



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



In the matter of:)
)
 [REDACTED]) ISCR Case No. 18-02879
)
 Applicant for Security Clearance)

Appearances

For Government: Moira Modzelewski, Esq., Department Counsel
For Applicant: *Pro se*
10/25/2019

Decision

MARINE, Gina L., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on March 21, 2017. On January 7, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF acted 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) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on February 6, 2019, and requested a decision on the written record without a hearing. On June 26, 2019, the Government sent Applicant a complete copy of its written case, a file of relevant material (FORM), including documents identified as Items 1 through 6. She was given an opportunity to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation to the Government’s evidence. She received the FORM on July 1, 2019, and did not respond. Items 1 and 2 contain the pleadings in the case. Items 3, 5, and 6

are admitted into evidence. Item 4 was admitted into evidence for the limited purpose described in the procedural matter section below. Applicant's SOR answer included a document that was marked and admitted into evidence as Applicant Exhibit (AE) A. The case was assigned to me on October 3, 2019.

Procedural Matter

The Government included a summary of Applicant's security clearance interview (Item 4) among the evidentiary items in the FORM. It also included a prominent notice advising Applicant of her right to object to the admissibility of Item 4 on the ground that it was not authenticated as required by Directive ¶ E3.1.20. The Government did not, however, advise Applicant of the consequences of her failure to raise an objection to Item 4 in her responses to the FORM: specifically, that she could be considered to have waived any such objection; and that Item 4 could be considered as evidence in her case. Applicant did not raise an objection to Item 4 in a FORM response or otherwise. However, because she was not advised that Item 4 could be considered as evidence absent her objection, Item 4 is admitted only for the limited purpose of considering any mitigating or exculpatory information therein. I will not consider any disqualifying or derogatory information contained in Item 4 that is not corroborated by admissible evidence.

Findings of Fact

Applicant, age 42, has never been married. She has three adult children. She received her GED in 1999. She took some college courses, without earning a degree, between August 2015 and August 2016. This is her first application for a security clearance.

Applicant was employed in exclusively part-time positions from at least 2006 through June 2017. The record does not specify whether she was either unable or unwilling to work full time during that period. She had one period of unemployment, after being fired, from October 2016 through February 2017. She has been employed in a janitorial services position by a defense contractor since February 2017. She began working for them full time in June 2017.

Applicant has 28 unresolved delinquent debts totaling \$48,171, including three federal student loan accounts totaling \$15,140 (SOR ¶¶ 1.a, 1.b and 1.e), and 16 medical accounts totaling \$13,050 (SOR ¶¶ 1.f – 1.o and 1.t – 1.y). Without providing any corroborating documents, she disputed a \$7,347 automobile loan account (SOR ¶ 1.z) on the basis that it was not her account. That account is listed as an individual account on her credit report. (Item 5 at 11)

Applicant engaged the services of a credit management company (Company A) in approximately October 2017 to assist her in resolving the debts alleged in the SOR. Company A advised her not to pay her creditors directly. In addition to debt settlement assistance, Company A offers budgeting information and credit education services. However, the record did not specify whether Applicant availed herself of those

additional services. As of November 2017, her debt resolution plan also included going back to school to increase her earning potential and securing additional part-time work. However, the record did not specify whether she followed through with either option. (AE A; Item 4 at 5 and 9)

Applicant attributed her financial indebtedness to unemployment and underemployment. She incurred some of her medical debt from a surgery she had at a time when she was uninsured. As of November 2017, she was willing and able to pay her debts and had been living within her means. As of February 2019, without providing any corroborating documentation, Applicant proffered that the debts alleged in SOR ¶¶ 1.a through 1.x, 1.aa, and 1.bb were in various stages of Company A's settlement negotiations process, and that she had a "financial agreement" in place for the debt alleged in SOR ¶ 1.y. (Item 2 at 5-7)

The Government identified in the FORM the areas in which Applicant failed to provide documentary evidence to support her mitigation case. She was also advised of the opportunity to submit that evidence in her FORM response. She did not respond to the FORM. (FORM at 2-3)

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." (*Egan* 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." (EO 10865 § 2).

Eligibility for a security clearance is predicated upon the applicant 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." (EO 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. 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. (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; AG ¶ 2(b)).

Analysis

The security concern under Guideline F (Financial Considerations) 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. 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. 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. (ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012)).

Applicant's significant unresolved delinquent debts, corroborated by the credit reports, establish two disqualifying conditions under this guideline: AG ¶ 19(a) (inability to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations).

Applicant has not provided sufficient evidence to establish the full application any of the following potentially applicable mitigating factors: 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(d) (the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts); and AG ¶ 20 (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). Therefore, I conclude that Applicant has not mitigated the security concerns raised by her financial indebtedness.

Whole-Person Analysis

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the adjudicative guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the 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 that Applicant has not mitigated security concerns raised by her financial indebtedness. Accordingly, Applicant has not 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

Formal findings 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: AGAINST APPLICANT

Subparagraphs 1.a – 1.bb: Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Clearance is denied.

Gina L. Marine
Administrative Judge