



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
)
) ISCR Case No. 19-01075
Applicant for Security Clearance)

Appearances

For Government: Dan O’ Reilley, Esq., Department Counsel
For Applicant: *Pro se*

09/06/2019

Decision

LYNCH, Noreen A., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application on October 24, 2017. On April 10, 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 (Exec. 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 adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

Applicant timely answered the SOR and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s file of relevant material (FORM) on July 3, 2019. Applicant received the FORM on July 10, 2019. The Government’s evidence, included in the FORM and identified as Items 1

through 6, is admitted without objection. Applicant responded to the FORM with a packet of documents, which was marked as Item A, and admitted into the record without objection. The case was assigned to me on August 26, 2019. Based on my review of the documentary evidence, I find that Applicant has mitigated the financial concerns.

Findings of Fact

Applicant is a 31-year-old employee for a federal contractor. She has never married and has no children. She is engaged to be married. She obtained her undergraduate degree in 2010, and received a graduate degree in 2014. She has never held a security clearance. She has been employed with her current employer since June 2017. (Items 2,3) Applicant's new employment provides her with a steady income. She watches her finances and hopes to buy a home.

Financial

The SOR alleges in 1.a-1.e, student loans accounts totaling \$356,681. (Items 2,6) Applicant admitted the debts listed on the SOR and provided explanations. She has no other delinquent debts. (Items 4,5 and 6)

Applicant worked part time while attending undergraduate school. She earned \$10 an hour, and during the summer, she worked as a teacher's assistant, earning \$13 an hour. She had to obtain student loans to fund her education. When she graduated in 2010, Applicant owed about \$115,096. in student loan debts (without interest). (AX A)

Applicant explained that she has been in contact with student loan servicers since 2010, and did not just begin addressing the student loan issues in 2019. (Response to FORM) In 2010, she started graduate school and her student loan was placed in deferment. She contacted the other loan service providers to place her loans in forbearance. Applicant continued to work as a teacher assistant. This did not provide sufficient income to pay, and she has a difficult time finding a position in her field that paid more money.

In addition, Applicant reports that one month after starting graduate school in 2010, she was in a head-on motor vehicle accident. Her car was deemed a total loss. She also received permanent injuries to her sternum and spine. Although this made it difficult, she continued to attend graduate school and work. Her savings were depleted after she purchased the car that was totaled. She is still receiving medical treatment as a result of the accident. (Answer to FORM)

In April 2011, Applicant was employed as a program assistant for a federal agency and received a salary of \$34,489. Her student loans were still in deferment. She admits that she borrowed \$220,418 in student loans from 2010 to 2013. After completion of her graduate degree, Applicant had a total debt of \$220,418.90, plus varying interest rates of 6 to 7 percent. The loans were deferred until December 2014. She received a settlement (\$22,000) amount from the car accident described above in July 2014. Applicant gave

the entire check to the university. (AX A, attachment 2). When Applicant graduated in 2014, she worked for a federal agency and her student loan remained in deferment. She also produced a 2014 letter that she wrote to her congressman asking for advice and help with the student loan. (AX A) The university did not resolve the financial issue and added a \$5,021 fee.

In 2016, Applicant contacted the other loan servicing providers to place her student loans in forbearance or loan forgiveness because she could not afford to make a payment. She also consolidated the student loans and asked for an income-driven repayment plan. (AX A, attachment 4) She stated that the loans were consolidated and she made a total of \$1,400 in payments in 2017 and 2018. (AX A, attachment 5) She had some family problems in 2018 as well and financially helped her father and her brother.

In 2019, Applicant negotiated a settlement of her student loans at SOR 1.b-1.e. (AX A, attachments 5 and 6) She settled the student loans for a total of \$14,200. She provided documentation of payments made from April through July 2019 for a total of \$1,790. (AX A, attachment 6)

On May 1, 2019, Applicant applied for a loan-rehabilitation program. She is now paying \$5 a month. She had made four payments at the time of her answer to the FORM. With this loan-rehabilitation program, Applicant will finish payments in 2023. She is current with her payments. (AX A, attachment 7)

As to SOR allegation 1.a, Applicant admitted that she owed the collection account in the approximate amount of \$203,504. She submitted documentation with her response to FORM that she is now in a loan-rehabilitation program for which she has qualified. (AX A, enclosure 4) She is making payments of \$5 a month.

As to SOR 1.b.-1.e, Applicant provided documentation that she had made payments in 2017 and 2018, as stated above, and negotiated a settlement in the amount of \$14,200. She is current on her payments. Thus far, she has made a total of \$1,790 in payments. (AX A)

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. 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.

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

Applicant's admissions, corroborated by her credit reports, and inability or failure to pay her delinquent student loans raises two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"); and AG ¶ 19(c) ("a history of not meeting financial obligations").

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable 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(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.

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 debt.

Applicant provided documentation that she has been addressing her student loans in many ways since 2010. She had deferments and in 2014, when she received a check due to the motor vehicle accident, she gave the entire check to the university. She provided documentation that she continued her good-faith efforts with various payments in 2017 and 2018. She did not neglect the student loans. She consolidated the loans in 2016. Finally, she managed to negotiate a settlement of the \$218,406 total student loans (SOR 1.b-1.e) for \$14,200. She is making payments and is current. She has a new position. She has made strides through her family and financial difficulties and has not neglected the student loans. She has no other delinquent debts. She submitted specific information about payments she has made. Applicant has furnished sufficient information to meet her burden. The five listed mitigating conditions 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. 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.

Applicant is 31 years old. She attended undergraduate and graduate school so that she could have good employment opportunities. She could not afford her education without student loans. She worked part time during undergraduate school and full time during her graduate classes. The jobs were low-paying ones. She has addressed her student loans since 2010. She also helped her father and brother who were in financial

difficulty. She suffered injuries from a motor vehicle collision in 2010, and is still receiving medical treatment for her injuries. She had no savings left at that point in time. When she received a check in July 2014 from the insurance for the collision, she gave the entire amount of the check (\$22,000) to the university. She sought help from her congressman in 2013. She has made student-loan payments under different plans and is now in a student loan-rehabilitation program and has settled the other student loans for \$14,000. Applicant provided proof of payments that she has made throughout the years. She acted responsibly under the circumstances. She did not neglect her student loans. She has no other delinquent debts. Circumstances beyond her control adversely affected her finances, and she acted reasonably and responsibly to address her delinquent debts. She took action and addressed her student loans.

Formal Findings

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

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

Subparagraphs 1.a-1.e:

For Applicant:

Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant's eligibility for access to classified information. Clearance is granted

Noreen A. Lynch
Administrative Judge