



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 19-01174
)	
Applicant for Security Clearance)	

Appearances

For Government: Chris Morin, Esq., Department Counsel
 For Applicant: *Pro se*
 09/23/2019

Decision

MARINE, Gina L., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on May 26, 2017. On April 26, 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 May 22, 2019, and requested a decision on the record without a hearing. On June 18, 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 30, 2019, and timely submitted her response on August 7, 2019 (FORM Response 1), to which the

Government did not object. Items 1 and 2 are the pleadings in the case. Items 3, 5, and 6 were 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 documents that were evidentiary in nature, which were admitted into evidence as Applicant Exhibits (AE) A through E. FORM Response 1 included a copy of the SOR, which is already part of the record, and several documents that were admitted as AE F through J. The case was assigned to me on August 29, 2019. Applicant submitted an additional FORM response on September 5, 2019 (FORM Response 2), to which the Government did not object. I admitted the documents attached to FORM Response 2 collectively as AE K.

Procedural Matter

The Government included a summary of Applicant's security clearance interview (Item 4) among the evidentiary items in the FORM. The Government included in the FORM 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 either FORM response. 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

Unless otherwise indicated by citation to another part of the record, I have extracted these findings of fact from Applicant's SOR Answer (Item 2), and her SCA (Item 3). Applicant, age 40, is married with three minor children. She has been employed as an engineer by the same defense contractor since earning her bachelor's degree in 2001. She has held a DOD security clearance since 2002.

The SOR alleged 12 delinquent accounts that were either charged off or placed for collection (SOR ¶¶ 1.a – 1.l). The debt alleged in SOR ¶ 1.l is a duplicate of that alleged in SOR ¶ 1.e. The remaining 11 debts totaled \$39,646. Applicant admitted the debts alleged in SOR ¶¶ 1.c, 1.e, and 1.g – 1.k. Although she denied the debts alleged in SOR ¶¶ 1.a, 1.b, 1.d, and 1.f on the basis that the underlying accounts were fraudulently opened in her name, she accepted responsibility for paying them. (AE I; Item 5 at 4; Item 6 at 2)

The debts alleged in SOR ¶¶ 1.a, 1.b, and 1.d are three credit union accounts totaling \$29,180. The debt alleged in SOR ¶ 1.f is an \$833 online retailer charge account. These four accounts were opened in 2014. Applicant was not aware of them until she reviewed a credit report in about May 2017. After investigating the matter and

discovering that neither she nor her husband had opened the accounts, she deemed it to be fraudulent activity. She contacted several attorneys, each of whom advised her to pay or otherwise resolve the accounts with the creditors because of the high legal costs associated with disputing them and her delayed detection of the suspected fraud. Following advice of counsel, Applicant and her husband accepted responsibility for repaying the debts alleged in SOR ¶¶ 1.a, 1.b, 1.d, and 1.f. They also chose not to formally contest them by filing police reports or disputes with the credit bureau agencies. (Item 2 at 3; Item 3 at 32-33; Item 4 at 2; Item 5 at 5 and 8)

In April 2018, Applicant and her husband engaged the services of a debt relief program (DRP) to assist them in resolving their delinquent debts. They anticipated that the working with the DRP would afford them the opportunity to negotiate reasonable settlements that they could afford without jeopardizing their finances. In January 2019, they retained a credit monitoring agency to assist them with monitoring their credit for fraudulent activity. The process for resolving debts through the DRP is: 1) Applicant and her husband make bi-weekly deposits of \$347 into their DRP savings account; 2) once sufficient funds build up in the savings account, the DRP negotiates agreements with creditors to settle the enrolled accounts, in an order determined by the DRP. Because it takes time to accumulate sufficient funds for the larger debts, they take the longest time to resolve. The estimated timeframe for resolving them is 24 to 48 months. (AE F; Item 2 at 3; Item 4 at 2 and 6)

From April 2018 through August 2019, Applicant and her husband made bi-weekly deposits of \$347 into the DRP savings account, totaling approximately \$12,716. The debts alleged in SOR ¶¶ 1.a – 1.f were enrolled in the DRP, none of which had been paid as of August 2019. However, the DRP negotiated settlement agreements in August 2019 for the debts alleged in SOR ¶¶ 1.c and 1.e to be paid from DRP funds, the balance of which was not specified in the record. (AE F; FORM Response 1).

