



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



In the matter of:)
)
) ISCR Case No. 17-02594
)
Applicant for Security Clearance)

Appearances

For Government: Kelly Folks, Esq., Department Counsel
For Applicant: William Cloud, Personal Representative

02/19/2019

Decision

LYNCH, Noreen A., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on April 4, 2016. On November 2, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F and Guideline E. The DOD CAF acted under Executive Order (Exec. 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) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on April 21, 2018, and requested a hearing before an administrative judge. The case was assigned to me on August 9, 2018. On September 13, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the

hearing was scheduled for October 16, 2018. The hearing was rescheduled for good cause and I convened the hearing on December 13, 2018. Government Exhibits (GX) 1 through 7 were admitted in evidence without objection. Applicant testified, presented two witnesses, and submitted Applicant's Exhibits (AX) A through F, which were admitted without objection. At Applicant's request, I kept the record open until December 28, 2018, for additional submissions. Applicant submitted (AX) G (a packet of documents) in a timely manner. The exhibits was entered into the record without objection. DOHA received the transcript (Tr.) on January 2, 2019.

Findings of Fact¹

Applicant is a 59-year-old security officer for a federal contractor. She is divorced and has two adult children. She graduated from high school in 1979. She has held a security clearance for about 20 years. She completed her security clearance application (SCA) on April 4, 2016.

Financial

The SOR alleges in 1.a-1.k, a 2012 Federal tax lien in the amount of \$20,834; 2011 delinquent Federal taxes in the amount of \$1,153.96; 2012 Federal delinquent taxes in the amount of \$1,901.74; 2013 delinquent Federal taxes in the amount of \$4,646.25; 2014 delinquent Federal taxes in the amount of \$828.90; 2015 Federal delinquent taxes in the amount of \$3,223.10; 2016 delinquent Federal taxes in the amount of \$458.72; a charged-off account in the amount of \$113; a vehicle repossession balance of \$8,862; a collection account in the amount of \$300; and a medical collection account for \$63. Applicant admitted the financial allegations listed on the SOR and provided explanations.

Applicant acknowledged that the tax lien and delinquent Federal taxes listed in SOR 1.a through 1.g are from 2011 to 2016. She explained that she timely filed her tax returns for the years in question. (Tr. 43) Applicant explained that she helped her daughter financially and that was one reason for not paying the taxes. In her 2017 interview with an investigator, she thought that the original amount of \$20,000 as a lien was due to her then-husband filing jointly in 2008 and 2009, and his employer was not taking the correct withholding amount of taxes from his pay. (GX 2) Applicant stated that the tax bill was given to her in 2012. She thought her husband would take care of this bill, but he did not. (GX 2) In that interview, Applicant stated that she filed for a hardship notice with the IRS blaming her husband for the unpaid tax money, but she never heard anything from them. In that same interview, she stated that she did not intend to pay that amount of money that she believes her husband owes. (GX 2 at 12)

At the hearing Applicant explained that she has been in several payment plans with the IRS beginning in April 2016. (Tr.44, GX 3) The first arrangement lasted for a period of time but was terminated by the IRS because Applicant did not maintain the \$200

¹ Applicant's personal information is extracted from her security clearance application (GX 1) unless otherwise indicated by a parenthetical citation to the record.

agreed upon monthly amount. (Tr. 46) She stated that she was between jobs, as she was terminated from a job in 2017. Applicant believes in June 2017, she started another payment arrangement, which was approved (AX C), but that was also terminated in August due to another tax obligation that was due. (Tr. 51) In October 2018, Applicant applied for another payment agreement with the IRS. The IRS advised that it is pending and has not been approved. At this time, there is no payment plan in place. She presented a "payoff calculator," which shows a balance of \$13,631.44 for taxes owed. (AX E)

As to SOR 1.h, a charged-off account in the amount of \$113, this was a fraudulent charge and she submitted documentation to prove the claim. (AE G)

As to SOR i., Applicant explained that she co-signed for an auto loan for her daughter. Her daughter testified at the hearing that she fell behind in the payments and the car was repossessed. (Tr. 25) However, Applicant was not made aware of the situation. Applicant's daughter paid the car loan in full and documentation was provided to support the assertion. (AE G) A small remainder of charges associated with the repossession and storage are to be paid by Applicant's daughter who recently learned about the charges.

As to SOR 1.j, a collection account in the amount of \$300, Applicant has paid the account in full and provided the receipt. (AE A)

As to SOR 1.k, the medical account for \$63, Applicant did not know the origin of the debt. She was later advised that it has been paid. (Tr. 62) She did not provide any documentation.

