



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



In the matter of:)
)
) ISCR Case No. 14-06715
)
Applicant for Security Clearance)

Appearances

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

12/08/2015

Decision

DUFFY, James F., Administrative Judge:

Applicant mitigated the security concerns arising under Guideline F, financial considerations. Eligibility for access to classified information is granted.

Statement of the Case

On February 27, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. DOD CAF took that action under 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*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

The SOR detailed reasons why DOD CAF could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to continue Applicant's security clearance. On March 23, 2015, Applicant

answered the SOR and requested a hearing. In an undated letter, she later supplemented her Answer to the SOR. On June 30, 2015, I was assigned this case. On July 8, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing scheduling the hearing for July 23, 2015. The hearing was held as scheduled.

At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 4, while Applicant testified and offered Applicant Exhibits (AE) A through E. The record of the proceeding was left open to August 6, 2015, to provide Applicant the opportunity to present additional matters. She submitted documents that were marked as AE F through J. All exhibits were admitted into evidence without objection. The transcript (Tr.) of the hearing was received on July 31, 2015.

Findings of Fact

Applicant is a 52-year-old employee of a defense contractor. She has been working for her current employer since November 2002. She graduated from high school in 1980 and earned an associate's degree in 2002. She served in the U.S. Air Force (USAF) for 22 years and retired as a technical sergeant (E-6) in 2002. She has been married twice. She married her current husband in February 2011 and has one adult child. She first obtained her security clearance while serving in the USAF.¹

The SOR alleged that Applicant failed to file her federal and state income tax returns for 2005, 2006, 2009, and 2010 (SOR ¶ 1.a) and that she had four delinquent debts totaling \$2,377 (SOR ¶¶ 1.b–1.e). In her Answer to the SOR, Applicant admitted two allegations (SOR ¶¶ 1.b and 1.c) and denied the remaining allegations. Her admissions are incorporated as findings as fact.²

In her Electronic Questionnaire for Investigations Processing (e-QIP) dated March 19, 2012, Applicant disclosed that she failed to file her federal income tax returns for 2005, 2006, 2009, and 2010, but also indicated in the comments section that she thought she had filed her 2005 and 2006 federal income tax returns. She stated that she was working with the Internal Revenue Service (IRS) to resolve her back taxes. In an interview with an Office of Personnel Management (OPM) investigator on May 16, 2012, Applicant also indicated that she had failed to file her state income tax returns for those same years. She stated she did not file her income tax returns because she could not afford to pay the taxes that were due.³

¹ Tr. 5-7, 38-43; GE 1, 2; AE A, B.

² Applicant's Answer to the SOR; GE 1-4. In the SOR, there was a typographical error. The year 2006 in SOR ¶ 1.a was listed as "200." Applicant had no objection to correcting the SOR so that year was reflected as "2006."

³ GE 1, 2.

In her Answer to the SOR, Applicant provided copies of her federal and state income tax returns for 2005, 2006, 2009, and 2010. Those copies were apparently obtained from her tax preparer's office and were neither signed nor dated. The tax preparer's invoice for 2005 was dated May 18, 2012; the invoice for 2009 was dated May 17, 2010; and the IRS e-file Signature Authorization for 2010 was dated April 13, 2011. For 2005, she owed \$3,374 to the IRS and was entitled to a state tax refund of \$438. For 2006, she owed \$3,741 to the IRS and was entitled to a state tax refund of \$432. For 2009, she owed \$5,330 to the IRS and was entitled to a state tax refund of \$414. For 2010, she owed \$4,183 to the IRS and was entitled to a state tax refund of \$277.⁴

In her Answer to the SOR, Applicant provided a receipt showing that she paid \$1,507 in March 2015 to satisfy the \$675 judgment filed against her in 2005 (SOR ¶1.b). She also provided receipts showing the \$1,490 collection account in SOR ¶ 1.c was paid in May 2012; the \$134 collection account in SOR ¶ 1.d was paid in March 2015; and the \$78 collection account in SOR ¶ 1.e was paid in May 2012.⁵