In 2017, Applicant made monthly payments of \$300 directly to the creditor of the debt alleged in SOR ¶ 1.c, reducing the balance from \$6,870 to \$3,172. She stopped those payments once the debt was enrolled in the DRP. Between May 2019 and August 2019, Applicant resolved, directly with the creditors, the debts alleged in SOR ¶¶ 1.g – 1.k, which totaled \$1,743. (Item 2 at 2; Item 6 at 2; AE C – J; FORM Response 1)

Applicant attributed her debts to fraudulent activity, an extended illness, utilizing credit cards for household expenses that exceeded her family's income, and an automobile accident. She did not provide any specific details concerning her overspending, but averred that she did not spend money on anything extravagant. She currently spends within her means and has not accumulated any new debts since 2017. Her debt resolution plan includes continuing to work with the DRP, and using a portion of the equity from the sale of her home to resolve her remaining debts. The closing is scheduled for the end of September 2019. (AE K; Item 4 at 2-3; Items 5 and 6; FORM Response 2)

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. 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. (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

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

Applicant's admissions and her 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).

The security concerns raised in the SOR have been mitigated by the following 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(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.

Applicant established AG ¶ 20(e) as to the debt alleged in SOR ¶ 1.I because it is a duplicate of the debt alleged in SOR ¶ 1.e. In her SOR answer, Applicant denied the debts alleged in SOR ¶¶ 1.a, 1.b, 1.d, and 1.f on the basis that the underlying accounts were fraudulently opened in her name. However, Applicant accepted responsibility and initiated action to resolve them along with her other delinquent debts well before the issuance of the April 2019 SOR.

In 2017, Applicant made monthly payments of \$300 directly to the creditor to reduce the balance of the debt alleged in SOR ¶ 1.c from \$6,870 to \$3,172. In April 2018, she engaged the services of the DRP to assist in resolving her delinquent debts, including those alleged in SOR ¶¶ 1.a – 1.f. In January 2019, she hired a company to help monitor her credit for fraudulent activity. From April 2018 through August 2019, Applicant and her husband made bi-weekly deposits of \$347 into the DRP savings account, totaling approximately \$12,716. Between May 2019 and August 2019, Applicant resolved, directly with the creditors, the debts alleged in SOR ¶¶ 1.g – 1.k, which totaled \$1,743. The DRP negotiated settlement agreements in August 2019 for the debts alleged in SOR ¶¶ 1.c and 1.e to be paid from DRP funds.

Applicant has established a reasonable plan to resolve her remaining delinquent debts by continuing to work with the DRP, and by using a portion of the equity from the September 2019 sale of her home. While Applicant is not currently debt-free, her actions, both before and after the SOR was issued, demonstrate that she will follow through with her plan.

Applicant's financial indebtedness occurred under circumstances not likely to recur. She initiated and is adhering to good-faith efforts to resolve her delinquent debts. She is currently managing her finances responsibly. I have no lingering doubts about Applicant's reliability, trustworthiness, or good judgment in light of the responsible manner in which she is addressing her delinquent debts. I conclude that AG ¶¶ 20 (a), (c), and (d) are established, and find SOR ¶¶ 1.a – 1.I in Applicant's favor.

Whole-Person Concept

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 following 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 mitigated the security concerns raised by her financial indebtedness. Accordingly, Applicant 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

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: FOR APPLICANT

Subparagraphs 1.a – 1.l: For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to continue Applicant's eligibility for access to classified information. Clearance is granted.

Gina L. Marine
Administrative Judge