Applicant provided documents and receipts for other accounts that she has paid in a timely fashion. (AE F) She also provided seven letters of recommendation from a landlord, church member and friends. Each letter attests to Applicant's charity, trustworthiness and honesty. One of her former co-workers explained that she is a hardworking individual who has never had any difficulty with security violations. (AE F)

A friend who has known Applicant for nine years stated that she is a loyal and dedicated professional as well as a caring friend. She always goes the extra mile. Applicant is described as dedicated, ethical and compassionate. (AE F)

Applicant has not received financial counseling. Her net weekly pay is about \$603. (AE B) She lives with a friend and pays for food and utility bills. She is current on her auto loan. She works overtime on occasions. She is current on her bills.

A co-worker testified that Applicant was always a dedicated security officer and she has known Applicant since 2010. She is also a personal friend of Applicant. The witness described Applicant as detail oriented and always willing to do more to complete task. (Tr. 32)

Guideline E, Personal Conduct

Applicant completed her SCA on April 4, 2016. In response to Section 26- Financial Record delinquencies or tax delinquencies, Applicant responded “No.” She did not list the delinquent Federal taxes from 2011 to 2016. She also answered “No” in that section as to whether she had any routine delinquent accounts. (SOR 2.a and 2.b)

Applicant has held a security clearance for about 20 years. However, in 2017, she was terminated from her employment for removing items from a trash can and giving vague explanations. (SOR 2.c) Applicant stated that she was escorting the cleaning crew and saw a writing pad and some wrapped plastic cups in a trash can in one of the offices that were being cleaned. She was seen on camera with them under her arm. The 2017 interview confirms this information. (GE 2) There is no other infraction noted in the interview.

Applicant denied all SOR allegations under personal conduct. She admitted that she had been terminated but disputed the facts given for the termination. She explained that she prides herself on being trustworthy and honest. Applicant had filled out one SCA before in pen and paper. This application was online and she said she was at work and rushed. She also believed that since she had been on payment plans with the IRS that she did not have to answer “Yes.” She noted at the hearing she misunderstood the questions and that she should have answered in the affirmative. She was credible in her testimony that she was in no way trying to lie to the Government. (Tr. 72) She did not falsify her application.

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 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. 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.” 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.

Analysis

Guideline F (Financial Considerations)

The concern under this guideline is set out in AG ¶ 18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental

health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person 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 her credit reports, and failure to pay Federal taxes that became delinquent, establish three disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"); AG ¶ 19(c) ("a history of not meeting financial obligations"); and 19(f) ("failure to pay annual Federal, state, or local income tax as required.")

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

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;

AG ¶ 20(c): the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

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

AG ¶ 20 (g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant has a history of not paying Federal taxes consistently for multiple years going back to at least 2008 through 2016. Applicant has a significant tax lien and owes back taxes. She started several payment arrangements over the years, but they were

terminated. Her latest plan has not been approved, but is still pending. She is not in a payment plan. AG 20(a) does not apply. She is divorced and claims that her husband contributed to the \$20,000 tax lien, but in a statement in an investigative interview she stated that she was not going to pay it because it is the responsibility of her husband. However, they had filed jointly. Some payments have been made, but she still has unresolved tax debt and a lien that is not resolved. As to the collection accounts, Applicant provided sufficient documentation that she has paid the collection accounts and that one was fraudulent. AG ¶ 20(b) only partially applies because I do not find that her attempts to resolve the significant tax issues are responsible. The last arrangement that Applicant made with the IRS is pending from 2018. Considering the factors, her financial situation is not under control at this time. AG 20 (c) (d) and (g) do not fully apply.

Applicant has not received financial counseling and did not provide a budget. She has paid the collection accounts listed in the SOR and provided documentation that she is current on her bills. However, she has furnished insufficient information to show that she has the tax problems under control. Applicant has not mitigated the financial considerations security concern.

Guideline E (Personal Conduct)

The concern under this guideline is set out in AG ¶ 15: “Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. . . .” Applicant’s history establishes the following disqualifying conditions under this guideline:

AG ¶ 16(c): credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information;

AG ¶ 16(d): credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of . . . (2) any disruptive, violent, or other inappropriate behavior; [and] (3) a pattern of dishonesty or rule violations; and

AG ¶ 16(e): personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes: (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing

Applicant did not falsify her 2016 SCA. She made a mistake. She admitted at the hearing that she was rushed and in hindsight she should have answered "Yes" to section 26. As to the termination, there is little or no evidence to dispute Applicant's explanation of her removing something from a trash can or that she did not follow a policy. She has never had any incidents of criminal activity or security violations. She has been open and candid about her past, thereby reducing any vulnerability to exploitation, manipulation, or duress.

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(d):

(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.

Applicant has held a security clearance for 20 years. She had started several payment plans with the IRS in 2018. She has paid the delinquent collection accounts listed in the SOR. However, despite several attempts, she is not in a current payment plan with the IRS.

She is making some strides with her delinquent taxes and lien but she has not presented sufficient information to mitigate the security concerns raised by her unpaid taxes.

She did not intentionally falsify her security clearance application in 2016, and has mitigated the personal conduct security concerns.

