



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
XXXXXXXXXXXX, XXXXX) ISCR Case No. 14-03432
)
Applicant for Security Clearance)

Appearances

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

01/08/2015

Decision

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Guideline F (financial considerations). Clearance is granted.

Statement of the Case

On December 18, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) or security clearance application (SF 86). On August 13, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant, pursuant to 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* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleged security concerns under Guideline F (financial considerations). The SOR detailed reasons why the DOD CAF was unable to find that it is clearly consistent with the national interest to grant a security clearance for

Applicant, and it recommended that her case be submitted to an administrative judge for a determination whether her clearance should be continued or revoked.

On September 15, 2014, Applicant responded to the SOR. On October 9, 2014, Department Counsel was ready to proceed on Applicant's case. On October 17, 2014, DOHA assigned Applicant's case to me. On October 20, 2014, the Defense Office of Hearings and Appeals (DOHA) issued a hearing notice, setting the hearing for November 4, 2014. Applicant's hearing was held as scheduled. At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 3, which were received into evidence without objection. Applicant did not call any witnesses, testified, and offered Applicant Exhibits (AE) A through D, which were received into evidence without objection.

I held the record open until November 14, 2014, to afford Applicant the opportunity to submit additional documents. Applicant timely submitted AE E through L, which were received into evidence without objection. On November 13, 2014, DOHA received the hearing transcript (Tr.).

Findings of Fact

In her SOR answer, Applicant admitted SOR ¶¶ 1.b, 1.d, 1.e, 1.f, 1.h, 1.i, 1.j, 1.k, and 1.m. She denied SOR ¶¶ 1.a, 1.c, 1.g, 1.l, 1.n, 1.o, 1.p, 1.q, 1.r, and 1.s. After a thorough review of the evidence, I make the following additional findings of fact.

Background Information

Applicant is a 46-year-old badging clerk, who has been employed by a defense contractor since December 2013. She seeks a secret security clearance, which is a requirement of her continued employment. (GE 1, Tr. 22-23.)

Applicant earned her GED in 1989. She was awarded an associate of science degree in paralegal studies in August 2008. (GE 1, Tr. 23-24.) Applicant was previously married from August 1990 to January 1995 and from January 1997 to August 2001. Her first two marriages ended by divorce. Applicant remarried a third time in February 2002. She has three adult daughters, none of whom are dependent on her for support. Applicant did not serve in the armed forces. (GE 1, Tr. 25-26.)

Financial Considerations

Applicant's SOR contains 19 separate allegations consisting of 12 collection accounts, 5 past-due accounts, and 2 charged-off accounts. The vast majority of these debts are for student loans. The remaining debts are for relatively small balances for a credit card and uncovered medical co-pay bills. (SOR ¶¶ 1.a – 1.s.)

Applicant attributes her financial problems to two periods of unemployment from June 2010 to February 2011 and February 2013 to October 2013, and a December 2013 surgery. (GE 1, Tr. 26-27.)

The following summarizes the status of each SOR debt:

SOR ¶ 1.a – Charged-off student loan for \$9,331. Applicant is making \$179 monthly payments and account is current. As of the hearing date, her loan balance had been reduced to \$4,120. **DEBT BEING RESOLVED.** (SOR answer; GE 3, AE A(6), AE F, AE G, AE H; Tr. 28-32, 55, 57.)

SOR ¶¶ 1.b, 1.d, 1.e, 1.f, 1.h, 1.i, 1.j, 1.k, and 1.m are collection or charged-off student loan accounts in the respective amounts of \$6,544, \$6,152, \$3,898, \$3,836, \$3,356, \$2,919, \$2,141, \$1,462, and \$1,119. Applicant consolidated these loans into one account and is making \$108 monthly payments on that account. **DEBT BEING RESOLVED.** (SOR answer; AE A(3), AE B, AE D, AE F, AE G, AE I; Tr. 33-37, 44-50, 56.)

SOR ¶¶ 1.c and 1.g are collection accounts in the respective amounts of \$6,451 and \$3,573. Applicant consolidated these accounts into one account and is making \$72 monthly payments on that account. **DEBT BEING RESOLVED.** (SOR answer; AE A(6), AE F, AE G; Tr. 38, 56.)

SOR ¶ 1.l is a charged-off student loan for \$884. Applicant settled and paid this account for the lesser amount of \$361 in September 2014. **DEBT RESOLVED.** (SOR answer; AE A(2), AE A(5), AE F, AE J; Tr. 34-36, 38, 54-55.)

