



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



In the matter of:)	
)	
)	ISCR Case No. 18-00519
)	
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 granted.

Statement of the Case

Applicant completed a Questionnaire for National Security Positions (SF 86)¹ on May 23, 2017. On March 26, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F.²

Applicant responded to the SOR on April 17, 2018, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals issued a notice of

¹ Also known as a Security Clearance Application (SCA).

² 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.

hearing on July 31, 2018, and the hearing was convened on August 28, 2018. Government's Exhibits (GE) 1 through 3, and Applicant's Exhibit (AE) A, were admitted in evidence without objection. The record was held open to permit Applicant time to submit additional documentary evidence. She submitted AE B, which was admitted into evidence without objection.

Findings of Fact

Applicant is a 62-year-old business analyst for a defense contractor, employed since 2002. She earned a bachelor's degree in 1998, and completed some credits toward a master's degree. She married in 1993 and has one child and one stepchild. She has held a security clearance since 2002.

The SOR alleges under Guideline F, that Applicant is indebted on three debts totaling approximately \$24,405. Applicant admitted the allegations, and provided a statement explaining the circumstances for the debts.

Applicant lived in state A and worked for her current employer. Her spouse is a retired civil service employee and also worked after retiring from the Government, in state A. In September 2007, Applicant was transferred to state B to continue working for the same employer in a different location. At the time, the housing market was declining, and Applicant's home appraised for less than the mortgage. Hoping the market would recover, she kept the home and listed it for rent in February 2008. The monthly rental income was half of the mortgage payment. At the same time, Applicant purchased another home in state B. Her spouse left his employment and moved to state B with Applicant in June 2008. In November 2008, Applicant's spouse suffered from a serious heart condition. In 2014, he was diagnosed with final stage renal failure, and in 2015, underwent quintuple cardiac bypass surgery. He never returned to work after 2009, leaving the family with Applicant's income alone, two mortgages and other debts.

Applicant's home in state A was not generating sufficient income and she exhausted all of her savings to make up the difference in mortgage payments until 2009. Since the real estate market had not recovered, Applicant was forced to allow the home to be foreclosed. The lender took possession in 2010, and sold the home in 2011 for less than half of the original mortgage amount. She does not owe a deficiency from the foreclosure.

In 2009, a credit card provider closed Applicant's and her spouse's accounts. This particular credit card provider requires full payment of the charged amount each month. Although Applicant made payments on the accounts until 2012, she stopped when she was no longer financially able to pay this debt and other debts. She described the action as a "strategic decision" to forgo payments on the credit cards in order to pay other debts and have sufficient income for her family. In October 2013, Applicant received letters from the creditor showing the debts were nonrecourse, and that no legal action would be permitted to collect the debts. Applicant's September 2018 credit report shows that the accounts were closed and charged off several years ago, but notes the accounts were

never late. Applicant submitted disputes to the credit bureaus requesting that they discontinue reporting the accounts on her credit report. Another small medical debt listed in the SOR was paid.

Applicant paid five other credit cards in 2015 and 2016, totaling about \$20,000. The family now has manageable debts including one credit card, a mortgage, and a student loan from Applicant and her son. Applicant inquired into employer-sponsored credit counseling, but none was offered. She self-educated online, and produced a family budget showing a take-home income of \$95,000, a net monthly remainder of \$1,116 after paying expenses, \$4,000 in cash savings, and a 401(k) retirement account valued at \$366,000. Applicant's testimony was forthcoming and sincere, and as suggested at her hearing, she provided explanatory information in her post-hearing submission.

Law and 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, and
- (c) a history of not meeting financial obligations.

Applicant’s admissions and the documentary evidence supporting the SOR allegations are sufficient to establish the above disqualifying conditions.

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; and

(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.

Applicant's financial problems occurred after she was transferred to another state and her spouse was unable to work again due to a serious medical condition. Faced with a single family income, two mortgages, and a sick spouse, Applicant had to make financial choices to pay some debts but not others. She contacted the creditor for two of the SOR debts and discussed her family's financial status, but was unable to make the required full payments on the accounts. The two credit-card debts from the same creditor were closed and charged-off some time ago, and there is no recourse permitted against Applicant. Applicant has disputed their continued reporting on her credit report, but the reports show the payments were "never late." About \$20,000 in other debts were paid in lieu of payment on these credit cards. These debts have been sufficiently addressed and resolved. The remaining small medical debt has been paid.

Applicant is now on solid financial footing. Her family income from her work and her husband's civil service pension are more than sufficient for her to meet all of her financial responsibilities. Despite a history of financial delinquencies due to circumstances beyond her control, Appellant has now shown a track record of responsible financial decisions and there is sufficient evidence to determine that she is living within her means. I find that Applicant acted responsibly under the circumstances to address her debts with the only means at her disposal given her difficult financial condition. Her financial condition no longer casts doubt on her current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), (b), and (d) apply; and ¶¶ 20(c) and (e) partially apply.

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). Although adverse information concerning a single criterion may not be sufficient for an unfavorable eligibility determination, the individual may be found ineligible if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or unstable behavior. AG ¶ 2(e).

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 has undergone significant financial stress through no fault of her own, but acted responsibly under the circumstances. She allocated resources within her means to address debts as she could, and the remaining two SOR debts were closed and charged-off without recourse several years ago. I am convinced that a similar financial event is unlikely to recur and that Applicant is financially stable. Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance.

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:	FOR APPLICANT
Subparagraphs 1.a – 1.c:	For Applicant

Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance eligibility is granted.

Gregg A. Cervi
Administrative Judge