



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



In the matter of:)
)
) ISCR Case No. 19-03356
)
)
Applicant for Security Clearance)

Appearances

For Government: A. H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

April 8, 2021

Decision

GLENDON, John Bayard, Administrative Judge:

Applicant mitigated security concerns regarding financial considerations. Based upon a review of the pleadings and the documentary evidence in the record, national security eligibility for access to classified information is granted.

Statement of the Case

On August 1, 2016, Applicant submitted a security clearance application (SCA). The Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant on February 7, 2020, detailing national security concerns under Guideline F (Financial Considerations). The DoD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (Dec. 10, 2016), effective within the Department of Defense on June 8, 2017.

On March 30, 2020, Applicant responded to the SOR allegations (Answer). She requested an administrative determination on the written record without a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). In her Answer, she asserted that the nine delinquent debts alleged in the SOR had all been settled and paid. She also attached to her Answer six documents, which I have marked as Applicant Exhibits (AE) A through F.

On November 5, 2020, Department Counsel submitted the Government's written case in a File of Relevant Material (FORM), which included nine documents identified as Items 1-9. The FORM and the nine attachments were provided to Applicant, which she received on December 2, 2020. She was afforded an opportunity to file objections and to submit a written response and documents within 30 days of her receipt of the FORM. She provided no response.

The case was assigned to me on January 28, 2021. I have marked Items 1 through 9 attached to the FORM as Government Exhibit (GE) 1-9, respectively, and they are admitted in the absence of an objection.

Findings of Fact

Applicant's personal information is extracted from her SCA unless otherwise indicated by a parenthetical citation to the record. After a thorough and careful review of the pleadings, including Applicant's statements in her Answer, and the documentary evidence in the record, I make the following findings of fact.

Applicant, age 60, is a property administrator for a DoD contractor. She has worked for this contractor since 1985. She has a high school education and has been married to her current husband since 1989. She has an adult child from a prior marriage.

In response to a Government interrogatory, Applicant provided her federal tax transcripts for the years 2012 through 2018. The transcripts reflect that she and her husband had a joint adjusted gross income (AGI) in tax year (TY) 2012 of over \$319,000. In subsequent years, their AGI was much lower, ranging from \$205,725 in 2013, to \$146,620 in 2018. During TYs 2012 through 2014, the couple under withheld on their incomes in significant amounts and incurred substantial federal tax liabilities. The SOR alleges that the liabilities were: ¶ 1.a - \$13,879 (TY 2012), ¶ 1.b - \$19,192 (TY 2013), and ¶ 1.c - \$25,314 (TY 2014). The SOR also alleges tax liabilities of ¶ 1.d - \$564 (TY 2016), ¶ 1.e - \$4,896 (TY 2017), and ¶ 1.f - \$14 (TY 2018). The record reflects that Applicant paid all of her taxes due for TY 2015 at the time she filed her taxes, so the SOR contains no allegation regarding that tax year. Applicant's total federal tax liability during the six tax years alleged in the SOR was about \$64,000. (GE 4.)

The SOR also alleges a credit-card debt that was charged off in the amount of \$5,546 (SOR ¶ 1.g) and a past-due amount of \$746 on a credit card with a balance of \$3,487 (SOR ¶ 1.h). In addition, the SOR alleges an unpaid medical debt of \$59 (SOR ¶ 1.i)

The July 2019 federal tax transcript for TY 2012 reflects that Applicant and her husband have been making monthly payments on installment plans from 2013 to at least July 2019. Their federal tax liability however, has not significantly decreased due to interest accruing on their debt. In her Answer, Applicant asserted that on March 3 and 5, 2020, about one month after the date of the SOR, she paid the IRS about \$64,227 to settle her tax liabilities for TY 2012 through 2014 and 2016. The specific amounts paid for each year were as follows: ¶ 1.a - \$12,677 (TY 2012), ¶ 1.b - \$19,671 (TY 2013), ¶ 1.c - \$25,943 (TY 2014) and ¶1.d - \$6,936 (TY 2016). (GE 4; AE A through D.)

Applicant also wrote in her Answer that her tax debt for TY 2017 was fully paid “that same year” as was her small debt for TY 2018. The July 25, 2019 tax transcript for TY 2017 does not reflect that payment. With her Answer, she provided evidence from the IRS showing her payments for TY 2012, 2013, 2014, and 2016, but nothing for TYs 2017 and 2018. Applicant’s evidence regarding the debt of \$4,896 for TY 2017 (SOR ¶ 1.e) is incomplete. The TY 2018 debt of \$14 (SOR 1.f) is immaterial.

