracted Lyme disease, suffered a heart attack, and has experienced periods of being unhoused. She took legal responsibility of her granddaughter in approximately 2020, after the child reported abuse by her mother and was facing placement in foster care. (Items 3 and 5; AE A)

The debt alleged in SOR ¶ 1.a was for a vehicle loan that Applicant acquired for her son prior to his health difficulties. He was to make the payments on the vehicle. However, the vehicle's engine died shortly after the purchase and then her son experienced his health problems. She indicated she voluntarily surrendered it to the creditor. However, they only were able to sell it for \$1,000. As a result, she was left with a \$13,584 debt. She indicated she intended to challenge the debt under her state's lemon laws but did not provide documentation of having disputed this debt. It is unresolved. (Items 2, and 5-7; AE A)

SOR ¶ 1.b alleged a delinquent medical collection account in the amount of \$3,447. Applicant incurred this debt for her mother's medical treatment. Her mother was suffering with Lewy Body Dementia. She was her mother's caregiver from 2013 until her mother passed away in 2020. This debt is unresolved. (Items 5-8, AE A)

SOR ¶ 1.c alleged a delinquent collection account owed originally to a power company in the amount of \$1,216. She acknowledged that this debt is unresolved. (Item (Items 5-8, AE A)

SOR ¶ 1.d alleged a medical collection account in the amount of \$611. It is unclear whether this debt related to her mother's treatment, her treatment, or her granddaughter's treatment. It remains unpaid. (Items 5-8, AE A)

SOR ¶ 1.e alleged a collection account in the amount of \$502. It was originally for fire casualty insurance. This debt is unresolved. (Items 5-8, AE A)

SOR ¶ 1.f alleged a collection account for a delinquent insurance debt in the amount of \$458. Applicant contests this debt. She indicated that it was for insurance that she cancelled after she was overcharged. However, she did not provide documentation of disputing the debt. (Items 5-8, AE A)

SOR ¶ 1.g alleges a delinquent revolving charge account in the amount of \$173. Applicant indicated she would pay this debt when she could afford to resolve it. It remains unresolved. (Items 5-8, AE A)

It is Applicant's goal to pay all of her creditors "when [she] make[s] enough to do that and be able to eat." Applicant acknowledged that she has not "paid anyone anything yet." (Items 5-8, AE A) Her personal financial statement reflects that her monthly expenses exceed her monthly income. (Item 4) There is no indication in the record that she has completed financial counseling.

Applicant noted that being "working-class poor" does not mean she lacks "intelligence, honesty, and loyalty." She represented that she is "honest to a fault, taking care of [her] family, hard working, and loyal to [her] country." She highlighted her relatives who have served in the U.S. military and noted that she would never betray them or her country. (AE A)

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).

The documentary evidence admitted into evidence establishes the following disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"); and AG ¶ 19(c) ("a history of not meeting financial obligations").

The following mitigating conditions under AG ¶ 20 are potentially relevant:

- (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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (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;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (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) through 20(e) are not fully applicable. Applicant's financial difficulties are ongoing. While her debts are attributable to multiple circumstances that were beyond her control as she struggled to care for her ailing mother, alcoholic son, granddaughter,

and great-grandson, there is no evidence to show that she acted responsibly under the circumstances with respect to her delinquent accounts. She has not established that she is participating in financial counseling. In order to establish Mitigating Condition 20(d), an applicant must initiate and adhere “to a good faith effort to repay overdue creditors or otherwise resolve debts.” See ISCR Case No. 08-06058 at 5 (App. Bd. Sep. 21, 2009). She did not establish that she has acted responsibly and made a good-faith effort to pay or resolve her debts. Finally, while she indicated that she disputes SOR ¶ 1.a under the lemon law and ¶ 1.f because she cancelled the account, she did not provide documented proof to substantiate the basis of the dispute or provide evidence of any actions to resolve the issues.

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. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (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). Applicant is a loyal American who loves her country and her family. She has persevered through multiple challenging family illnesses and events. However, she spends monthly more than she earns, and she is unable to address her delinquencies. 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 did not mitigate the financial considerations security concerns.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F:

AGAINST APPLICANT

Subparagraphs 1.a-1.g:

Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Jennifer I. Goldstein
Administrative Judge