



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



In the matter of:)
)
) ISCR Case No. 15-01690
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

06/27/2016

Decision

CERVI, Gregg A., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

Applicant completed a Questionnaire for National Security Positions (SF 86) on June 30, 2014. On November 19, 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 responded to the SOR on December 10, 2015, provided supporting documents, and elected to have the case decided on the written record in lieu of a hearing. The Government's written brief with supporting documents, known as the File

of Relevant Material (FORM), was submitted by Department Counsel on January 20, 2016.

A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on February 8, 2016. She filed a response to the FORM, and included two exhibits, marked AE A, a personal letter, and AE B, a letter of support from her security manager. She did not assert any objections to the Government's evidence.

The case was assigned to me on May 3, 2016. The Government exhibits included in the FORM (Items 1 to 7) are admitted into evidence without objection. Applicant's exhibits are admitted into evidence without objection.

Findings of Fact

The SOR alleges Applicant filed a Chapter 7 bankruptcy in May 2015, which was discharged in September 2015. The evidence submitted with the FORM substantiates the SOR allegations, except that the bankruptcy discharge order was dated October 1, 2015. Applicant admitted the allegation with an explanation.

Applicant is 38 years old and is employed by a defense contractor as a planning and scheduling analyst, since February 2014. Her security manager provided a letter attesting to Applicant's honesty, trustworthiness and excellent work performance.¹ She received a bachelor's degree in 2000. She has been married since 2002, and has two children. Before accepting her current position in 2014, she was primarily a homemaker from about 2006 to 2014, but was employed as a part-time realtor from 2005 to 2008, and as a part-time transaction coordinator from 2008 to 2014.²

Applicant claims that before 2006, her credit rating was good. Applicant's husband left an executive position in 2008 to start and operate a business while Applicant was primarily a homemaker. The business struggled because they did not have the required licenses, and did not generate expected income. As a result, they fell behind on credit card debt and their mortgage. Applicant claims to have contacted their creditors in an attempt to negotiate favorable terms that they could afford, but was unsuccessful. They eventually were able to short-sell their home.

In May 2015, Applicant received two garnishment orders at her work, to collect on judgments from 2012 and 2013. The judgments resulted from two unpaid credit card debts. Applicant claims she could not afford the loss of income from the garnishments, so she filed personal (Chapter 7) bankruptcy in May 2015, after completing mandatory financial counseling. Her husband was not included in the bankruptcy filing. Approximately \$62,402 in delinquent debt was ordered discharged on October 1, 2015.

¹ AE B.

² Item 2.

Applicant claims that she has not accumulated new debt in the past two to seven years and is able to live within her means since her husband is now employed.

No documentary evidence was submitted with Applicant's Answer or in response to this FORM, to show the current status of her finances, credit, household budget or other information to establish financial responsibility. I was unable to evaluate her personal credibility, demeanor, or character since she elected to have her case decided without a hearing.

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.³ In *Department of Navy v. Egan*⁴, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.⁵

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

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan.27, 1995).

⁴ *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).

⁵ *Egan*, 484 U.S. at 531.

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.⁶

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,
- (b) a history of not meeting financial obligations.

Applicant filed her Chapter 7 bankruptcy case to extinguish delinquent debts, including two judgments that she was unable or unwilling to resolve. 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:

⁶ *Egan*, 484 U.S. at 531.

(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.

Applicant has been employed full-time since 2014, and part-time while raising children. Her husband left an executive level position in 2008 to start a company, which apparently struggled. Applicant accumulated credit card debts that resulted in two judgments and garnishment orders. Applicant filed personal Chapter 7 bankruptcy to extinguish her debts. I have no documentary information in the record regarding the Applicant's income, expenses, debts, etc., or her husband's assets and contributions to the family's financial resources in the past or now. I am unable to determine Applicant's ability to meet current and future financial obligations.

Although Applicant filed bankruptcy to extinguish her delinquent financial obligations accumulated during a period of underemployment and apparent business struggles, I do not have sufficient information to determine her past financial status as her husband was not included in the bankruptcy filing, or to show her current financial responsibility. Applicant is responsible to submit evidence to show mitigation. I am unable to determine whether she is able to meet current or future financial obligations based on the information in the record.

There is insufficient evidence for a determination that Applicant's overall financial condition has improved since the bankruptcy. Although bankruptcy is an acceptable form of addressing debts, an applicant must show that her financial problems are under control and that she is able to address her financial issues responsibly in the future. Applicant's financial issues are recent and ongoing. They continue to cast doubt on her current reliability, trustworthiness, and good judgment. Although she received mandatory financial counseling before filing bankruptcy, there is insufficient evidence to show her current financial status and her ability to act responsibly in the future. None of the mitigating conditions are fully applicable.

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. I considered all of the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F in this whole-person analysis.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate 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:	Against Applicant
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Subparagraph 1.a:	Against Applicant
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Conclusion

In light of all of the circumstances, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

GREGG A. CERVI
Administrative Judge