



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



In the matter of:)
)
) ISCR Case No. 12-04745
)
Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

05/22/2013

Decision

DUFFY, James F., Administrative Judge:

Applicant mitigated the security concerns arising under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on December 6, 2011. On January 25, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F. This action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

The SOR detailed reasons why DOD could not find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. On February 16, 2013, Applicant answered the SOR and requested a hearing. The case was assigned to me on April 2, 2013. The Defense Office of Hearings and Appeals (DOHA) issued the Notice of Video Teleconference Hearing on April 4, 2013. The hearing was held as scheduled on April 23, 2013. At the hearing, Department Counsel offered exhibits (GE) 1 through 5 that were admitted into evidence without objection. Applicant testified, called one witness, and offered exhibits (AE) A through H that were admitted into evidence without objection. The record was left open until May 7, 2013, for the Applicant to submit additional matters. Applicant submitted AE I through T that were admitted into evidence without objection. Department Counsel's email indicating he had no objection to Applicant's post-hearing submission was marked as Hearing Exhibit (HE) 1. The transcript (Tr.) of the hearing was received on April 29, 2013.

Findings of Fact

Applicant is a 34-year-old employee of a defense contractor. She began working for that contractor in November 2011. She served on active duty in the Air Force from August 1999 to September 2001 and received an honorable discharge. She was awarded a bachelor's degree in 2006 and a master's degree in 2007. She is divorced and has two children, ages 12 and 16. While serving in the Air Force, she held a security clearance without incident.¹

The SOR asserted that Applicant was granted a Chapter 7 bankruptcy discharge in April 2002 and that she had 20 delinquent debts totaling \$19,897. In her Answer to the SOR, Applicant admitted two allegations (SOR ¶¶ 1.a, the bankruptcy discharge, and 1.s, a debt of \$49) and denied the remaining allegations. Her admissions are incorporated as findings as fact.²

The father of Applicant's first child, who she never married, has not paid child support. She does not have contact with him and last heard that he was in prison.³

Applicant was married for about 14 years. She and her ex-husband separated in about 2009 and divorced in 2011. They have joint custody of their child. Neither pays child support, but they split expenses. As part their divorce, they entered into a settlement agreement in which each agreed to be responsible for any prior or subsequent debts in his or her name and to hold the other harmless for such debts. She

¹ Tr. 7-8, 46-51; GE 1, 2; AE A.

² Applicant's Answer to the SOR.

³ Tr. 46-53, 81-83; GE 1, 2.

indicated that one of the reasons for their divorce is because her ex-husband could not handle money.⁴

In her Electronic Questionnaire for Investigations Processing (e-QIP), Applicant indicated that she had been unemployed on several occasions. She also testified that her ex-husband lost a job while they were married. Her periods of unemployed included:

a. Applicant was unemployed from September 2001 to January 2003, a period of 17 months following her release from active duty. At that time, she was dealing with medical issues, including torn Achilles tendons that resulted in her receiving a Department of Veterans Affairs (VA) disability. During this period, she was granted a Chapter 7 bankruptcy discharge.

b. Applicant was unemployed from December 2004 to July 2005, a period of about eight months. This occurred because she left her job to move to a different state.

c. Applicant was unemployed from November 2007 to February 2008, a period of about four months. This occurred because she left her job to move to a different state.

d. Applicant was unemployed from October 2010 to January 2011, a period of about four months. This occurred because she left her job to move to a different state.

e. Applicant was unemployed from June 2011 to November 2011, a period of about five months. She was released from that job soon after she refused the sexual advances of the owner of that company.⁵

At the hearing, Applicant provided documentation showing that she paid the debt in SOR ¶ 1.m (\$1,408) in March 2012. Her ex-husband was supposed to pay a portion of that debt, but failed to do so. She had been making periodic payments on that debt since about July 2010. She admitted the debt in SOR ¶ 1.s (library book for \$49). She attempted to pay this debt with a credit card over the telephone, but the library was not able to accept that payment. At the time of the hearing, she was waiting to receive a bill in the mail from the library so that she could pay it. She also provided proof that she paid a delinquent medical debt that was not alleged in the SOR.⁶

The largest alleged debt (SOR ¶ 1.n) is a timeshare mortgage loan in the amount of \$11,800. This debt constitutes more than half of the total amount of all the SOR debts. Applicant and her ex-husband purchased the timeshare for about \$10,000 to \$12,000 in about 2006. Their monthly mortgage payments were about \$205. When they

⁴ Tr. 46-53, 81-83; GE 1, 2; AE S. The settlement agreement for her divorce indicated that both of Applicant's children were issue of that marriage.

