



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 14-05143
)	
Applicant for Security Clearance)	

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

08/24/2015

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 September 19, 2013. On November 21, 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; Department of Defense 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 January 21, 2015, denied the allegations in the SOR, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on February 24, 2015. On May 4, 2015, a complete copy of the file of relevant material (FORM), consisting of Items 1 through 6,

was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. She received the FORM on May 18, 2015, and she submitted a seven-page letter (Response to FORM) and Exhibits A through O, which were added to the record, without objection from Department Counsel. She objected to the admission of Item 4, an unauthenticated summary of a personal subject interview. I have sustained her objection and will not consider Item 4. The case was assigned to me on August 4, 2015.

Findings of Fact

Applicant is a 50-year-old material expeditor employed by a defense contractor since January 2012. She is currently deployed overseas. She was previously employed by defense contractors and deployed overseas from June 2009 to March 2010 and March to November 2011. She was unemployed from February to June 2009, March to September 2010, and November 2011 until she began her current job. She has held a security clearance since February 2011.

In July 2003, Applicant purchased a home and lived in it with her mother and two daughters. In May 2005, she decided to move to a better neighborhood. She purchased another home and rented her former home. On the advice of a friend, she purchased a second rental property in July 2005. In December 2005, she began having financial problems because one tenant failed to pay the rent and the other tenant moved out on short notice and left the house infested with roaches and in need of expensive rehabilitation. Applicant was unable to make the mortgage payments on her two rental properties and her family home, and she lost both rental houses to foreclosure. The lenders did not claim any deficiencies on the first mortgages. She was able to obtain a loan modification on the family home and keep her loan payments current.

A September 2013 credit bureau report (CBR) reflects that a second mortgage on one of the rental properties was charged off in October 2007. (Item 5 at 3) An April 2014 CBR reflects that the charged-off debt was referred for collection. (Item 6 at 5.) However, the CBRs do not reflect a transfer of this debt to a debt collection agency. In June 2015, while home on leave from her overseas place of duty, Applicant obtained a Verification of Mortgage document from the original mortgage lender, reflecting that the second mortgage was foreclosed in November 2014, and that there was a zero balance on the account. (Exhibit A.)

Applicant used a credit card for new appliances and improvements when she converted her personal residence to a rental property. The credit card account became delinquent when she encountered problems with her tenants, and it was referred for collection. As is common practice, the debt was transferred or sold several times and assigned new account numbers. The debt appears on her CBRs and is alleged in the SOR under the name of one of the first collection agencies in the chain. In June 2012, the collection agency then holding the debt obtained a consent judgment, settling the debt for \$4,500, with Applicant agreeing to pay it at the rate of \$100 per month. (Answer to SOR at 6.) The debt was paid in full in June 2015. (Exhibit B.) Based on the

transaction dates in the CBRs, the similarity of the amount reflected as in collection, and the absence of any other collection accounts for similar amounts in Applicant's CBRs, I am satisfied that the plaintiff who obtained the consent judgment and received Applicant's payments was the successor of the collection agency alleged in the SOR.

In January 2015, Applicant hired a law firm to work with the credit bureaus to audit and verify the two entries on which the SOR was based. As of the date the record closed, her dispute of the two entries had not been resolved.

Applicant's monthly income is \$5,556, and her living expenses are about \$1,362. Her only debt payment is \$1,343 for her home mortgage loan. She has a net monthly remainder of about \$2,581. (Exhibit J.) As an employee working outside the United States, only her wages in excess of \$90,000 are taxable, and she is exempt from her state income tax.

Two of Applicant's friends, who have known her for many years, describe her as "respected and loved in our community," organized, efficient, and dependable. (Exhibits M and N.) Her supervisor considers her dedicated, reliable, punctual, and trustworthy. (Exhibit O.) Her most recent annual performance appraisals have rated her as "5" on a 5-point scale for job knowledge, quality of work, promptness, and "4" for reliability, initiative, and values. (Exhibit K.)

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 SOR alleges a delinquent second mortgage placed for collection for \$34,548 (SOR ¶ 1.a) and a delinquent credit card account placed for collection for \$8,163 (SOR ¶ 1.b). 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).

The documents in the FORM, Applicant's answer to the SOR, and her response to the FORM 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 under this guideline 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 established. Applicant's debts were recent, but only two debts are at issue, and they occurred under circumstances making them unlikely to recur, because Applicant is no longer involved with rental properties.

AG ¶ 20(b) is established. Applicant's irresponsible tenants and her periods of unemployment were conditions beyond her control. She acted responsibly by maintaining contact with her creditors, reaching a payment agreement on the credit card debt, and successfully resolving both debts.

AG ¶ 20(c) is partially established. Applicant has not obtained financial counseling in the traditional sense, but her financial problems are under control.

AG ¶ 20(d) is established for the credit card debt, because Applicant made all payments as agreed and the debt is resolved. It is not established for the delinquent second mortgage, because it was resolved by foreclosure.

AG ¶ 20(e) is established. Applicant contacted the original creditor for the second mortgage and determined that the debt was resolved. She has provided documentary evidence that she has retained a law firm to correct the adverse entries on her CBRs and she has documented the basis for her dispute.

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

Applicant has worked for various defense contractors since June 2009, and she enjoys a reputation for dedication, reliability, and trustworthiness. She has held a security clearance since February 2011, apparently without incident. In spite of being overseas, she diligently obtained the necessary documentation to support her responses to the SOR and the FORM.

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 raised by her delinquent debts. Accordingly, I conclude she has carried her burden of showing that it is clearly consistent with the national interest to continue 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.b:

For Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge