



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 15-02270
)	
Applicant for Security Clearance)	

Appearances

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

05/31/2016

Decision

HESS, Stephanie C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Applicant incurred debt as a result of her husband’s extensive period of unemployment. She has taken steps to reduce her expenses and manage her finances, and has otherwise acted responsibly under the circumstances. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on December 5, 2012. On October 21, 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.

Applicant answered the SOR on November 23, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on February 8, 2016, and the case was assigned to me on March 16, 2016. On March 23, 2016, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for April 12, 2016. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibit (AX) A, which was admitted without objection. DOHA received the transcript (Tr.) on April 21, 2016.

Findings of Fact

The SOR alleges 10 delinquent debts totaling approximately \$71,500, and one Federal tax debt for tax year 2009 in an unspecified amount. The delinquent debts include personal loans, a medical bill, and consumer debt. In her Answer, Applicant admitted each of the allegations. She qualified the status of the tax debt at SOR ¶ 1.k, by stating that she is paying \$200 per month on it. Her admissions are incorporated in my findings of fact.

Applicant is a 57-year-old logistics analyst employed by a defense contractor since August 2002. She served honorably in the U.S. Air Force from September 1976 until September 1980, during which time she held a security clearance. (GX 1; Tr. 48.) She divorced in 1984 and 1987, remarried in 1999, and is legally separated from her current husband. She has one adult daughter who is financially independent. (GX 1; Tr. 24.)

In approximately 2008, Applicant's husband entered a job where he earned substantially more than he had previously earned, with an annual income of approximately \$100,000. Applicant and her husband spent frivolously, believing that he would sustain his employment indefinitely. However, after about 18 months, Applicant's husband was fired. He has not maintained regular employment in the past six and one-half years. (Tr. 18.) Applicant has taken hardship loans from her 401k, refinanced her vehicles, taken personal loans, and used a credit card, in an effort to maintain their living expenses during her husband's extensive period of unemployment and underemployment. (Tr. 18; Tr. 26.)

Applicant and her husband improperly filed their 2009 federal tax return when they inadvertently failed to include wage information from one of his employers. The result of this error was a tax liability, with a current balance of approximately \$8,500. (Tr. 29-32.) They entered a repayment plan with the Internal Revenue Service (IRS) for monthly payments of \$200. Applicant's husband is required by their separation agreement (AX A), to make monthly payments of \$500 to Applicant towards this debt. (AX A; Tr. 19.) However, he has been sporadic in his payments. (Tr. 36.) Nevertheless, Applicant is paying the required \$200 per month to the IRS through an automatic bank draft. (Tr. 31.) Because her 2015 tax filing status changed to Married Filing Separately, she has a tax liability for 2015 of about \$3,000. She will make a partial payment when she timely files, and will pay the balance in installments. (Tr. 44.)

Applicant's husband signed the deed to their house over to her after their October 2015 separation, and she is solely responsible for the mortgage payments, utilities, and upkeep. (Tr. 20.) Due to her financial struggles, she fell behind on the mortgage payments. She contacted the creditor and, in February 2016, completed the paperwork for a mortgage modification. She is approximately five months in arrears on the payments, but it is her understanding that any foreclosure proceedings are stayed while her modification paperwork is processed. (Tr. 20; Tr. 33-36.) She intends on getting a roommate to help with expenses, but will sell the house if necessary. (Tr. 20-21.)

Applicant is current on her monthly car payment of \$510, and has repaid over \$7,500 of the \$15,000 of her most recent 401(k) hardship loan. (Tr. 39-40; GX 3.) She is the co-maker on the loan alleged in SOR ¶ 1.b for \$22,155, but there is no evidence that her husband intends to pay this debt, and it is not addressed in the separation agreement (GX 3; AX A.) She paid the debt of \$588 alleged in SOR ¶ 1.g. Her credit bureau reports (CBRs), show twenty-one secured and unsecured credit-union loans between 2005 and 2012, that she paid as agreed and are closed. These loans total approximately \$210,000. (GX 3; GX 2.) With the exception of her mortgage, she is current on her ongoing financial obligations. She lives within her means, does not spend frivolously, and has not incurred any significant debt since 2013. (GX 3; Tr. 38.) Applicant's best friend is going to assist her in managing her finances, and she plans to pay the smaller debts off first, then the larger ones as her finances permit. (Tr. 46.)

The delinquent debts are reflected in Applicant's her CBRs dated February 2015 and December 2012. (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).

Applicant's admissions, corroborated by the record evidence 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 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 significant delinquencies since approximately 2013. Her financial difficulties were not the result of irresponsible behavior 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 or underemployed, beginning in about 2010. She incurred debt in an effort to maintain living expenses for her husband and herself. Although the debt in SOR ¶ 1. b is jointly owned with her husband, there is no evidence that he intends to pay his share of this debt, thus leaving Applicant with liability for it. Additionally, her husband's failure to regularly comply with the tax payments is beyond her control. She acted responsibly by applying for a mortgage modification, not incurring recent delinquent debt, repaying her IRS debt, repaying her 401(k) hardship loan, seeking financial assistance from a friend, and planning to get a roommate.

AG ¶ 20(d) is established. Applicant paid SOR debt ¶ 1.g, and is adhering to her repayment plan to the IRS (SOR ¶ 1.k) and for her 401(k) loan. Her conduct constitutes

a good-faith effort to resolve her debts. “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 taken steps to reduce her expenses, has paid off one SOR creditor, is repaying several of her debts in a responsible manner, and plans to systematically repay her creditors as her finances permit her to do so. She will sell her house if circumstances necessitate such action. Applicant's financial difficulties arose over the past three years from circumstances largely beyond her control, and she previously had a documented history of financial responsibility. Although her recent financial record is not perfect, she has implemented a reasonable plan to resolve her financial issues 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:

Applicant has held the same job for nearly 14 years. She served honorably in the military, where she held a security clearance. She has a documented history of financial responsibility as evidenced by the numerous loans she has repaid. She lives within her means and timely pays her car note and her IRS and 401(k) obligations. 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.

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.k:

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