



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 17-03972 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Mary M. Foreman, Esq., Department Counsel
For Applicant: *Pro se*

02/26/2019

Decision

CERVI, Gregg A., Administrative Judge

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on April 8, 2016. On December 28, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F.¹ Applicant responded to the SOR on February 21, 2018, and requested a hearing before an administrative judge. The case was assigned to me on June 18, 2018.

¹ 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 revised adjudicative guidelines (AG) effective on June 8, 2017.

The Defense Office of Hearings and Appeals issued a notice of hearing on August 1, 2018, and the hearing was convened on August 29, 2018. Government Exhibits (GE) 1 through 9 were admitted in evidence. Applicant testified. The record was held open so that Applicant could submit additional evidence. She submitted Applicant Exhibit (AE) A, which was admitted into evidence. DOHA received the hearing transcript (Tr.) on September 7, 2018.

During testimony, Applicant admitted that she failed to file Federal and state income tax returns since about 2013. On motion by Department Counsel, the SOR was amended to add SOR ¶ 1.s, to conform to the evidence regarding her failure to file Federal and state income tax returns for tax years 2013 to 2017. Applicant did not object to the amendment, and was provided additional time after the hearing to provide supplemental documentary evidence in mitigation.

Findings of Fact

Applicant is a 45-year-old senior electrical engineer, employed by a defense contractor since 2003. She earned a bachelor's degree in 1999 and a master's degree in 2006. She married in 1995 and divorced in 2011. She remarried in 2012. She has four children, the youngest of whom is living with her. She has held a security clearance since 2007.

The SOR alleges 16 delinquent debts totaling over \$31,000, a deed relinquished in lieu of foreclosure, and a 2006 bankruptcy discharge. (SOR ¶¶ 1.a-1.r.) SOR ¶ 1.s alleges Applicant's failure to file Federal and state income tax returns for tax years 2013 to 2017. The record evidence is sufficient to establish the SOR allegations.

In her answer to the SOR, Applicant admitted all the SOR allegations, but for SOR ¶ 1.h, a timeshare deed in lieu of foreclosure allegation, stating that it was part of her divorce and was settled and paid. Applicant provided post-hearing evidence of resolution of this allegation. Applicant admitted SOR ¶ 1.s during testimony.

While married to her first spouse, Applicant filed a Chapter 7 Bankruptcy in 2005, which resulted in the discharge of nearly \$80,000 in debts in 2006. Applicant accumulated debts from a business venture from 2001 to 2005, and defaulted on other debts and credit cards. The largest SOR debt is an \$18,734 new car loan from 2011 that became delinquent in 2012 after Applicant had an accident and stopped paying. (SOR ¶ 1.a) Since she was uninsured and could not afford the repairs, she abandoned the car with the auto dealer. This debt remains unresolved.

SOR ¶¶ 1.b and 1.i are duplicate debts for \$2,876, for damage to a rental property. Applicant paid the collection company (SOR ¶ 1.i) in May 2018, and provided evidence in her post-hearing submission. These allegations are resolved.

SOR ¶ 1.c is a collection account for a credit card that is past due in the amount of \$896. Applicant testified that it was unpaid, and that she had not contacted the creditor

or collection agent. In her post-hearing submission, she stated that intends to dispute the amount owed with the assistance of a second credit repair company. This debt remains unresolved.

SOR ¶¶ 1.d - 1.f,² 1.l - 1.n, and 1.p - 1.q, are medical debts. Applicant testified that none of the debts were resolved. However, in her post-hearing submission, she provided evidence of payments or partial payments toward the medical debts. They are now resolved.

SOR ¶ 1.g is a 2009 judgment for \$3,184 from an appliance and furniture company that has not been paid. Applicant testified that she has not resolved the debt. In her post-hearing submission, Applicant stated that she was advised by a credit repair attorney that although the judgment is current, she should not make efforts to pay it so that it does not reappear on her credit report. However, the debt stays in the public record for 20 years. This debt is unresolved.

SOR ¶ 1.j is a cable company debt for \$600 on an item that was returned but not accounted for by the company. The debt also appears as SOR ¶ 1.o. Applicant disputed the debt and was issued a lost equipment ticket. She stated that after 30 days, the equipment will be considered permanently lost and the charge will be removed. SOR ¶ 1.k is a credit card account for \$290 placed for collection. In her post-hearing submission, Applicant stated the account has been paid in full. These debts are resolved.