⁵ Tr. 20-24, 50-56; GE 1.

⁶ Tr. 40-43, 87-90, 100-101; GE 2; AE G, H.

purchased the timeshare, they were informed that they could transfer their timeshare interest to another location if they moved. When they were planning to move to another state, they attempted to transfer their timeshare interest, but were told they could not do so. At that point, they notified the timeshare company that they wanted to terminate their timeshare interest. They signed paperwork turning over their interest in the property to the lender. At that point, Applicant thought that she was relieved of any further financial obligations concerning the property. In her post-hearing submission, Applicant provided a credit report that indicated “credit grantor reclaimed collateral to settle defaulted mortgage” and did not list any outstanding balance or past-due amount. In her post-hearing submission, she also provided email correspondence from the creditor indicating that no further financial obligation existed on this debt.⁷

Upon her discharge from the Air Force, she was rated with an 80% VA disability. She qualifies for free VA medical care. If a nearby VA medical facility cannot provide the medical treatment she needs, it will issue her an authorization letter so that she can obtain that treatment from a private medical facility. The VA will then cover those medical costs. The VA, however, often takes a long time in paying bills from the private facilities. When there is such a delay, a private facility may attempt to collect the debt directly from her. She indicated that the debts in SOR ¶¶ 1.b, 1.c, 1.e, 1.p, and 1.q were the responsibility of the VA. She indicated that she called the VA in January 2011 and was informed those debts were paid. Of those debts, two (SOR ¶¶ 1.c for \$70 and 1.e. for \$279) remained listed on her most recent credit report dated May 7, 2013.⁸

Applicant indicated that she had no knowledge of a number of the debts. She believed some of those were her ex-husband’s debts. She also indicated that she may have been the victim of identity theft perpetrated by a relative of her ex-husband. A credit report reflected that she has disputed eight debts (SOR ¶¶ 1.d for \$394; 1.f for \$1,225; 1.g for \$382; 1.h for \$1,006; 1.i for \$498; 1.j for \$163; 1.k for \$988; 1.l for \$180). She also indicated that she disputed other debts (SOR ¶¶ 1.o, 1.r, and 1.u), but provided no documentation supporting those disputes. She testified that her ex-husband paid the debt in SOR ¶ 1.u; yet, it still remained on her credit report.⁹

Applicant also disputes the debt in SOR ¶ 1.t in which the original creditor was a car insurance company. This debt was assigned for collection in February 2008. In post-hearing submission, she indicated that she called the car insurance company and was informed the delinquent account belonged to a couple to whom she had no connection.

⁷ Tr. 90-96; AE M, N, R.

⁸ Tr. 50-51, 56-64, 98, 120; GE 2.

⁹ Tr. 15, 64-87, 96-100, 103; GE 2, 3, 4; AE Q, R. At the hearing, Department Counsel indicated that the some of the SOR debts were duplicates. These included the debts in SOR ¶¶ 1.d and 1.k, ¶¶ 1.g and 1.h, and ¶¶ 1.i and 1.l. See Tr. 15, 119-120. Applicant testified that the debts in SOR ¶¶ 1.f and 1.h were low-limit credit cards that she opened, but fees were tacked on to those debts that she disputes. She has inquired into those fees, but has not received a response that explains them.

