



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 14-03437
)
 Applicant for Security Clearance)

Appearances

For Government: Fahryn Hoffman, Esq., Department Counsel
For Applicant: *Pro se*

01/07/2015

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 February 28, 2014. On July 25, 2014, the Department of Defense (DOD) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD acted under Executive Order 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) implemented by DOD on September 1, 2006.

Applicant answered the SOR on August 13, 2014, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on October 29, 2014, and the case was assigned to me on October 31, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 3, 2014, scheduling the hearing for November 21, 2014. I convened the hearing as scheduled.

Government Exhibits (GX) 1 and 2 were admitted in evidence without objection. Department Counsel's letter transmitting copies of GX 1 and 2 to Applicant was attached to the record as Hearing Exhibit (HX) I. Applicant testified and submitted Applicant's Exhibits (AX) A through E, which were admitted without objection. I kept the record open until December 5, 2014, to enable Applicant to submit additional documentary evidence. She timely submitted AX F and G, which were admitted without objection. Department Counsel's comments regarding AX F and G are attached to the record as HX II. DOHA received the transcript (Tr.) on December 8, 2014.

Amendment of SOR

On Department Counsel's motion, without objection from Applicant, I amended SOR ¶ 1.a to conform to the evidence by amending the date of the judgment to allege "July 2012" instead of "2009." (Tr. 15-16.) On my own motion and without objection from either party, I corrected the spelling of "Captial" in SOR ¶ 1.a to "Capital." (Tr. 19.)

Findings of Fact

In her answer to the SOR, Applicant admitted all the allegations, except SOR ¶¶ 1.d and 1.m, which she denied on the ground that they had been paid. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 31-year-old naval shipyard trainee employed by a federal contractor since February 2014. She has never held a security clearance. She has completed the first phase of her training, but she cannot complete the second phase without a security clearance. (Tr. 58.)

Applicant previously was employed as an administrative assistant for a county health department from August 2011 to February 2014, and she held various full-time and part-time administrative positions for a state university from August 2003 to August 2011. During her employment by the county health department, she earned the respect of her colleagues and supervisor for her strong administrative skills, adaptability, and strong leadership. She was regarded as a quick learner, a team player, and a trustworthy custodian of sensitive and confidential information. (AX A; AX B; AX C.)

Applicant completed college and received a bachelor's degree in August 2007. She married in June 2009. She and her husband have two children, ages four and two. Her husband has a ten-year-old daughter from a previous relationship.

Applicant testified that in 2010, she encountered medical complications during pregnancy that made her unable to work for six months. She received short-term disability pay, which was 60% of her regular pay. She and her husband were living paycheck to paycheck, and the reduction in pay caused them to fall behind on their debt payments. (Tr. 29, 43-45.)

In 2011 and 2012, Applicant's daughter was hospitalized several times, incurring co-payments on medical bills and causing Applicant to be unable to work for weeks at a time. At the same time, her husband was out of work for a month, recuperating from an injury. Applicant and her husband decided to relocate closer to Applicant's parents to reduce their living expenses. Applicant stayed with her parents for about three months. (Tr. 30.)

When Applicant and her husband fell behind on their debt payments, they both withdrew all the funds from their retirement accounts to pay bills. She withdrew about \$3,000 and her husband withdrew about \$6,000. (Tr. 51, 57.) On November 13, 2014, Applicant's husband lost his job because he failed a certification test. (Tr. 56.)

Applicant's credit bureau report (CBR), dated March 14, 2014, reflected the thirteen delinquent debts alleged in the SOR, totaling about \$14,133. (GX 2.) The table below summarizes the evidence concerning the debts alleged in the SOR.

SOR	Debt	Amount	Status	Evidence
1.a	Judgment	\$749	Paid, 7-29-14	AX E at 1
1.b	Credit card	\$333	Paying \$15 monthly	Tr. 70
1.c	Credit card	\$1,455	Paying monthly, balance reduced to \$887	AX E at 4; Tr. 63-64
1.d	Credit card	\$8,626	Deleted from credit report	AX G
1.e	Medical	\$290	Paying \$20 monthly	AX E at 21; Tr. 71
1.f	Medical	\$267	Payments included in 1.e	AX E at 21; Tr. 71
1.g	Medical	\$52	Unresolved	GX 2 at 6
1.h	Collection	\$689	Paid, 4-18-14	AX E at 22; Tr. 73
1.i	Medical	\$100	Unresolved	GX 2 at 8
1.j	Medical	\$398	Unresolved	GX 2 at 9
1.k	Medical	\$25	Unresolved	GX 2 at 9
1.l	Medical	\$275	Paying \$15 monthly	Tr. 74
1.m	Credit card	\$874	Paid, 6-27-14	AX E at 2

About two months before the hearing, Applicant joined a credit union that offers free financial counseling. A credit counselor reviewed her credit report, examined her monthly income and expenses, and recommended a debt-resolution strategy. (Tr. 78-79.)

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, *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 AG. 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.” See 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. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

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; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

The concern under this guideline is set out in AG ¶ 18:

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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual 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, corroborated by her CBR, establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

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.

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

AG ¶ 20(b) is established. Applicant encountered several conditions that were largely beyond her control: her disabling medical complications during pregnancy, her husband's disabling work-related injury, her daughter's illness and hospitalization, and her husband's recent loss of employment. She has acted reasonably by maintaining contact with her creditors, withdrawing retirement funds to pay debts, moving in with her parents to reduce expenses, negotiating several payment agreements, and obtaining credit counseling.

AG ¶ 20(c) is partially established. Applicant obtained credit counseling about two months before the hearing, but she has not had the time or adequate income to implement the suggestions of her financial counselor.

AG ¶ 20(d) is established. Applicant has satisfied the judgment in SOR ¶ 1.a, paid the debts in SOR ¶¶ 1.h and 1.m, and established payment agreements for the debts in SOR ¶¶ 1.b, 1.c, 1.e, 1.f, and 1.l. The medical debts in SOR ¶¶ 1.g (\$52), 1.i (\$100), 1.j (\$398), and 1.k (\$25) are not resolved. However, a person is not required to establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant has methodically addressed her delinquent debts to the best of her ability, and she has significantly reduced her indebtedness. She paid three debts in full (SOR ¶¶ 1.a, 1.h, and 1.m, totaling \$2,312); she successfully disputed the \$8,626 debt in SOR ¶ 1.b; and she has reduced the debt in SOR ¶ 1.c from \$1,455 to \$878.

AG ¶ 20(e) is established for the debts in SOR ¶¶ 1.d and 1.m, which she denied in her answer to the SOR. She proved that the debt in SOR ¶ 1.d was deleted from her CBR and the debt in SOR ¶ 1.m was paid in full.

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(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.

I have incorporated my comments under Guidelines F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guidelines, but some warrant additional comment.

Applicant was highly respected in her previous employment. She has been unable to complete the training required for her current job without a security clearance. She was candid, sincere, and credible at the hearing. She has struggled financially since 2010 due to circumstances beyond her control and has made personal sacrifices to minimize her living expenses. I am confident that she will overcome her latest financial setback (her husband's loss of employment) and will continue her pattern of diligence and perseverance in addressing her financial problems.

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 based on financial considerations. Accordingly, I conclude she has carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

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.m: For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

LeRoy F. Foreman
Administrative Judge