



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 14-06966
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: Samson Newsome, Personal Representative

02/03/2016

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 June 18, 2014. On June 15, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF 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 the DOD on September 1, 2006.

Applicant answered the SOR on July 22, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on September 4, 2015, and the case was assigned to me on October 2, 2015. On October 20, 2015, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was

scheduled for November 16, 2015. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant testified but did not call any witnesses or submit any documentary evidence. However, her answer to the SOR included correspondence with the Internal Revenue Service (IRS) and documents pertaining to a Chapter 13 bankruptcy, which are included in the record. (Enclosures 1 and 2 to Answer.) I kept the record open until December 7, 2015, to enable her to submit additional documentary evidence. She timely submitted Applicant's Exhibit (AX) A. DOHA received the transcript (Tr.) on November 25, 2015.

Findings of Fact

In her answer to the SOR, Applicant admitted SOR ¶¶ 1.b-1.f. She denied SOR ¶ 1.a. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 55-year-old program analyst employed by defense contractors since February 2001. She was laid off in June 2014, but she has accepted a job with another defense contractor, contingent on obtaining a security clearance. (GX 1 at 12; GX 2 at 3.) Until recently, she was unable to work without a clearance.

Applicant held a security clearance from about 1980 to 1994. Her jobs after 1994 did not require a clearance. She does not have a current active clearance. (GX 1 at 36; Tr. 9.)

Applicant earned about \$88,000 per year before she was laid off. The employer who is sponsoring her for a security clearance offered to match the pay she was receiving before she was laid off. (Tr. 45.)

About a week before the hearing, Applicant was offered a job by her former employer (the one who laid her off in June 2014), and she accepted the offer because of her uncertainty about her application for a security clearance. In her post-hearing submission, she stated that she is working again. (AX A.) The employer who hired her in June 2014, contingent on obtaining a security clearance, is still sponsoring her for a clearance. (Tr. 52-54.) She is currently earning about \$50,000 per year in her new job. She still has a job waiting for her, at significantly higher pay, with the employer who hired her in June 2014, if she obtains a security clearance.

Applicant attended a community college from 1978 to 1980 and received a certificate in clerical studies. She attended a university for one semester in 1989 and completed a class in contracting and procurement. She attended a university from September 2009 to May 2010, working toward a bachelor's degree in finance, but she has not completed her degree requirements.

Applicant married in September 1981 and divorced in March 1990. She remarried in October 1995 and divorced in March 2004. (AX A.) She divorced her first husband because he was abusive, and she divorced her second husband because of

his infidelity. (GX 2 at 5.) She married her current spouse in April 2006. They have been living apart since January 2010, when her spouse left her. They are not legally separated and have no separation agreement. She has three children, ages 18, 28, and 30. Her 18-year-old daughter lives with her.

Applicant and her husband separated because he was still grieving the death of his previous wife of 25 years, and he insisted on continuing to support his unemployed 30-year-old son and a grandson, including making the payments on his son's home. Her husband's insistence on supporting two households caused financial difficulties and marital disagreement. When her husband left her, he began living with his adult son and financially supporting him. (Tr. 26-27.)

Applicant did not file her federal and state tax income tax returns for tax years 2006-2009. She erroneously believed that she was not required to file a return if she did not owe any taxes. She hired a tax professional to file her returns in 2010 and discovered that she should have filed her returns for 2006 through 2009. Her federal income tax returns for these years were filed in 2010 and 2011. The IRS had difficulty tracking her tax records because the returns were filed under three different names as a result of her two previous marriages. (Enclosure 1 to Answer; Tr. 28-29.) She has timely filed her returns since 2010. (Tr. 40.) She owes about \$3,000 in federal taxes for 2014. She testified that she intended to set up a payment plan for her tax debt, but she had not done so as of the date of the hearing because she had no income. (Tr. 29.) In her post-hearing submission, she stated that she had a payment arrangement with the IRS to begin making payments in January 2016. (AX A.) She did not submit any documentation of her payment plan.

After being laid off, Applicant used her severance pay for living expenses until it was exhausted. She drew unemployment from August 2014 to March 2015. She worked part-time seasonal jobs, earning the minimum wage, until September 2015. (Tr. 36-37.) At the time of the hearing, she was borrowing money from her father to cover her living expenses.