She provided documentation that confirmed she had car insurance with a different insurance company from at least December 2007 to December 2008. The car insurance debt is not listed on her most recent credit report.¹⁰

Applicant's annual salary is \$31,500. She also has been rated with 80% Veterans Affairs disability for which she receives \$19,000 annually. Consequently, her annual income is about \$51,000. She stated that she is living within her means and currently has no credit cards. She provided proof showing she was current on her rent and utility payments. She had been making those payments regularly for a number of months. In November 2012, she provided a personal financial statement that showed she had a net monthly income of \$3,638, and monthly expenses of \$2,109, which left her a net monthly remainder of \$2,109. She indicated that she have never received financial counseling.¹¹

Applicant's supervisor recommended Applicant for a security clearance. He described her as a professional and dedicated employee. He testified that it has been a honor to have her working for him. He indicated that he can count on her and noted that she has assumed greater responsibility and taken on difficult challenges. He would place her at the top of the three individuals that he supervises. Applicant also submitted letters of reference from present and past coworkers that indicate she is reliable, dedicated, and valued employee.¹²

Policies

The President of the United States 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. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant 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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's

¹⁰ Tr. 101-103; AE O, P

¹¹ Tr. 19, 22-24, 45-51, 56-60, 103-119, 127; GE 2, 3; AE G, I, J, K, L, Q, R.

¹² Tr. 30-36; AE A-F.

adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavourable, to reach his decision.

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 of potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or 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 and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18 as follows:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant received a Chapter 7 bankruptcy discharge in 2002. Since then, she accumulated delinquent debts totaling over \$19,000 that she has been unable or unwilling to satisfy for a number of years. This evidence is sufficient to raise the above disqualifying conditions.

Five financial considerations mitigating conditions under AG ¶¶ 20 are potentially applicable:

- (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;
- (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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (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.

Security clearance adjudications are not debt collection procedures. Instead, they are procedures designed to evaluate an applicant's judgment, reliability, and

trustworthiness.¹³ An applicant is not required, as a matter of law, to establish that he or she has resolved every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take sufficient action to implement the plan. Resolution could include successfully disputing alleged SOR debts.¹⁴

After a 14-year marriage, Applicant and her ex-husband divorced. She indicated that he was not financially responsible and had acquired debts in her name. He has not paid some of the debts that belonged to him. Applicant and her ex-husband also encountered periods of unemployment while they were married. Her divorce and some of her periods of unemployment were conditions beyond her control.

Applicant has shown that the timeshare mortgage in SOR ¶ 1.n, *i.e.*, the largest alleged debt, is resolved. She paid the debt in SOR ¶ 1.m, which was partially her ex-husband's responsibility. She has successfully disputed the debts in SOR ¶¶ 1.b, 1.c, 1.d, 1.e, 1.f, 1.g, 1.h, 1.i, 1.j, 1.k, 1.l, 1.p, 1.q, and 1.t. Four debts remain unresolved. Two of those four debts (SOR ¶¶ 1.o and 1.r), she disputes, but failed to provide supporting documentation. She said she was going to pay the debt in SOR ¶ 1.s, but failed to provide proof. She indicated her ex-husband paid the debt in SOR ¶ 1.u, but also failed to provide proof. The unresolved debts, which total \$755, are minor and do not raise security concerns that reflect negatively on her trustworthiness, reliability, and good judgment.

Applicant financial problems occurred under circumstances that are unlikely to recur. Since her divorce, Applicant has been living within her means. She is now financially stable. AG ¶¶ 20(a) and 20(c) apply. AG 20(b), 20(d), and 20(e) partially apply.

Whole-Person Concept

Under the whole-person concept, the 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. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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.

¹³ See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

¹⁴ See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

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. I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant served honorably in the Air Force. She is a mature adult, a responsible mother, and a valued employee. The alleged debts are attributable to financial difficulties arising from her divorce. Specifically, her ex-husband was not financially responsible and acquired debts in her name that he did not pay. Applicant has paid some of those debts. She has successfully disputed others. She currently lives within her means. Although documentation has not been provided to show she disputed some debts or to show other debts were paid, those unresolved debts are minor and not significant from a security clearance perspective. From the evidence presented, she has shown that she is a trustworthy and reliable individual who exercises good judgment.

Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the financial considerations security concerns.

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.u:	For Applicant

Decision

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue eligibility for a security clearance for Applicant. Eligibility for access to classified information is granted.

James F. Duffy
Administrative Judge