



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 [Redacted]) ISCR Case No. 19-02133
)
 Applicant for Security Clearance)

Appearances

For Government: Kelly Folks, Esq., Department Counsel
For Applicant: *Pro se*

12/13/2019

Decision

FOREMAN, LeRoy F., 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 on July 18, 2018. On July 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 (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 the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on August 19, 2019, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on October 17, 2019, and the case was assigned to me on October 24, 2019. On the same day, the Defense

Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for November 12, 2019. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or submit any documentary evidence. I kept the record open until December 2, 2019, to enable her to submit documentary evidence. She did not submit any additional evidence. DOHA received the transcript (Tr.) on November 21, 2019.

Findings of Fact

In Applicant's answer to the SOR, she admitted all the allegations. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 24-year-old marine painter employed by a defense contractor since February 2018. She graduated from high school in June 2013 and worked at various private-sector jobs until she was hired by her current employer. She married in December 2014 and separated in April 2016. Her husband is 37 years old. According to Applicant, they separated because of her husband's anger issues and abusive behavior. (GX 2 at 2.) She was unemployed from about July to November 2014 after she and her husband moved to another state to be nearer to his family. (Tr. 25.) She and her husband have a four-year-old son, who has had multiple medical problems since birth. She has never held a security clearance.

Applicant and her son have lived with her mother since June 2015. She moved in with her mother to help care for her father, who was dying from cancer and has since passed away. (Tr. 22.) She shares the rent with her mother, paying about \$900 per month. She testified that her son receives Social Security benefits of \$726 per month. (Tr. 42-43.) Applicant earns \$20.80 per hour, which amounts to about \$635 per month. (Tr. 24.) Her net monthly remainder after paying all expenses is about \$600 or \$700. She has about \$2,500 in her 401(k) retirement account and nominal amounts in her checking and saving accounts. (Tr. 44-45.)

Applicant testified that she has not filed a divorce petition, but she believes her husband has. However, she has not received any documents regarding a divorce. She and her husband have a formal separation agreement, but she does not believe that it allocates responsibility for joint debts incurred during the marriage. She testified that she and her husband have a verbal agreement that he would take care of the car payments and a joint bankruptcy petition, and she would be responsible for their son's medical expenses. (Tr. 49-50.)

The SOR alleges six delinquent debts totaling about \$27,602 that are reflected in credit reports dated September 19, 2018, and May 14, 2019. (GX 3; GX 4.) The evidence concerning these debts is summarized below.

SOR ¶ 1.a: deficiency after voluntary automobile repossession, charged off for \$12,829. Applicant and her husband bought this vehicle in February 2016. The title

and loan were in both names. Applicant testified that she was giving her husband the money to make the payments on this vehicle, but he failed to make the payments on this vehicle as well as two others. She erroneously believed that she was not liable for the debt because it was charged off. (Tr. 31-33.) The debt is not resolved.

SOR ¶ 1.b: medical debt, referred for collection of \$606. Applicant testified that she incurred this debt when she went to an urgent-care clinic when she had an allergic reaction to a medication. She testified that she contacted TRICARE and made the \$30 copayment, but she did not submit any documentation that she made the copayment or that the debt was otherwise resolved. (Tr. 34.)

SOR ¶ 1.c: bank account overdraft, referred for collection of \$182. Applicant testified that the overdraft occurred when her husband withdrew money from the account without telling her. She was notified of the overdraft in July or August of 2015, but she forgot about it. She testified that she paid the debt shortly before the hearing, but she provided no documentation of the payment. (Tr. 35-36.)

SOR ¶ 1.d: medical debt, referred for collection of \$108. Applicant testified that this debt was for her son's hospitalization when he was three and a half months old. She testified that the debt was covered by TRICARE, that she had made the copayment, and that the debt was resolved. She provided no documentation to support her testimony. (Tr. 36-37.)

SOR ¶ 1.e: car insurance premium, referred for collection of \$1,612. Applicant testified that she cancelled the insurance after two of their vehicles were repossessed. She testified that she had documentation of the insurance cancellation, but it was locked in a storage shed at their previous residence, and her husband would not give her access to it. (Tr. 38.) She testified that she would contact the insurance company to obtain documentation, but she submitted nothing.

SOR ¶ 1.f: deficiency after automobile repossession, referred for collection of \$12,265. Applicant testified that this was another debt on which her husband failed to make the payments after she gave him the money to do so. She was unaware that he had not made the payments until she came home from work in early 2015 and found that her car was gone. She has not contacted the creditor or the collection agency about this debt. (Tr. 40-41.)

Applicant testified that her husband was medically discharged from the Army and receives benefits from the Department of Veterans Affairs (VA). When Applicant responded to the SOR, she stated that her husband intended to file a bankruptcy petition. At the hearing, she testified that her husband believed that a bankruptcy petition would make him ineligible for his VA benefits, and that he now intends to resolve their debt through debt consolidation. (Tr. 44-42.) She submitted no evidence of a debt-consolidation plan or other resolution of her delinquent debts.

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:

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

Applicant's admissions and the evidence submitted at the hearing 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 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;

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.

AG ¶ 20(a) is not established. Applicant's delinquent debts are numerous, recent, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is not fully established. Applicant has encountered several conditions largely beyond her control: a four-month period of unemployment, medical problems for herself and her child that were not fully covered by insurance, the financial irresponsibility of her husband, and a marital breakup. However, she has not acted responsibly. She has taken no significant action to resolve the two repossession deficiencies alleged in SOR ¶¶ 1.a and 1.f and the bank overdraft in ¶ 1.c. Instead, she has relied on her irresponsible husband to resolve them.

AG ¶ 20(c) is not established. Applicant has not sought or obtained financial counseling, and her financial problems are not under control.

AG ¶ 20(d) is not established. Applicant claimed that she had resolved the two medical debts alleged in SOR ¶¶ 1.b and 1.d and the delinquent insurance premium alleged in SOR ¶ 1.e, but she submitted no documentation to support her claims. Applicants who claim that specific debts have been resolved are expected to present documentary evidence to support their claims. See ISCR Case No. 15-03363 at 2 (App. Bd. Oct. 19, 2016).

AG ¶ 20(e) is not established. Applicant has not disputed any of the debts alleged in the SOR.

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.

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 some warrant additional comment. Applicant was sincere and candid at the hearing. She is financially unsophisticated and apparently has allowed her older and abusive husband to take advantage of her. Her reaction to her financial problems has been largely passive. She did not take advantage of the additional time I gave her to support her testimony with documentary evidence. 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 delinquent debts.

Formal Findings

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

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a-1.f:

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.

LeRoy F. Foreman
Administrative Judge