



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



In the matter of:)	
)	
)	ISCR Case No. 15-01851
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey DeAngelis, Esq., Department Counsel
For Applicant: *Pro se*

05/23/2016

Decision

CERVI, Gregg A., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

Applicant completed a Questionnaire for National Security Positions (SF 86) on August 20, 2014. On September 15, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 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 October 14, 2015, and requested a hearing before an administrative judge. The case was assigned to me on February 25, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on

March 3, 2016, and a hearing was scheduled for March 24, 2016. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibit (AE) A, which was admitted without objection. DOHA received the hearing transcript (Tr.) on April 1, 2016. The record was held open until April 15, 2016, to permit Applicant to submit additional documentary evidence. Applicant submitted exhibits (AE) B through I, which were admitted without objection.

Findings of Fact

The SOR alleged 11 delinquent debts, including five small medical debts. Applicant admitted all of the SOR allegations except SOR ¶ 1.i, wherein she noted the debt was paid by her father. She annotated the SOR with additional explanations for most of the other allegations. After a careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 34 years old and has been employed as an aircraft mechanic by her current employer since 2011. She is a high school graduate with some college, and honorably served in the U.S. Navy until she was discharged in 2009. She has previously held a DOD security clearance and is requesting that it be renewed. Applicant is a single mother, with a 14-year-old child.

Some of Applicant's financial problems were incurred shortly after her discharge from the Navy. After her discharge, she was unemployed for four months before securing a position with another government contractor. This position paid poorly and Applicant lost the position in 2010 over a dispute about leave approval. She remained unemployed for another three months before she was again employed at her current position at a much higher pay rate. During these periods of unemployment, she incurred delinquent consumer debts and medical co-pays.

In response to the SOR and after the hearing, Applicant provided documents showing how she has addressed her financial issues. Of the 11 SOR allegations, Applicant has paid or is paying on all but two small medical co-pays where the creditor is unknown (SOR ¶¶ 1.e and k), and she has inquired about a phone account (SOR ¶ 1.j).¹

Applicant attended college after the Navy with the mistaken understanding that her Montgomery GI Bill would cover all of the costs, based on incorrect advice from a college representative. She incurred a debt to a community college (SOR ¶ 1.a), but has since established a payment plan and has begun paying \$150 per month toward this debt. SOR ¶¶ 1.b – 1.d are small medical debts that were paid in 2015. SOR ¶¶ 1.f – 1.g, are cable and phone-carrier debts that were paid in 2015 and 2016. SOR ¶ 1.h is a collection for a broken apartment lease. Applicant became indebted for housing costs

¹ AE B. Applicant inquired about a debt listed by a phone company, and is awaiting a response. She asserts that the account was closed and removed from her credit report.

when she was unable to pay her rent after a roommate who shared costs became violent and was forced to leave the property. Applicant eventually left the property before the expiration of the lease after complaining of pests and other problems. She was responsible for approximately \$5,000 in unpaid rent and fees. She negotiated with the collection agent to pay bi-monthly installments totaling \$400 per month, which has resulted in a significant reduction of the debt. Her current balance is approximately \$1,000. She remains on the payment plan and has been paying satisfactorily.

SOR ¶ 1.i is a charged-off debt from a vehicle loan. Applicant was a co-signer on the loan with her father. The vehicle was repossessed while she was on deployment after several months of late payments. Her father received the late notices, but eventually told her it was involved in an accident and declared a total loss. Applicant thought the insurance covered the remaining loan amount. She later discovered that the vehicle was repossessed, and in 2014, Applicant's father paid the balance due on the account.

Besides the debts discussed above, Applicant has been paying satisfactorily on a car loan, and has no other delinquencies on her most recent credit report. Applicant testified that she now tracks her expenses closely and has approximately \$300 per month remaining after paying bills.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security clearance decision.² In *Department of Navy v. Egan*³, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.⁴

² ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” It is well-established law that no one has a right to a security clearance. As noted by the Supreme Court in *Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.” Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.⁵

The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk 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.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

(a) inability or unwillingness to satisfy debts; and

³ *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

⁴ *Egan*, 484 U.S. at 531.

⁵ *Egan*, 484 U.S. at 531.

(c) a history of not meeting financial obligations.

Applicant accumulated delinquent consumer debts over a period while unemployed and underemployed. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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;

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

(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.

Applicant attributes her past financial difficulties to periods of unemployment after separating from the military and an initial job that paid poorly. Two debts make up the significant majority of her delinquencies, including her college expenses and the defaulted apartment lease. She addressed both of these debts by establishing installment plans and by making regular monthly payments. Based on the documents presented and Applicant's testimony, I am convinced she has made significant efforts to address her financial issues. She has resolved or is resolving the debts as detailed in my findings of fact. She is now working in a position which affords her a significant salary and she is able to meet her monthly financial obligations. I am convinced that she will continue her efforts to stay financially solvent and will address her future financial obligations in a responsible manner. Financial concerns are mitigated under AG ¶¶ 20(a), 20(b), 20(c), and 20(d).

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.

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.

Applicant provided sufficient evidence to document the actions taken to address her debts. She has been employed in her current position since 2011 and earns a significant salary. I considered all of the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I incorporated my findings of fact and comments under Guideline F in this whole-person analysis. I have also considered Applicant's current work history, demeanor while testifying, and her efforts to resolve her debts. Applicant presented enough evidence to convince me of her sincere efforts to address her past delinquencies and remain financially solvent going forward.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	For Applicant
Subparagraphs 1.a – 1.k:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Gregg A. Cervi
Administrative Judge