



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



In the matter of:)
)
) ISCR Case No. 18-01606
)
Applicant for Security Clearance)

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

02/01/2019

Decision

GLENDON, John Bayard, Administrative Judge:

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

Statement of the Case

On June 15, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended (Exec. Or.); DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016) (AG) for all adjudicative decisions on or after June 8, 2017.

Applicant provided a response to the SOR on July 13, 2018, and elected to have the case decided on the written record in lieu of a hearing. In her response, she admitted all five allegations of the SOR and provided four documents.

Department Counsel submitted the Government's written case on August 15, 2018, which included five documents. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit a written response and documents to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on October 2, 2018. She had until November 16, 2018, to respond to the FORM and provide documentation in mitigation of the Government's security concerns. She failed to provide a response. The four exhibits Applicant attached to her SOR answer and the Government's five exhibits are admitted into the record. The Government's exhibits are referred to herein using Department Counsel's numbering for each Item. The case was assigned to me on January 30, 2019.

Findings of Fact¹

In her SOR answer, Applicant admitted the five allegations under Guideline F and set forth in SOR ¶¶ 1.a-1.e. Her admissions are incorporated in my findings of fact.

Applicant is 33 years old. She earned a high school diploma in 2003 and an Associate's degree in 2004. She entered into a civil union in 2004 and has two children, ages 11 and 13. She has worked for a government contractor as a reviewer since 2017. (Item 3 at 2.) She has been continuously employed in a full-time job since 2008.

On October 24, 2017, she submitted a security clearance application (SCA). In the SCA, she disclosed that she was delinquent on several debts, including the debts alleged in SOR ¶¶ 1.a, 1.b, 1.c, and 1.d. With respect to her college student loans (SOR ¶ 1.a), (apparently borrowed in 2003 and 2004), she has never been able to afford payments on the loans, which now total about \$26,000. According to her statement in her SCA, these loans were in forbearance until March 2012, and she has been unable to pay them "due to poor job decisions and having children." The loans have been assigned to the Government and are presently in collection. In her January 2018 background interview, she stated that she intended to contact the Government and begin paying this debt after she received her 2017 tax refund. (Item 3 at 3.) She provided an introductory rehabilitation letter from the U.S. Department of Education, dated February 26, 2018, with her July 2018 SOR answer. She failed to provide anything further and did not respond to the FORM in which Department Counsel made clear that she needed to provide documentation of payments on her debts to mitigate the Government's security concerns. (Item 3 at 3.)

Applicant admitted in her SOR answer that her two Capital One credit card accounts (SOR ¶¶ 1.b and 1.c) have been charged off. The Government's evidence shows that the last payments on these accounts were made in May 2017. Applicant wrote in her October 2017 SCA that these accounts were four months delinquent because her husband changed jobs and implied that he made less income. She wrote further that she planned to begin paying these accounts again in November 2017. In her January 2018 background interview, she explained that her husband had changed jobs to a

¹ Applicant's personal information is extracted from her security clearance application, dated October 24, 2017 (FORM Item 2), unless otherwise indicated by a parenthetical citation to the record.

commission-based compensation and that this caused them financial hardship. (Item 3 at 4.) She further advised the investigator that he changed jobs again to a full-time job, which would give them sufficient income to start paying these debts. She attached to her SOR answer two documents reflecting her agreement with the collection agency handling these accounts, Client Services Incorporated, to pay both accounts off within a year or so. (Item 1.) She has offered no additional evidence, however, to reflect that she followed through on these two payment plans or has made any payment to the creditor.

The two other delinquent debts in the SOR (¶¶ 1.d and 1.e) are credit card debts. Applicant provided a proposed payment plan for the debt alleged in SOR ¶ 1.d, but has provided no evidence of any follow-up actions or payments. Also, she provided no evidence reflecting any efforts to contact the creditor handling the debt alleged in SOR ¶ 1.e.

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. 15-01253 at 3 (App. Bd. Apr.20, 2016).

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 security concern under this guideline is set out in AG ¶ 18 as follows:

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. . . .

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.

Applicant’s admissions in her testimony and the documentary evidence in the record establish the following potentially disqualifying conditions under this guideline: AG ¶ 19(a) (“inability to satisfy debts”) and AG ¶ 19(c) (“a history of not meeting financial obligations”).

The following mitigating conditions are potentially applicable:

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; and

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

Applicant blames her financial problems on her poor job choices, which presumably refers to working at jobs with low wages. She also blames her problems on the expense of raising two children and her husband's decision to work at a job with an unreliable commission income. Starting in 2018, he has been working at a full-time job and apparently with a more reliable income. She advised the investigator conducting her background interview that she anticipated receiving a tax refund in March 2018 and would begin repaying her debts. She provided no evidence that she made any payments on any of her debts, even though Department Counsel in his FORM explicitly wrote that she has not provided evidence of any payments of her debts and such evidence was important to her case. She also provided no evidence that she has received any financial counseling.

I conclude that none of the above mitigating conditions apply and that Applicant has not made a serious attempt to provide evidence to support a conclusion that she has acted responsibly in the handling of her delinquent debts.

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 and applying the adjudicative factors in AG ¶ 2(d).²

I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by her past actions.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraphs 1.a - 1.e: Against Applicant

Conclusion

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

John Bayard Glendon
Administrative Judge

² The factors are: (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.