



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



In the matter of:)
)
 [REDACTED]) ISCR Case No. 17-02567
)
 Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Esq., Department Counsel
For Applicant: *Pro se*

03/19/2019

Decision

HESS, Stephanie C., Administrative Judge:

Applicant experienced financial difficulties due to circumstances largely beyond her control, but mitigated the concern by acting responsibly. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on January 3, 2017. On August 23, 2017, the Department of Defense (DOD) sent her a Statement of Reasons (SOR), alleging security concerns under Guidelines F (Financial Considerations). The DOD acted under Executive Order (Ex. Or.) 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) effective June 8, 2017.

Applicant submitted her Answer to the SOR on September 18, 2017, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on November 1, 2017, and the case was assigned to me on March 20, 2018. On May 22, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant

that the hearing was scheduled for June 6, 2018. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted into evidence without objection. Applicant testified and Applicant's Exhibits (AX) A through D were admitted without objection. I left the record open until June 20, 2018, to enable Applicant to submit additional documentary evidence. She timely submitted AX E and F, which I have admitted without objection. DOHA received the transcript (Tr.) on June 14, 2018.

Findings of Fact

Applicant is a 38-year-old supplier-diversity-specialist currently employed by a defense contractor since February 2015. She earned her bachelor's degree in 2008 and her juris doctor in 2013. This is her first application for security clearance. (GX 1.)

Under Guideline F, the SOR alleges 22 past-due accounts totaling \$17,762, 19 of which are past-due medical accounts totaling \$10,517. In her Answer, Applicant admits each of the debts and explains their origin and current status. The delinquent debts are reflected in Applicant's credit bureau report (CBR) from April 2017, discussed during her personal subject interview (PSI) from May 2017, and many are listed on her e-QIP from January 2017. (GX 3; GX 2; GX 1.)

In 2012, Applicant was in law school, working a part-time job, and living at home with her mother and two younger siblings. Her mother became gravely ill, and was no longer able to work. Applicant used her meager earnings and took additional student loans to pay the family's living expenses, including the mortgage. Applicant fell behind on the payments on her two credit-card accounts that she had opened during college. Additionally, Applicant was unable to afford health insurance. She began experiencing medical issues and was diagnosed with an illness that required frequent blood screening and sometimes required hospitalization. She amassed significant medical debt which she was unable to pay due to the expenses of maintaining the family's household. (Tr. 16-19.)

After graduating from law school, Applicant worked as a law clerk from September 2013 until August 2014. She worked on a campaign for a senator from September 2014 until December 2014. Applicant experientially benefited from these two jobs, but they were not lucrative. She was unemployed from December 2014 until she started her current job in February 2015, which required her to move to another state. Applicant took out a loan to help with moving expenses, including the requisite down-payment on an apartment of first and last month's rent and a security deposit, which was approximately \$3,600. She had a long commute and spent a significant amount each month on gas and tolls. At the end of 2016, Applicant was required by her employer to again relocate. She took another loan to cover moving expenses. She completed repaying the two moving-related loans in March 2017. (Tr. 38-39.) Her student loans are in good standing. (Tr. 40.)

Applicant then started addressing her delinquent debt. Her ongoing plan is to pay off the smaller debts first and progress to the largest one. Applicant paid the \$160 medical debt alleged in SOR ¶ 1.p. (AX B.) She settled-in-full the \$2,286 delinquent credit-card

debt alleged in SOR ¶ 1.a and the \$524 medical debt alleged in SOR ¶ 1.q. (AX A; AX D.) She entered a repayment plan in July 2017 with the medical creditor of SOR ¶¶ 1.b, 1.c, and 1.r. She has satisfied SOR ¶¶ 1.b - \$122 and 1.c - \$35, and owes approximately \$1,093 on the \$1,308 account alleged in SOR ¶ 1.r. (Tr. 24-25.) She has 16 monthly payments of \$55 remaining on her repayment plan with the creditor of SOR ¶ 1.p, a delinquent credit card originally \$1,318 and now \$823. (AX C.)

