



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 [Redacted]) ISCR Case No. 20-00519
)
 Applicant for Security Clearance)

Appearances

For Government: Rhett Petcher, Esq., Department Counsel
For Applicant: *Pro se*

01/12/2022

Decision

FOREMAN, LeRoy F., 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 September 9, 2019. On June 4, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F. The 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 in an undated document, denied all the allegations, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on February 21, 2020. Scheduling of the hearing was delayed by health

precautions imposed by DOD in response to the COVID-19 pandemic. The case was assigned to me on September 24, 2021. On October 5, 2021, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for October 20, 2021. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through Q, which were admitted without objection. DOHA received the transcript (Tr.) on October 26, 2021.

Findings of Fact

Applicant is a 59-year-old radiological control technician employed by a defense contractor since May 2019. She served on active duty in the U.S. Army from October 1981 to July 1982 and in the U.S. Army Reserve until July 1987. She received an honorable discharge. She worked for various non-federal employers from at least November 2012 until she was laid off in June 2018. She was unemployed until she was hired by her current employer. She has never held a security clearance.

Applicant married in May 1985, divorced in November 1990, married in June 1992, October 1995, divorced in November 1990, married in June 1992, and divorced in April 1995. She married her current spouse in October 1995. She received an associate's degree in July 2006. She has two adult children.

The SOR alleges seven delinquent medical bills (SOR ¶¶ 1.a-1.g) that are reflected in credit reports from February 2020 and November 2019. (GX 3 and 4.) The medical bills were incurred after she was diagnosed with a brain tumor in 2008, and the costs of medical treatment were not fully covered by her medical insurance. (GX 5 at 6.) The medical accounts alleged SOR ¶¶ 1.b-1.g were referred to the same collection agency.

Appellant contacted the collection agency in 2019, before she received the SOR, and began making payments. She initially paid the collection agency \$25 per month but then increased the amount as other bills were paid off. The debts alleged in SOR ¶¶ 1.b-1.g have been paid in full. (AX E, F, and G.)

Appellant initially thought that the \$603 debt alleged in SOR ¶ 1.a had been referred to the same collection agency. When she discovered that it was not included, she began making payments directly to the original creditor. On October 14, 2021, she paid \$300 on the debt alleged in SOR 1.a, and she agreed to pay the balance in six \$64 installments. (AX D; AX P; Tr. 36-40.)

Applicant received Social Security disability pay of \$1,500 per month when she was unable to work due to her brain tumor. During a personal subject interview with a security investigator in December 2019, she told the investigator that she returned to work part time in 2014 and reported her employment to the Social Security Administration Office (SSAO), but the disability payments were not terminated, resulting in the \$38,988 debt alleged in SOR ¶ 1.h. She believed that she was entitled to disability pay for nine months after returning to work full time, but she continued to receive it for an additional

year. After she was notified in September 2016 that she had been overpaid, she made arrangements to repay it. She testified that she was unaware that she was being overpaid until she received a letter from the SSAO notifying her of the overpayment. (GX 5 at 6; Tr. 46-49.) She began repaying the overpayment at \$250 per month until she was laid off in June 2018. Now that she is employed, she has resumed payments at the rate of \$100 per month. (AX C, H through O, and Q.)

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).

The evidence submitted at the hearing establishes the two disqualifying conditions: AG ¶ 19(a) ("inability to satisfy debts") and AG ¶ 19(c): ("a history of not meeting financial obligations"). AG ¶ 19(d) (deceptive or illegal financial practices) is not relevant because the SOR does not allege that Applicant fraudulently obtained the overpayment of disability payments. Applicant credibly testified that she was not aware of the overpayment of disability benefits until she received the letter from the SSAO. In evaluating Applicant's judgment and reliability, I have considered her negligent failure to notify the SSAO when the payments did not stop after she returned to work.

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; and

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

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

AG ¶ 20(b) is established for Applicant's medical debts. It is not established for the overpayment of disability benefits, because it could have been prevented if Applicant had notified the appropriate authorities when the payments were not terminated. The continued monthly payment of \$1,500 in disability benefits after she returned to full-time work should have caught her attention and triggered corrective action.

AG ¶ 20(d) is established. Applicant has paid all her medical debts except the debt alleged in SOR ¶ 1.a, on which she is making payments. She has established and adhered to a payment plan for the overpayment of disability benefits.

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 and applied the adjudicative factors in AG ¶ 2(d). Applicant was candid, sincere, and credible at the hearing. Although she was careless in failing to terminate her disability benefits, she has acted responsibly in resolving her delinquent debts. She appears to have learned an expensive lesson about monitoring the receipt of government benefits. 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 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): FOR APPLICANT

Subparagraphs 1.a-1.h:

For Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge