



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 [REDACTED]) ISCR Case No. 19-01756
)
 Applicant for Security Clearance)

Appearances

For Government: Dan O’Reilly, Esq., Department Counsel
For Applicant: *Pro se*
01/31/2020

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 November 19, 2018. On July 16, 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 August 28, 2019, and requested a decision on the written record without a hearing. On October 24, 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 5. 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 October 30, 2019, and timely submitted her response, to which the Government did not

object. Items 1 and 2 are the pleadings in the case. Items 3 through 5 are admitted into evidence. Applicant's SOR answer and FORM response included documents that I admitted into evidence as Applicant Exhibits (AE) A and B. The case was assigned to me on December 13, 2019.

On January 2, 2020 and January 3, 2020, I emailed the parties to reopen the record in order to afford Applicant the opportunity to provide an updated FORM response. Applicant timely submitted supplemental FORM responses with additional evidence, to which the Government did not object. I admitted them as AE C and D. I marked the emails exchanged about these matters as HE I. I closed the record on January 28, 2020.

Procedural Matters

I extracted the below findings of facts from Applicant's SOR Answer (Item 2), her SCA (Item 3), and the summary of her security clearance interview (Item 4). Item 4 was not authenticated as required by Directive ¶ E3.1.20. However, I conclude that Applicant waived any objection to Item 4. The Government included in the FORM a copy of Item 4 and a prominent notice advising Applicant of her right to object to the admissibility of Item 4 on the ground that it was not authenticated. Applicant was also notified that if she did not raise any objection to Item 4 in her response to the FORM, or if she did not respond to the FORM, then she could be considered to have waived any such objection, and Item 4 could be considered as evidence in her case. Applicant did not raise any objections to Item 4 in her FORM responses or otherwise.

Findings of Fact

Applicant, age 35, is married without children. She earned a bachelor's degree in 2006 from one university and a master's degree in 2012 from another university. She has been steadily employed full time in her chosen field as a senior consultant since 2012 by two different employers.¹ She has worked for her current employer since 2018. She was granted a DOD security clearance in 2007 when she worked for another employer. The status of that clearance was not addressed in the record.

The SOR alleged 11 student-loan debts, including four federal loans totaling \$51,959 and seven unspecified loans totaling \$231,047. It also alleged a \$134 medical debt. Applicant admitted each of the student-loan debt allegations. She denied the medical debt allegation on the basis that it had been "paid in full" on an unspecified date. She provided a confirmation number for her payment, but was awaiting receipt of a letter from the creditor to prove the payment. Each of the alleged debts were confirmed by a 2019 credit report. (Item 2; Item 4 at 2; Item 5)

Applicant attributed defaulting on her student loans to underemployment. She took on significant student-loan debt in 2002 to pay for college and again in 2010 to pay

¹ Although the start date for her first field-related employment is listed as October 2010 in her SCA, it appears to be a typographical error. I have assumed a start date of October 2012 based on other record information. (Item 3 at 14)

for graduate school. She asserted that student loans were her only option to pursue her degrees. In March 2019, she described her financial situation as “improving.” In August 2019, she described her salary as sufficient to enable her to “work towards restoring [her] financial situation.” The record did not specify details concerning her relevant income and expense history beyond the information alleged in the SOR and the information regarding Applicant’s loan repayment history. In November 2017, she reported that her adjusted gross income was \$61,551. In November 2019, although she held the same job title, she worked in a higher position with a significantly higher (but unspecified) salary than what she earned in 2017. (FORM response; AE B; Item 2; Item 4 at 2)

Applicant tried to negotiate a loan consolidation for her student loans in 2017. However, she was unsuccessful because several loans were not eligible for the income-based repayment plan she requested and were “difficult for her to repay.” She continued to work with her loan service providers to repay her student loans. At times, her loans were placed in deferment status, but they still accrued compound interest. At other times, she made minimum monthly payments. When able, she paid more than the minimum. Through documentary evidence, she proved the payments she made from at least April 2017 through January 2020 to two student-loan service providers, one for the federal loans (Provider A) and one for the unspecified loans (Provider B). (FORM response; AE A, B, C, D; Item 2; Item 3 at 43-46; Item 4 at 2-3)

From April 2017 through April 2019, before the SOR was issued, Applicant made 16 payments totaling \$14,031 to Provider A including: two payments totaling \$2,252 in April 2017; five monthly payments of \$419 from September 2017 through January 2018; seven monthly payments from February 2018 through June 2018, of which five were \$455, and two totaled \$2,320; a \$357 payment in July 2018; and a \$191 payment in April 2019. Applicant made five consecutive monthly payments of \$908, as part of a loan rehabilitation program, to Provider A from August 2019 through December 2019. From January 2019 through January 2020, she made 24 consecutive bi-monthly payments, 12 of which occurred before the SOR was issued, to Provider B totaling \$16,690, which included: 10 monthly payments of \$1,417; one monthly payment totaling \$892; and one monthly payment totaling \$1,628. (FORM response; AE A, B, C, D; Item 2; Item 3 at 43-46; Item 4 at 2-3)

In her SOR response, Applicant expressed that she understood the security concerns surrounding financial health. She considers herself a patriot with a deep love for her country. She has served in AmeriCorps. She asserted that she would never do anything to compromise the security of the United States. She continues to work hard to repay her student loans in full and believes that her hard work will pay off. Her 2019 credit report revealed no new delinquent debts and two credit-card accounts in good standing with no reported delinquencies over a 60 day period. It also revealed an unalleged student-loan collection account that was paid; and an open \$17,949 federal student-loan account with a \$143 per month payment in good standing with no delinquencies reported over a 30 day period. (Item 2; Item 4 at 2; Item 5)

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

Guideline F: Financial Considerations

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 admissions and her credit reports establish the following disqualifying conditions: AG ¶ 19(a) (inability to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations).

The following are the potentially applicable mitigating conditions under this guideline:

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.

Applicant did not meet her burden to establish AG ¶ 20 (b). Regardless of whether she provided sufficient documentary proof of payment, I do not find the \$134 medical debt alleged in SOR ¶ 1.1 to be disqualifying in light of the amount and nature of the debt. The primary concern involves her significant delinquent student-loan debts, which total over \$280,000.

Applicant initiated good-faith efforts to repay her student loans well before the issuance of the SOR. She established a meaningful track record of payments to both of her student-loan service providers. She is managing her current finances responsibly. While she is not currently debt-free, her actions, both before and after the SOR was issued, demonstrate that she will follow through with her commitment to repay her student loans in full over time. I do not find that her delinquent student loans cast doubt on her current reliability, trustworthiness, or good judgment. ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017) (An applicant does not have to be debt-free in order to qualify for a security clearance. Rather, all that is required is that an applicant act responsibly given [her] circumstances and develop a reasonable plan for repayment, accompanied by “concomitant conduct” that is, actions which evidence a serious intent to effectuate the plan). I conclude that AG ¶¶ 20 (a) and (d) are established, and find SOR ¶¶ 1.a – 1.1 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 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 mitigated the security concerns raised by her delinquent debts. 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 grant Applicant eligibility for access to classified information. Clearance is granted.

Gina L. Marine
Administrative Judge