At the hearing, Applicant stated that her step-father passed away in 2004. At that time, she was a single parent. As the eldest daughter, she felt obligated to support her mother who was a victim of a large hurricane. By providing support to her mother, Applicant was not able to meet her own financial obligations. She stated that she did not initially file her income tax returns because she knew she owed taxes that she could not afford to pay. She indicated that she finally realized her approach was flawed and filed her returns.⁶

Applicant testified that she has filed all of her federal and state income tax returns for 2005 through 2014. She owed the IRS about \$35,000 in past-due taxes for 2007 through 2014, which was not alleged in the SOR. She stated that she entered into a repayment plan with the IRS in about 2012 and paid about \$4,000 or \$5,000 toward her past-due taxes last year. She indicated that changes are periodically made to the repayment plan. She expected that her monthly IRS payment would soon increase to \$625. Those payments are generally withdrawn from her bank account automatically; however, she periodically has to renew the withdrawal authorization. In her post-hearing submission, she provided IRS documentation confirming the existence of the repayment plan. She also testified that she was making adjustments to her withholding to avoid further tax delinquencies. She noted that she was current with her payments on about \$16,000 in student loans and had received some financial counseling from her tax preparer.⁷

⁴ Applicant's Answer to the SOR.

⁵ Tr. 34-38; GE 3, 4; AE A; Applicant's Answer to the SOR.

⁶ Tr. 26-28.

⁷ Tr. 28-38; 43-48; AE G-J; Applicant's Answer to the SOR.

Applicant's annual salary is about \$48,000. She receives about \$18,000 annually from her military retirement. Her husband also is retired from the military. She estimated that their combined annual income was about \$120,000 and their monthly discretionary income was about \$1,500.⁸

For her military service, Applicant was awarded four Air Force Commendation Medals, an Air Force Achievement Medal, and six Air Force Good Conduct Medals. In 2001, she was recognized as her command's outstanding noncommissioned officer of the year. She served on active duty in Saudi Arabia and South Korea.⁹

Applicant's civilian work performance evaluations reflect that she consistently exceeds expectations. She has received a number of annual merit pay increases, bonuses, and awards. She has been nominated to receive the 2015 Star Award for her outstanding work performance. She provided letters of reference from coworkers and friends that attest to her professionalism, honesty, integrity, dependability, trustworthiness, and exceptional work ethic.¹⁰

Policies

The President of the United States 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. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant 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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs 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 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 unfavourable, to reach his decision.

⁸ Tr. 38-43; AE D.

⁹ AE A, B.

¹⁰ AE C, D.

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 of 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), Section 3. Thus, a clearance decision is merely an indication that the applicant has or 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 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 [his or 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

Guideline F, Financial Considerations

The security concern for this guideline is set out in AG ¶ 18 as follows:

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.

Applicant's admissions and the record evidence established the following disqualifying condition under AG ¶ 19:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file annual Federal, state, or local income tax returns as required

Four 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

After her step-father passed away in 2004, Applicant took on the responsibility of supporting her mother. At that time, she was a single mother and struggled to support her mother and meet other financial obligations. This was a condition beyond her control that contributed to her financial problems. She made a bad decision by not timely filing her federal and state income tax returns for 2005, 2006, 2009, and 2010 because she did not have the money to pay the taxes that were due. She rectified that tax filing error between 2010 and 2012. She also made a bad decision by not having enough tax withholdings from her pay and ended up owing the IRS a significant amount in past-due taxes. In 2012, she entered into a repayment plan with the IRS to resolve her past-due tax issue. AG 20(b) partially applies.

In 2012 and 2015, Applicant paid the alleged delinquent debts. Each SOR allegation has been resolved. She is now married and financially stable. Her previous financial problems are unlikely to recur and do not cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 20(a) partially applies. AG ¶¶ 20(c) and 20(d) apply.

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 relevant 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. Some of the factors in AG ¶ 2(a) were addressed under the Guideline F analysis, but some warrant additional comment.

Applicant honorably served in the military for 22 years. She is a valued employee in her current job. She has held a security clearance for many years. She encountered financial problems, but has either taken or is taking sufficient steps to resolve those issues. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant mitigated the financial considerations security concerns.

Formal Findings

Formal findings on the allegations set forth in the SOR are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a – 1.e:	For Applicant

Decision

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. Eligibility for access to classified information is granted.

James F. Duffy
Administrative Judge