Applicant and her husband each owned their own homes when they married. They began to have financial difficulties in 2012, when her husband lost his job. He quickly found another job, but his pay was about \$800 less per month. Applicant tried to keep the payments on her husband's house current, in order to protect his security clearance. (GX 2 at 5.) The mortgage on her house was foreclosed and the house was sold. She now lives in a rented house owned by her aunt and uncle. (Tr. 43-44; GX 2 at 3.) Her July 2014 credit bureau report (CBR) does not reflect any deficiency resulting from the foreclosure of the mortgage on her house. (GX 3.)

The SOR alleges five delinquent debts reflected in Applicant's CBR. The debt alleged in SOR ¶ 1.b is a joint debt incurred by Applicant and her husband in September 2007 to purchase a recreational vehicle. The original loan was for about \$44,000. (Tr. 41; Answer.) The vehicle was repossessed when they could not afford the payments. The debt is included in a Chapter 13 bankruptcy petition filed by her husband

in March 2013. Applicant is not included in the petition. (Enclosure 2 to Answer.) Her husband appears to be complying with the Chapter 13 payment plan. (Tr. 40-41.)

The medical bills alleged in SOR ¶¶ 1.c (\$85), 1.e (\$476), and 1.f (\$107) were medical copays. Applicant contacted the creditors in June 2014, but she was unable to set up payment plans because she could not start working until she had a security clearance.

The tuition debt for \$4,260, alleged in SOR ¶ 1.d, was incurred in her bachelor's degree program. She contacted the university but could not make payments on the debt and resume her classes until she began earning income.

In Applicant's post-hearing submission, she stated that, now that she is working again, she has contacted her creditors and the IRS to make payment arrangements. She expects her financial situation to be "vastly improved" within six months. (AX 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, *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 three disqualifying conditions under this guideline:

AG ¶ 19(a): inability or unwillingness to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(g): failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

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; and

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

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

AG ¶ 20(b) is established. Applicant encountered several circumstances largely beyond her control: her husband's substantial pay reduction, her loss of employment, her estrangement and separation from her husband, and unexpected medical expenses totaling about \$668. She acted responsibly by staying in contact with her creditors, aggressively seeking new employment, and minimizing her living expenses.

AG ¶ 20(c) is established for Applicant's failure to timely file her tax returns. Applicant's belief that she was not required to file returns unless she owed taxes was erroneous but not uncommon. She obtained professional tax advice and filed her overdue tax returns.

AG ¶ 20(c) is not established for the other debts alleged in the SOR. Applicant has kept in contact with her other creditors and the IRS. The amount of her debts is manageable now that she is employed, and she is negotiating payment plans with her

creditors. However, she has not received financial counseling, and there are not yet “clear indications” that they are being resolved. She has not yet finalized any payment agreements. Her husband has taken responsibility for the largest debt, resulting from the repossession of the recreational vehicle, and it is being resolved through a Chapter 13 bankruptcy. However, she remains liable for any portion of the debt that is not fully satisfied under the Chapter 13 payment plan.

AG ¶ 20(d) is not established. Applicant has just returned to the workforce and has not had sufficient time to establish a track record of timely payments.

A security clearance adjudication is an evaluation of an individual’s judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) A person is not required to establish resolution of every debt alleged in the SOR. 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. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant has a plan to resolve her remaining debts and she has taken significant actions to implement it. She has aggressively searched for employment; started a new job, albeit at less pay; and maintained contact with most of her creditors.

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 defense contractors and held a security clearance for many years. She was candid, sincere, and credible at the hearing. She has overcome the financial and emotional burdens of being estranged from her current husband and losing her job. She has a plan to restore her financial stability and the financial means to execute it. I am confident that she will resolve her debts as she has promised.¹

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 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.f:

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

¹ Administrative judges do not have authority to grant conditional clearances. ISCR Case No. 99-0901, 2000 WL 288429 at *3 (App. Bd. Mar.1, 2000). See *also* ISCR Case No. 01-24328, 2003 WL 21979745 at *2 (App. Bd. May 23, 2003). However, applicants do not have a vested right to a security clearance. “The Government has the right to reconsider the security significance of past conduct or circumstances in light of more recent conduct having negative security significance.” ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012). Violation of a promise made in a security context to pay legitimate debts also raises judgment concerns under Guideline E, and may support future revocation of a security clearance.