During testimony, Applicant stated that after her divorce in 2011, she believed that she filed her 2012 Federal income tax return, and sent in a check for \$13,000 in taxes. The IRS notified her that they could not match the check with a tax return. Applicant stated that she mailed in a copy of the return, but continued to receive letters from the IRS. This incident caused her to lose confidence in her ability to file tax returns, so Federal returns after 2012 were not filed. Regarding state returns, Applicant claimed that she filed her 2013 tax return in another state, but has not filed any other state returns. She testified that she hired an accountant to file all tax returns owed, however she did not provide evidence of additional tax return filings or the current status of her efforts to resolve SOR ¶ 1.s in her post-hearing submission. SOR ¶ 1.s remains unresolved. In testimony, Applicant also admitted that she did not report her failure to file tax returns on her 2016 SCA.

Applicant's gross income is \$178,000. She testified that she had \$2,500 in bank accounts and about \$90,000 in a 401K retirement account. She borrowed about \$30,000 from the 401K, and owes \$9,000. Her spouse restarted a bath and beauty product business at home, and earned about \$8,000 in 2017 and \$20,000 in 2018. Their business inventory is worth \$15,000 - \$18,000. Applicant testified that she needed to learn to be responsible and manage her debts, and had never had formal credit counseling. She acknowledged in her post-hearing submission that her hearing was a "wake up call," and that she was ashamed that she allowed her financial neglect to impact her clearance. She

² SOR ¶¶ 1.f is a duplicate of 1.q; and 1.e is a duplicate of 1.m.

noted that she needed to do better and needed help to be successful. She attended employee sponsored debt counseling, created a budget, cut expenses, and started to save for an emergency. She also contacted a debt resolution attorney to assist her with her debts.

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.

National security eligibility 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 a person’s stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG ¶ 1(b).

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. *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, e.g., ISCR Case No. 12-01295 at 3 (App. Bd. Jan. 20, 2015).

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, e.g., 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 ¶ 1(d).

Analysis

Financial Considerations

The security 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. . . .

The relevant disqualifying conditions under AG ¶ 19 include:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant’s admissions, testimony, and the documentary evidence in the record are sufficient to establish the disqualifying conditions above.

The following mitigating conditions under AG ¶ 20 are potentially relevant:

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

(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;

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

(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; and

(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 financial irresponsibility that dates back to at least 2005, when she filed Chapter 7 Bankruptcy. Despite full-time employment since 2003, she has not responsibly addressed her delinquent debts in good faith or in a timely manner. Her delinquent debts may have been incurred under circumstances that were beyond her control, to include her divorce in 2011, but she has not shown sufficient evidence of attempts to resolve the debts until after her hearing in this case. Her failure to file Federal and state tax returns for several years is further evidence of gross financial irresponsibility.

SOR ¶ 1.a is an auto loan that became delinquent when Applicant abandoned the car after an accident. It remains unresolved. SOR ¶ 1.c is not resolved, but Applicant intends to dispute the amount owed with the assistance of a second credit repair company. She did not submit sufficient evidence of the disputed amount, but agrees that some amount is owed. Applicant has not made sufficient effort to resolve the judgment alleged in SOR ¶ 1.g, rather she is choosing to ensure her credit is not damaged by resurrecting the debt. SOR ¶ 1.s concerns delinquent income tax filings. There is insufficient evidence that this allegation has been resolved. No mitigating conditions apply to the allegations.

Applicant is well educated, makes a substantial income, and has experience running a business. Her unexplained failure to pay debts and a judgment when incurred, and to file income tax returns when due, is troubling and inconsistent with a long-standing security clearance holder. Applicant's testimony appeared to be honest and straightforward, but her failure to report her tax return delinquencies on her SCA is unfavorable and does not give me confidence that she has a handle on her finances.

Despite her efforts to address the smaller debts after her hearing, I am not convinced that Applicant has control of her finances, can live within her means, and that further delinquencies are unlikely to recur. There is insufficient evidence of resolution of the larger debts, filing of overdue tax returns, or financial responsibility. Mitigation credit is applicable for debts she has finally resolved, but no mitigating credit fully applies to unresolved debts, her failure to file tax returns, and her overall history of financial irresponsibility. I have not seen sufficient evidence of financial reform and a track record of financial responsibility to overcome the security concerns raised in the SOR.

Whole-Person Concept

Under AG ¶¶ 2(a), 2(c), and 2(d), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the 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(d).

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 my whole-person analysis.

Applicant is an intelligent, experienced employee who has shown a history of disregard for financial matters. She has not shown that she is now financially stable and able to adequately address her financial responsibilities in a timely manner. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with the national security interests of the United States to grant her eligibility for access to classified information.

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:

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| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a, 1.c, 1.g, and 1.s: | Against Applicant |
| Subparagraphs 1.b, 1.d - 1.f, 1.h - 1.q, and 1.r: | For Applicant |

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant's eligibility for continued access to classified information. Clearance is denied.

Gregg A. Cervi
Administrative Judge