



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



In the matter of:)	
)	
)	ISCR Case No. 18-01486
)	
Applicant for Security Clearance)	

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*

01/28/2019

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her eligibility for access to classified information. She presented sufficient evidence to explain, extenuate, or mitigate the security concern stemming from her delinquent student loans and delinquent consumer debts. Accordingly, this case is decided for Applicant.

Statement of the Case

On July 6, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging that her circumstances raised security concerns under the financial considerations guideline. Applicant answered the SOR on August 2, 2018, and requested a hearing to establish her eligibility for continued access to classified information.¹

¹ This action was taken under Executive Order (E.O.) 10865, Safeguarding Classified Information within Industry (February 20, 1960), as amended, as well as Department of Defense Directive 5220.6, Defense Industrial Personnel Security Clearance Review Program (January 2, 1992), as amended (Directive). In addition, the Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (AG), effective within the Defense Department on June 8, 2017, apply here.

On January 15, 2019, a date mutually agreed to by the parties, a hearing was held. Applicant testified, and the exhibits offered by the Government were admitted into the administrative record without objection. (Government Exhibits (GE) 1 – 5 and Hearing Exhibits (HE) I and II were admitted without objection.) Applicant offered one exhibit, Applicant Exhibit (AE) A, which was admitted without objection. At the request of Applicant, without objection, the record remained open until January 29, 2019. Applicant timely submitted five documents, which I marked as AE B through AE F and which were admitted without objection. The transcript (Tr.) was received on January 23, 2019.

Findings of Fact

Applicant is 45 years old, a college graduate, and has been divorced since 2010. She has three adult children. Applicant has been employed by the same defense contractor since October 2011.²

The SOR alleges that Applicant has six delinquent debts totaling \$71,072, of which two student loans total \$62,076.³ Along with her Answer to the SOR, Applicant provided documentation establishing that two of the SOR debts are under payment plans to which she is adhering, and two of the SOR debts have been paid in full.⁴

Applicant testified about the status of her two student loans and explained AE A, which is a payment history for those loans. Although technically in default, since October 2005 through January 2019, Applicant has routinely made monthly payments of amounts ranging from \$5 to \$6,847. The lender, in its discretion, allocates each payment to either interest-only, principal-only, or some split. Since April 2018, Applicant has only been able to address the interest. She expects soon, however, to have the lender lift the default status, so her monthly payments can be allocated to retire some of the principal.⁵

Applicant testified about the circumstances that caused her indebtedness. In 2009, Applicant and her then spouse encountered marital problems, and in 2010 they divorced. At the time, Applicant's spouse, the father of the three children, was the sole breadwinner, Applicant being a full-time mother caring for the children. She was unemployed and was thereby deprived of the \$80,000 to \$90,000 annual earnings her spouse brought to the household. After the separation and divorce, Applicant's ex-spouse provided only "occasional" child support. Applicant quickly took part-time jobs, like janitorial work cleaning offices. Because of the children, she could only manage about 20 hours of work

² GE 1; Tr. 18, 25.

³ SOR ¶ 1.

⁴ Answer ¶¶ 1.(c) and (d) (payment plans); Answer ¶¶ 1.(e) and (f) (paid in full).

⁵ AE A; Tr. 20-22.

per week. After she began her current job in October 2011, however, Applicant succeeded in becoming current with most of her debts.⁶

Applicant's post-hearing submissions are five annual Employee Performance Evaluations for Applicant from July 2012 through June 2017. Applicant routinely exceeds Rating Guidelines and in some categories, she "Significantly Exceeds" those Guidelines. Applicant is described as a "strong employee," one with "excellent problem solving skills" who is "thorough and accurate," and a "team player."⁷

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). Individuals are eligible for access to classified information "only upon a finding that it is clearly consistent with the national interest" to authorize such access. E.O. 10865 § 2; SEAD-4, ¶ E.4.

When evaluating an applicant's eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision. SEAD-4, Appendix A, ¶¶ 2(c), 2(d).

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Applicants are responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15.

Administrative Judges are responsible for ensuring that an applicant receives fair notice of the issues raised, has a reasonable opportunity to litigate those issues, and is not subjected to unfair surprise. ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014). In resolving the ultimate question regarding an applicant's eligibility, "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." SEAD-4, Appendix A, ¶ 2(b). See also SEAD-4, ¶ E.4. Moreover, the Supreme Court has held that officials making "security clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours. The Government reposes a high degree of trust and

⁶ Tr. 20, 25-28. Applicant has about \$15,000 in her 401(k), \$7,000 in savings, and \$5,000 in an emergency fund. Tr. 24.

⁷ AE B through AE F.

confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Discussion

Guideline F, Financial Considerations

The SOR alleges that Applicant has a number of delinquent debts, which purportedly raise a security concern under Guideline F. The financial considerations security concern is explained at AG ¶ 18, which in pertinent part, states:

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.

Guideline F is not limited to a consideration of whether a person with financial issues might be tempted to compromise classified information or engage in other illegality to pay their debts. It also addresses the extent to which the circumstances giving rise to delinquent debt and other security-significant financial issues cast doubt upon a person's self-control, judgment, and other qualities essential to protecting classified information.⁸

In assessing Applicant's case, I considered the following pertinent disqualifying and mitigating conditions:

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

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

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,

⁸ ISCR Case No. 11-05365 at 3 (App. Bd. May. 1, 2012).

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

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

A security clearance adjudication is not a debt-collection process. Rather, my obligation is to examine the way an applicant handles her personal financial obligations to assess how she may handle her security obligations.⁹ Here, Applicant's security clearance eligibility was called into question by her delinquent student loans and delinquent consumer debt. I conclude that disqualifying conditions AG ¶ 19(a) and (c) apply. The next inquiry is whether any mitigating conditions apply.

The record is clear that Applicant's financial problems were caused by her divorce in 2010. At the time, she became an unemployed (outside of the home) mother of three who suddenly lost all of her household income. What help she got from her ex-spouse was only "occasional," not much to rely upon in raising a family of four. After a few part-time jobs, in October 2011 Applicant landed the job where she works to this day. She is a valued employee and has managed to dig herself out of the financial hole that the divorce caused. AG ¶¶ 20(a), (b), and (d) apply.

The record does not raise doubts about Applicant's reliability, trustworthiness, good judgment, and ability to protect classified information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also gave due consideration to the whole-person concept.¹⁰ Accordingly, I conclude that Applicant met her ultimate burden of persuasion to show that it is clearly consistent with the national interest 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:

Paragraph 1, Guideline F (Financial Considerations):	For Applicant
Subparagraphs 1.a – 1.f:	For Applicant

⁹ See *generally* ISCR Case No. 12-09719 at 2-3 (App. Bd. Apr. 6, 2016).

¹⁰ AG ¶ 2(a)(1)-(9).

Conclusion

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant access to classified information.

Philip J. Katauskas
Administrative Judge