Applicant also provided with her Answer evidence that she had completed paying a settlement of her credit-card debt with Bank A (SOR ¶ 1.g). The bank sent her a letter dated March 22, 2020, reflecting a settlement and a payment of \$3,328. With respect to her credit-card delinquency on an account with Bank B (SOR ¶ 1.h), Applicant wrote in her Answer that she had paid the account balance of \$3,487 in full on March 18, 2020. She commented that she had requested that the bank provide her with a letter confirming the payment, but she had not received the letter at the time she submitted her Answer. Instead, she provided a copy of a page from her bank statement showing a payment to a collection agency in the amount of \$3,487, which is the amount of the balance due on the account according to the SOR allegation.

Lastly, with respect to SOR allegation 1.i of a medical debt in the amount of \$59, Applicant wrote in her Answer that “all medical payments were paid in full.” She provided no documentation with respect to the particular medical bill alleged in the SOR. The most recent credit report in the record, dated November, 2, 2020, does not reflect that this 2017 debt has been paid. Aside from a relatively small auto loan balance, Applicant has minimal balances on a few active accounts. She and her husband have lived in rental homes throughout their marriage. (Answer at 1; GE 8 at 1-6.)

Since neither party asked for a hearing in this case, the record contains limited information as to why Applicant incurred large tax liabilities during the period 2012 to 2014 and again in 2016 and 2017. The record does reflect that Applicant had a state tax liabilities of about \$8,000 in TY 2004 and federal and state tax liabilities of over \$40,000 in TY 2005. Also, Applicant had significant tax liabilities to her state tax authority for tax years prior to 2016. The state issued a wage garnishment against Applicant in 2016. None of those debts are alleged in the SOR. (GE 2 at 33-35; GE 3 at 30, 33; GE 9.)

The record is silent of the status of Applicant’s tax status in 2019 and 2020, though her behavior in 2015, 2016, and 2018 shows that she acted much more responsibly in recent years than she had in the prior years when the couple’s joint AGI was higher. The

record is also limited as to the source of the substantial funds Applicant required to pay her tax and credit-card debts. In her Answer, Applicant merely commented that, "I was able to gather enough funds to take care of all of our taxes and credit cards." There is no information as to whether she withdrew funds from a tax-deferred savings account and will have future tax liabilities or whether she had other liquid assets that were available to pay these debts. I note that the tax transcripts for TYs 2016 through 2018 list that Applicant had a significant amount of dividend income, which reflects that she and her husband had substantial stock investments. (Answer at 1.)

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 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. . . . 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.

Applicant's admissions in her SOR Answer and the documentary evidence in the record establish the following disqualifying conditions under this guideline:

AG ¶ 19(a) inability to satisfy debts;

AG ¶ 19(c) a history of not meeting financial obligations; and

AG ¶ 19(f): failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

The guideline in AG ¶ 20 contains seven conditions that could mitigate security concerns arising from financial difficulties. Three of them have possible applicability to the facts of this case:

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(g): the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

The record evidence establishes the above mitigating conditions. Although Applicant's (and her husband's) mishandling of her tax liabilities despite her family's significant income was frequent in the tax years prior to 2014, she has been more responsible in recent years. Her payment of all of her past-due tax liabilities last year for TY 2012 through 2014 and 2016 supports the conclusions that her behavior is unlikely to recur and does not cast doubt on her current reliability, trustworthiness, and good judgment. The absence of any documentary evidence regarding the status of her tax liability in 2017 is concerning. Also the fact that she waited until receiving the SOR to initiate repayments of her tax liabilities and unpaid creditors undercuts the good-faith nature of her mitigation evidence. On the other hand, she has provided documentary evidence that she has fully paid four past years with tax delinquencies in the total amount of about \$64,000 and two credit-card debts with payments totaling \$6,800. There is no evidence in the record to suggest that she continued to incur any tax liabilities after TY 2017 or other material debts. In light of the record as a whole, security concerns under SOR paragraph 1 are resolved in Applicant's favor.

Whole-Person Analysis

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 and applying the adjudicative factors in AG ¶ 2(d), specifically:

- (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 applied the adjudicative factors in AG ¶ 2(d). Overall, the record evidence as described above leaves me without any questions or doubts as to Applicant's eligibility and suitability for a security clearance. After weighing the applicable disqualifying and mitigating conditions and evaluating all of the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by her indebtedness.

Formal Findings

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a through 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraphs 1.f through 1.i:	For Applicant

Conclusion

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

John Bayard Glendon
Administrative Judge