



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 20-02405
)
 Applicant for Security Clearance)

Appearances

For Government: Patricia Lynch-Epps, Esq., Department Counsel
For Applicant: *Pro se*

12/05/2022

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 April 23, 2018. On December 10, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DCSA 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 November 30, 2021, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on January 26, 2022. Scheduling of the hearing was delayed by COVID-19. The case was assigned

to me on September 6, 2022. On September 19, 2022, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on October 25, 2022. I convened the hearing as scheduled. Government Exhibits (GX) 1-3 and 5 were admitted in evidence without objection. GX 4, an unauthenticated summary of a personal subject interview of Applicant on August 24, 2018, was not admitted. Applicant testified but did not present the testimony of any other witnesses or submit any documentary evidence. I kept the record open until November 29, 2022, to enable her to submit documentary evidence. She timely submitted Applicant's Exhibits (AX) A through P. Because parts of the cover letter for AX A through P are testimonial, I have marked it as AX Q. Her exhibits were admitted without objection. DOHA received the transcript (Tr.) on November 3, 2022.

Findings of Fact

In Applicant's answer to the SOR, she admitted the sole allegation in the SOR, with explanations. Her admission is incorporated in my findings of fact.

Applicant is a 34-year-old information security analyst employed by defense contractors since August 2016. She has worked for her current employer since December 2021. (Tr. 30.) She served on active duty in the U.S. Navy from July 2006 to May 2013. She received a security clearance in January 2007 and eligibility for access to SCI in June 2012. She has been attending a community college since 2018. She has an associate's degree and is working toward a bachelor's degree. (Tr. 29.) As of the date of the hearing, she continued to hold a clearance and SCI eligibility. (Tr. 6.)

The SOR alleges a mortgage loan, reflected in a December 2019 credit report, that is past due for \$140,708 and is in foreclosure status with a balance of \$410,901. (GX 4.) As of the date of the SOR, the loan was still delinquent.

In response to interrogatories from the DOD CAF (the predecessor of DSCA CAF) in March 2020, Applicant stated that she and her then fiancé purchased the home in 2010, using her veteran's benefits. Her fiancé was the primary borrower on the loan, and she was a co-borrower.

Applicant and her fiancé were both on active duty in the Navy when they became engaged in 2010 and Applicant became pregnant. Her fiancé left active duty in October 2010. Applicant was involved in a serious automobile accident with a drunk driver in November 2010 that caused her to lose her unborn child and suffer serious injuries that caused her to be medically retired in May 2013. (Tr. 21.) She has a 90% disability for which she receives disability pay of \$1,998 per month. (Tr. 36.) Her fiancé stopped working at his civilian job to care for her. She received a settlement of \$142,000 from the drunk driver. At some point, her relationship with her fiancé deteriorated, causing her to move out of the home in October 2013. (GX 3 at 6.) She testified that she stopped making payments on the loan in December 2013. (Tr. 32.)

Applicant worked part time at a military medical facility from May 2013 to May 2016 while attending nursing school. (GX 1 at 18-19.) She was unemployed from May to August 2016, when she was hired by a federal contractor.

The last activity on the loan was in July 2013, and the lender has initiated foreclosure. (GX 4 at 1.) Applicant testified that she orally contacted the lender about a hardship loan modification before she moved out of the home in 2013, but the lender did not respond. (Tr. 57-58.) She was not aware that the loan payments were past due until she received a letter from the lender in 2015. (Tr. 22.) She consulted with an attorney about filing a partition action, but the lawyer advised her that it would cost at least \$10,000 and would not resolve the delinquent loan. (Tr. 24.)

In October 2016, Applicant agreed to give her former fiancé a quitclaim deed if the bank would agree to take her off the loan. (AX B.) She signed a quitclaim deed in November 2016 to enable her former fiancé to refinance the loan. (GX 5 at 1; AX C.) However, he did not submit the documents for a refinancing. (AX D.) He continues to live in the home. Applicant no longer is a co-owner, but she is still the co-borrower on the loan.

Applicant met with a counselor from the local Urban League office in October 2013. (AX A.) She consulted with several lawyers in January 2018, February 2019, and March 2020, but did not hire any of them because of the expense. (AX E, F, G, and H.) In February 2019, she contacted the lawyer referral service for her area, who referred her to a lawyer. She had not met with this lawyer as of the date the record closed. (AX O; AX P.) She contacted the original lender and asked what options were available to resolve the delinquent loan. Her letter to the lender is undated, but it lists her most recent address. (AX I.)

Applicant currently earns \$140,000 per year. Her monthly take-home pay is about \$7,500. Her monthly disability pay is \$1,998. (Tr. 44.) She purchased a home in June 2021, and her monthly payment on the mortgage loan is \$2,640. She is making monthly car payments totaling about \$2,000 for two late-model luxury cars. She estimates that her total monthly expenses are about \$5,000. (Tr. 44-47.) She also owns a timeshare property that she purchased in 2018. Her monthly payment for this property is about \$264. (Tr. 48.) She carries a balance of about \$36,000 on her credit cards. (Tr. 50.) A November 2022 credit report reflects no delinquent debts. (AX J.)

Applicant's current supervisor describes her as a valuable, responsible, and attentive member of the team. He vouches for her work ethic, integrity, and honesty. (AX K.) A co-worker for the past two years considers her honest, patient, hardworking, focused, and ethical. (AX L.) A former coworker and long-time friend admires her for her desire to be successful and her remarkable resilience. (AX M.)

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 following disqualifying conditions under this guideline are potentially applicable:

AG ¶ 19(a): inability to satisfy debts;

AG ¶ 19(b): unwillingness to satisfy debts regardless of the ability to do so;
and

AG ¶ 19(c): a history of not meeting financial obligations.

AG ¶¶ 19(a) and 19(b) are not established. Applicant has a good income, sufficient to purchase a home, a timeshare property, and two luxury cars. Her most recent credit report reflects that she is current on all her financial obligations.

AG ¶ 19(c) is established. Applicant appears to have sufficient income to resolve the delinquent mortgage loan, but she has not made payments on the loan for many years, and she has not yet reached an agreement on resolving the delinquent loan.

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 established. The debt is recent, but it is infrequent, and it arose under circumstances making recurrence unlikely.

AG ¶ 20(b) is established. Applicant and her ex-fiancé purchased a home for themselves and their unborn child. Her near-fatal car crash and the loss of their unborn child apparently did not impair their relationship, because her ex-fiancé continued to care for her while she recovered from her injuries. Although Applicant was vague about the reasons for their breakup, it appears to have been a condition largely beyond her control. Her ex-fiancé's financial irresponsibility after the breakup was a condition beyond her control. She was duped into giving her ex-fiancé a quitclaim deed for the property. The lender has not proceeded with foreclosure, which would significantly reduce the amount of indebtedness, even though the loan has been delinquent for many years. Applicant acted responsibly by seeking legal advice, contacting the lender on multiple occasions, and exploring options for resolving the debt. (AX I.) Her recent letter to the lender is undated, but it lists her most recent address. The lender has not responded.

AG ¶¶ 20(c), 20(d), and 20(e) are not established. Applicant has not received financial counseling, and the problem is not being resolved. She has not made any payments on the delinquent loan, and she has not disputed the legitimacy of the debt.

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 candid, sincere, and credible at the hearing. She is financially stable. She has earned the respect of her supervisors and coworkers. She served honorably in the U.S. Navy. She has held a security clearance and SCI eligibility for many years. 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 the delinquent mortgage loan.

Formal Findings

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

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraph 1.a:

For Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge