



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 18-01748
)	
Applicant for Security Clearance)	

Appearances

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

08/06/2019

Decision

HESS, Stephanie C., Administrative Judge:

Due to unique circumstances largely beyond her control, Applicant incurred two delinquent debts. However, Applicant acted responsibly under the circumstances and has mitigated the potential financial security concern. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on January 9, 2018. On June 25, 2018, the Department of Defense (DOD) sent her a Statement of Reasons (SOR), alleging security concerns under Guideline F (Financial Considerations). The DOD acted under Executive Order (Ex. 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 adjudicative guidelines (AG) effective June 8, 2017.

Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on October 4, 2018, and the case was assigned to me on January 30, 2019. On April 3, 2019, the Defense Office of Hearings

and Appeals (DOHA) notified Applicant that the hearing was scheduled for April 23, 2019. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified but did not submit any documentary evidence. DOHA received the transcript (Tr.) on May 6, 2019.

Findings of Fact

Applicant is a 56-year-old special investigator employed by a federal contractor since May 2018. She earned her practical nurse license in 1985 and her bachelor's degree in 2017. She and her husband married in 1986 and have two adult children. Applicant's husband retired from the Army in 2000. (Tr. 27-28.) This is Applicant's first application for a security clearance. (GX 1.)

The SOR alleges two debts: a charged-off vehicle-loan account for \$38,717 and a charged-off personal loan for \$8,506. Applicant admits both of the allegations. The delinquent debts are reflected in Applicant's April 2019 and January 2018 credit bureau reports (CBR) (GX 4; GX 2), and discussed in her personal subject interview (PSI) summary (GX 5) and responses to interrogatories (GX 3). Applicant's admissions are incorporated in my findings of fact.

The \$38,717 debt alleged in SOR ¶ 1.a is a loan for a recreational vehicle that Applicant co-signed with her husband in August 2005 for about \$71,800. They made payments of approximately \$591 per month until December 2015. Earlier in 2015, they experienced a tire blowout and subsequent accident. The insurance company assessed the vehicle as a total loss. The loan holder, which had purchased the vehicle loan in 2013 or 2014, demanded full repayment of the loan balance. Applicant's husband attempted to negotiate a settlement with the loan holder, but was unable to do so. He eventually stopped making payments and the vehicle was voluntarily repossessed. According to the loan holder, the vehicle was sold for \$17,000. However, the loan holder continued to demand the entire balance from Applicant and her husband. Applicant's husband continued to attempt to negotiate a settlement with the loan holder. He made a payment of \$125 in April 2018 with the intention of showing a good-faith effort to reach an agreement. (Tr. 22-24; GX 3.) The loan holder offered a settlement of \$15,000 to be paid at \$625 a month for 24 months. Applicant's husband made a counter offer of a \$4,000 lump-sum settlement, which the loan holder rejected. Applicant and her husband have not had any contact with the loan holder since April 2018. Applicant has not taken any independent action to resolve this debt because her husband has taken responsibility for resolving this account. (GX 5; Tr. 30.)

In 2013, Applicant took out a personal loan to help her daughter pay for college. Several months later, Applicant's hours at her job were cut from full-time to part-time and she was unable to afford the loan payments. After approximately six or seven months, Applicant entered a repayment plan with the creditor to pay \$75 a month, which was automatically drafted from Applicant's checking account. Applicant made her final payment in June 2018. (GX 3; Tr. 18-19.)

Applicant's CBRs show a credit history that dates back to 1994, that includes paid off lines of credit, vehicle loans, and credit cards. She is current with repayment of her student loans. Applicant refinanced her mortgage loan in 2017, and she has timely made all payments with the current and previous mortgage-loan holders since purchasing the house in 2000. (GX 4; GX 2.) Applicant invests in a 401(k), and she and her husband have several certificates of deposit and other investments. She lives within her means and is fiscally stable and responsible. (Tr. 50-51.) Applicant was straightforward, sincere, and credible in her testimony.

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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant's meeting the criteria contained in the AG. 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." See 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. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

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; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

The 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....

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The record evidence establishes the following disqualifying conditions under this guideline: AG ¶ 19(a): an 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; and

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

The conditions that caused Applicant to become delinquent on her two debts arose under unique circumstances which were largely beyond her control. Applicant fell behind on a personal loan when her hours were cut from full-time to part-time. She acted responsibly by entering a repayment agreement with the creditor that she satisfied in June 2018. The delinquent account for the vehicle loan occurred following an accident. Applicant's husband has continuously made a good-faith effort to resolve this account with the creditor. With the exception of these two delinquent accounts, Applicant has a long-standing sound financial record, which includes consistent repayment of her mortgage loan, credit cards, vehicle loans, and student loans. She lives within her means and actively manages her finances. Applicant's delinquent debts did not arise from lack of self-control, irresponsibility, or unwillingness to abide by rules and regulations. AG ¶¶ 20(a), 20(b), and 20(d) apply.

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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but I have also considered the following:

Applicant invested in her future by gaining her bachelor's degree in 2017. She has a lengthy history of excellent financial management and is currently financially stable and fiscally responsible. Applicant was straightforward, sincere, and credible in her testimony.

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 mitigated the potential security concerns raised by her financial issues. Accordingly, I conclude she has carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

Formal Findings

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a and 1.b: For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Stephanie C. Hess
Administrative Judge