SOR ¶ 1.n is a credit card past-due account for \$135. Applicant has been making payments on this account since December 2013. The account has been rehabilitated and is in good standing. **DEBT BEING RESOLVED.** (SOR answer; AE A(4), AE F, AE K; Tr. 39, 55.)

SOR ¶ 1.o is a collection account for \$277. The account is listed as “closed” on Applicant’s January 2014 credit report. Department Counsel withdrew this allegation. **DEBT RESOLVED.** (SOR answer; GE 3, AE F; Tr. 39-40.)

SOR ¶¶ 1.p – 1.s are delinquent medical co-pay accounts in the respective amounts of \$75, \$75, \$75, and \$20. Accounts paid in full. **DEBTS RESOLVED.** (SOR answer, AE L, Tr. 40-46.)

Applicant and her husband’s net monthly income is \$5,729. Applicant’s budget reflects that she is current on her monthly bills and lives within her means. Applicant’s monthly budget also reflects a net monthly remainder of \$1,919. (Tr. 50-51, 59, 61-63, AE E.)

Character Evidence

Applicant provided her most recent work performance evaluations for 2013 and 2014 documenting above-average performance. (AE A(7), AE A(8).) Applicant also submitted two work-related reference letters from her supervisor and a co-worker. Both individuals attested to her good character and noted her contribution as a defense contractor employee. Applicant's employer fully supports her for a security clearance. (AE A(9), AE A(10).)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no 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 applicant's 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.

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, these guidelines are applied 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, 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 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 "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), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It 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. 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 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

AG ¶ 18 articulates the security concern relating to financial problems:

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.

AG ¶ 19 provides two financial considerations disqualifying conditions that could raise a security concern and may be disqualifying in this case, “(a) inability or unwillingness to satisfy debts,” and “(c) a history of not meeting financial obligations.” Applicant’s history of delinquent debt is established by the evidence presented. The Government established disqualifying conditions AG ¶¶ 19(a) and 19(c).

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.

Applicant's conduct does not warrant full application of AG ¶ 20(a) because there is more than one delinquent debt and her financial problems are not isolated. Her debt is a "continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). Nevertheless, she receives partial credit under AG ¶ 20(a) because the debts occurred under circumstances that are unlikely to recur and her behavior does not cast doubt on her current reliability, trustworthiness, or good judgment.

Full application of AG ¶ 20(b) is warranted. Applicant's two periods of unemployment and a surgery could not have been anticipated. She diligently sought reemployment and is doing her level best to pay her creditors. As noted *supra*, Applicant has paid or is resolving all of her debts and has made substantial progress in regaining financial responsibility.¹

AG ¶¶ 20(c) and 20(e) are not applicable. Applicant's budget demonstrates that she is living within her means. Having paid or is resolving the debts in SOR ¶¶ 1.a through 1.s, Applicant is able to receive full credit for those debts under AG ¶ 20(d).

¹"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether she maintained contact with her creditors and attempted to negotiate partial payments to keep her debts current.

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 the 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.

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. AG ¶ 2(c). The discussion in the Analysis section under Guideline F is incorporated in this whole-person section. However, further comments are warranted.

Applicant's employment with a defense contractor weighs heavily in her favor. She is a law-abiding citizen and a productive member of society. She is current on her day-to-day expenses, lives within her means, and her SOR debts have been resolved or are being resolved. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

In evaluating F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has ". . . established a plan to resolve his financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a

reasonable debt plan be the ones listed in the SOR. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Applicant's debts have been paid or are being resolved. Due to circumstances beyond her control, her debts became delinquent. Despite her financial setback as a result of two periods of unemployment and a medical issue, it is clear from Applicant's actions that she is on the road to a full financial recovery. These factors show responsibility, rehabilitation, and mitigation.

Both the mitigating conditions under Guideline F and the whole-person analysis support a favorable decision. I specifically considered Applicant's years of financial responsibility before falling into debt, the circumstances that led to her financial difficulties, her financial recovery and steps she has taken to resolve her financial situation, her potential for future service as a defense contractor, the mature and responsible manner in which she dealt with his situation, her reference letters, and her testimony and demeanor. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole-person, I conclude she has mitigated the financial considerations security concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines.

Formal Findings

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a to 1.s: For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Clearance is granted.

Robert J. Tuider
Administrative Judge