



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



In the matter of:)
)
 [REDACTED]) ISCR Case No. 15-00224
)
 Applicant for Security Clearance)

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

03/31/2016

Decision

HESS, Stephanie C., 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 (e-QIP) on February 6, 2014. On August 25, 2015, 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.

The SOR was sent to Applicant on August 25, 2015. She received the SOR and on September 6, 2015, answered it and requested a decision on the record without a hearing. Department Counsel submitted the Government’s written case on November 9, 2015. On November 10, 2015, a complete copy of the file of relevant material (FORM,) which included Government Exhibits (GX) 1 through 5, 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 December 15, 2015 and did not respond.¹ The case was assigned to me on March 17, 2016.

Findings of Fact

The SOR alleges 26 delinquent debts totaling approximately \$142,593. In her Answer, Applicant admits 21 of the allegations, and qualifies many of the admissions with a repayment status or an explanation as to why she incurred the debt. She states that three of the alleged debts are duplicates. She denies five of the alleged debts. Her admissions in her Answer are incorporated in my findings of fact.

Applicant is a 37-year-old acquisition specialist. She has been employed by various defense contractors since December 2002, and by her current employer since October 2013. She earned an associate's degree in general studies in August 2002, a bachelor's degree in business information systems in February 2006, and a master's degree in information systems in October 2008. She married in 2003, and has been separated since September 2011. (GX 2.) She has held a DOD clearance since 2003. (GX 4.)

Applicant's husband was unemployed for three years between 2008 and 2011, during which time he did not actively seek employment. Applicant suffered extreme duress due to the financial pressures her husband's unemployment was causing. She was unemployed from May 2011 until October 2011, and underemployed in a retail job from October 2011 until June 2012. Due to these circumstances, Applicant's finances spiraled further out of control. (GX 1; GX 2.)

In September 2009, Applicant and her husband entered a rent-to-own agreement for a house which was in foreclosure. They soon discovered that the seller was collecting their payments, but not paying the mortgage, and that there was a tax lien on the house that precluded its sale. In September 2010, they moved to an apartment, where Applicant struggled to pay the rent. She borrowed money from her 401(k) in an effort to maintain her financial obligations. Nevertheless, they were ultimately evicted from the apartment, and Applicant's car was repossessed. She left her husband in September 2011, and moved in with her mother. (GX 2.)

By that time, Applicant had defaulted on her student loans and several other loans and credit-card accounts. (GX 3; GX 4.) In January 2013, she met with a bankruptcy attorney, and in January 2014, signed a retainer agreement to file bankruptcy. However, she did not pursue the filing. Instead, she contacted her creditors and attempted to work out a repayment schedule, by repaying the smaller debts first and then moving to the larger debts as her budget allows. (GX 1.) She is in repayment

¹The Defense Office of Hearings and Appeals (DOHA) transmittal letter is dated November 10, 2015, and Applicant's receipt is dated December 15, 2015. The DOHA transmittal letter informed Applicant that she had 30 days after receiving it to submit information. The DOHA transmittal letter and receipt are marked as Administrative Exhibit 1.

of the debts in SOR ¶¶ 1.a, 1.b, 1.c, 1.h, 1.i, 1.m, 1.n, and 1.r. Of these debts, all are student loans except SOR ¶ 1.c, which is for the balance on her repossessed car. She has paid off the debts in SOR ¶¶ 1.k, 1.u, and 1.z, which total approximately \$1,125. (GX 1.) She will enter repayment plans for SOR ¶¶ 1.d through 1.g, 1.o, 1.p, and 1.w through 1.y, once she resolves the debts she is currently repaying. (GX 1.) One of her student loans is in forbearance. (GX 1.)

Applicant states: The debts in SOR ¶¶ 1.b and 1.q are the same debt; SOR ¶¶ 1.d and 1.l are the same debt; and that SOR ¶¶ 1.n and 1.v are the same debt. The record evidence supports these statements. (GX 1; GX 4.) The duplicate debts total approximately \$28,268. (GX 1; GX 4; GX 5.)

Of the remaining \$113,200 of delinquent debt for which Applicant is responsible, she has entered repayment plans with, and is currently making payments to, the creditors that own \$83,521 of that debt. (GX 1.) She pays \$2,193 monthly to her creditors, which is slightly greater than half her monthly net income, and continues to maintain her routine living expenses. (GX 1.) She is in repayment of several of her student loans. (GX 4; GX 1.) She maintains a written monthly budget, which includes a list of all her creditors, the balance of each debt, and the payments she is currently making. (GX 1.) She has not incurred any delinquent debt since approximately 2011.

The delinquent debts are reflected in Applicant's credit bureau reports (CBRs) dated December 2014 and February 2014. (GX 4; GX 5.) She discussed many of the debts in her e-QIP, and her overall financial status in her Personal Subject Interview (PSI) (GX 2; GX 3.)

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's 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).

The record evidence establishes that: SOR ¶¶ 1.b and 1.q; 1.d and 1.l; and, 1.n and 1.v, are duplicate debts. Therefore, I have not considered the debts alleged in SOR ¶¶ 1.q, 1.l, and 1.v, when evaluating Applicant's financial status. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice).

Applicant's admissions, corroborated by her CBRs, e-QIP, and PSI, 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; and

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

AG ¶ 20(a) is established. Applicant has not incurred any delinquencies since approximately 2011. Her prior financial difficulties were not due to irresponsible behavior or poor decision-making, and her conduct "does not cast doubt on [her] current reliability, trustworthiness, or good judgment."

AG ¶ 20(b) is established. Applicant experienced circumstances largely beyond her control when her husband was unemployed for three years, and when she was unemployed and underemployed. She acted reasonably by contacting her creditors, and entering payment plans which she could afford. She has fully resolved several of her debts.

AG ¶ 20(d) is established. “Good faith” means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). 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. 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 been paying her smaller debts first and then will repay the larger ones. She maintains a written budget and lives within her means.

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 I have also considered the following:

For many years, Applicant invested in her future by earning first an associate’s, then a bachelor’s, and ultimately a master’s degree. Following her husband’s and her own periods of unemployment, Applicant took significant measures to regain control over her finances. She separated from her husband and moved in with her mother. She continued to seek, and finally regain, employment as a government contractor. She established repayment schedules with many of her creditors, and has placed a student loan in forbearance. Although she considered resolving her debts through bankruptcy, she instead chose to repay them. She has been living within her means while repaying her creditors for several years. Such actions are indicative of an individual who is

reliable and trustworthy and who exercises good judgment. I am confident that Applicant will continue her good-faith effort to resolve her remaining delinquent debt.

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

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a – 1.z: 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.

Stephanie C. Hess
Administrative Judge