



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



In the matter of:)
)
) ISCR Case No. 18-00748
)
Applicant for Security Clearance)

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: *Pro se*

06/04/2019

Decision

BENSON, Pamela C., Administrative Judge:

Applicant mitigated security concerns arising under Guideline F (financial considerations). She made significant progress resolving her delinquent debts and is clearly committed to repaying all of her outstanding medical accounts. Her finances are under control, and future financial problems are unlikely to recur. Eligibility for access to classified information is granted.

Statement of the Case

On June 5, 2017, Applicant submitted a security clearance application (SCA). On August 31, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F. 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) effective within the DOD on June 8, 2017.

On September 14, 2018, Applicant responded to the SOR, attached five pages of supporting documentation, and requested a hearing. On February 28, 2019, the case was assigned to me. On March 5, 2019, the Defense Office of Hearings and Appeals

(DOHA) issued a notice of hearing, setting the hearing for March 20, 2019. Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered three exhibits, Government Exhibits (GE) 1-3, and Applicant offered four exhibits, Applicant Exhibits (AE) A-D. There were no objections, and all proffered exhibits were admitted into evidence. On April 1, 2019, DOHA received the hearing transcript. Applicant timely submitted a monthly budget, (AE E), and the record closed on April 22, 2019.

Findings of Fact

In Applicant's SOR response, she admitted SOR ¶¶ 1.a-1.e. She denied owing the debts alleged in SOR ¶¶ 1.f-1.p, claiming these debts had been paid. Applicant's admissions are accepted as findings of fact.

Applicant is a 36 years old. She is married and has one child, age three. She graduated with a bachelor's degree in 2004. She started working for her current employer in June 2017. Her job title is security officer, and she does not currently possess a DOD security clearance. (Tr. 20-21; GE 1)

Financial Considerations

Applicant encountered financial issues when she became pregnant with her son in 2015. She was underemployed at the time, and she did not have adequate health insurance coverage. She required medical care throughout the pregnancy due to serious medical complications. Immediately after her son's birth, her son also required medical care. She did not make sufficient income to pay for the medical bills, as she was making just enough to pay her monthly expenses. She applied for Medicare twice, but she was denied both times. Her medical bills were referred for collection. (Tr. 20-23; AE B; SOR Response)

The SOR alleges 16 delinquent debts totaling \$42,683. One delinquent account is an unpaid utility account in the amount of \$50, and the remaining 15 accounts are for unpaid medical services. Applicant makes approximately \$4 an hour more with her current employer, and the record establishes the status of her accounts as follows: (Tr. 21)

SOR ¶¶ 1.a, 1.b, 1.d, 1.f, 1.g, 1.i, and 1.n allege medical accounts referred to the same collection agency. The total amount of these debts is about \$38,107. At the time she responded to the SOR, the supporting documentation showed she had paid off approximately \$3,000, with the total amount owed to the collection agency then \$35,120.54. She also disclosed that the collection agency offered her a settlement if she paid \$7,000. Applicant contacted this creditor to see if she could apply her anticipated income tax refund towards the settlement amount. At the time of the hearing, she was uncertain how much her 2018 tax refund totaled. She intends to continue working with this creditor until this debt is settled, or fully resolved. Sufficient evidence shows that these medical accounts are currently being resolved. (Tr. 27-29; SOR Response)

SOR ¶¶ 1.c, 1.e, 1.h-1.k, and 1.m allege medical accounts referred to a different collection agency totaling about \$4,476. Applicant provided documentation that she had consolidated all of these accounts under a repayment agreement. At the time she responded to the SOR, supporting documentation showed the total amount owed to the collection agency was \$3,354.63. At the hearing, Applicant provided documentation showing that she made consistent monthly payments in 2018, and she had reduced the balance to less than \$2,000. These debts are currently being paid. (Tr. 23-27; AE B, AE C, AE D; SOR Response)

SOR ¶ 1.o alleges an unpaid utility account in the amount of \$50. Applicant denied this allegation in her response to the SOR since she had paid this account in full. This account has been resolved. (Tr. 29; AE B; SOR Response)

SOR ¶ 1.p alleges an unpaid medical account referred to a collection agency in the amount of \$50. Applicant denied this allegation in her response to the SOR since she had paid this account in full. This account has been resolved. (Tr. 28-29; AE B)

Applicant established a monthly budget to keep track of her family's monthly expenses. She and her husband have also watched their spending habits; for example, if they go out to eat, they do not eat at an expensive restaurant. They are current on their monthly expenses, and she is paying \$200 monthly to one collection agency, and \$100 monthly to the other collection. Both she and her husband carry health insurance through their employers. They have not created any new debt, and they file their tax returns every year. (Tr. 32-33, 35; AE E)

Applicant's supervisor provided a character reference letter for Applicant. (AE A) He is aware of her financial troubles. He has known her for approximately two years, and he finds her work ethic and integrity to be impeccable. She is a reliable employee and he fully supports her receiving a security clearance. (Tr. 34-35)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no 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 applicant's 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 meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are

applied 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, 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 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 "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, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 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). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005). "[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

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The record establishes the disqualifying conditions in AG ¶¶ 19(a) and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions.

Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable in this case:

(a) the behavior happened so long ago,¹ 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 complications from her pregnancy, underemployment, and insufficient health insurance caused her to experience financial difficulties. These are circumstances beyond her control. It is important to note that she paid, is currently paying, or actively working towards resolution all of the debts alleged in the SOR. Applicant made significant progress resolving her delinquent debts, and it is clear that she is committed to repaying all of her outstanding medical accounts. Her finances are under control, and future financial problems are unlikely to recur. AG ¶¶ 20(a), 20(b) and 20(d) are established, and financial considerations security concerns are mitigated.

¹ A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)).

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 the circumstances. The 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.

Under AG ¶ 2(c), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant's actions show financial responsibility and good judgment, and she has established her reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18. I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that financial considerations security concerns are mitigated.

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 through 1.p: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or reinstate Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Pamela C. Benson
Administrative Judge