The creditor of the \$3,641 credit-card debt alleged in SOR ¶ 1.o sought a default judgment which was entered against Applicant in 2016. Applicant's friend, an attorney, successfully petitioned to have the judgment vacated because Applicant was never served with notice. The attorney is now negotiating with the creditor on Applicant's behalf and is attempting to reach a settlement agreement. (AX E; Tr. 22-23.)

The \$102, \$166, and \$108 medical debts alleged in SOR ¶¶ 1.e, 1.f, and 1.g are in collection with the same creditor. The \$200, \$40, and \$65 debts are in collection with another creditor. Applicant contacted the creditors to verify that the accounts were hers. Applicant stated that she intended to enter repayment agreements with these two creditors in July 2018. (Tr. 26-28.)

The remaining accounts, SOR ¶¶ 1.i through 1.n and 1.s through 1.v, totaling \$7,473 were incurred when Applicant had to be hospitalized for her medical condition and was uninsured. Applicant will contact this creditor as soon as she is financially able to enter into a repayment plan, which she anticipated would be the end of 2018. (Tr. 27-29.)

Applicant now earns approximately \$73,000 annually in salary. (Tr. 38.) She lives within her means and has not incurred any delinquent debt since 2014. (GX 3; Tr. 41-42.) Applicant's direct supervisor of over three years, who is aware of the nature of the SOR allegations, highly recommends Applicant for a security clearance, stating that she is trustworthy and that her most recent performance evaluation rated her as overall exceeding expectations. (AX F.) Applicant was candid, sincere, and credible while testifying.

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 following disqualifying conditions apply:

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

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

The relevant mitigating conditions in this case are:

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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and

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

Applicant's financial difficulties arose due to conditions largely beyond her control. Specifically, Applicant's mother became extremely ill in 2012 and was unable to work. Applicant, a law student with a part-time job, became responsible for the household expenses, including the mortgage, for her mother's house where her mother, her two

younger siblings, and she resided. Applicant used her earnings and additional student loans to cover these expenses. She fell behind on her personal credit-card accounts, and was unable to afford health insurance. Applicant began experiencing medical issues which required numerous treatments, including periods of hospitalization. She incurred significant medical debt. Applicant's first two jobs after graduating from law school were low-paying. In order to begin work at her current employer in February 2015, Applicant was required to move. She took out a loan to cover the moving-related expenses. At the end of 2016, while she was still paying off the loan for the moving-related expenses, Applicant's employer required her to move again. Applicant took a second loan to cover moving-related expenses. She completed repaying these two loans in March 2017, and immediately began to address her delinquent debts. Applicant established and instituted a plan to pay her smaller debts first, then progress to the repayment of her largest debt. She has resolved six SOR debts, is paying one debt, and has contacted the two creditors of six of the debts with the intention of establishing repayment plans in July 2018. The judgment entered against her has been vacated and an attorney is working on reaching a settlement agreement on Applicant's behalf. She stated her intention to contact the remaining unaddressed SOR creditor, who is collecting for seven debts, before the end of 2018. She has not incurred any delinquent debts since 2014, and lives within her means. Her student loans are in good standing.

“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 a person'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 a person 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's financial difficulties are not due to reckless spending or irresponsible behavior and did not arise under circumstances that cast doubt on her current reliability, trustworthiness, or good judgment. By addressing her debts in a responsible manner, Applicant has taken proactive steps to ensure ongoing financial stability. Although her financial record is not perfect, she has implemented a reasonable plan to resolve her financial issues within her means, and to avoid future financial difficulties. AG ¶¶ 20(a), 20(b), and 20(d) apply.

Whole-Person Concept

Under AG ¶ 2, 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 in light

of the nine adjudicative process factors listed at AG ¶ 2. I have incorporated my comments under Guideline F in my whole-person analysis.

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.v:

For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Stephanie C. Hess
Administrative Judge