



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 12-07561
)
 Applicant for Security Clearance)

Appearances

For Government: David F. Hayes Esq., Department Counsel
For Applicant: *Pro se*

03/13/2015

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 March 5, 2012. On May 19, 2014, the Department of Defense (DOD) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD acted under Executive Order 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 DOD on September 1, 2006.

Applicant received the SOR on May 23, 2014; answered it on September 5, 2014; and requested a hearing before an administrative judge. Department Counsel was ready to proceed on January 16, 2015, and the case was assigned to me on January 23, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 5, 2015, scheduling the hearing for February 23, 2015. I

convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through C. I kept the record open until March 2, 2015, to enable her to submit additional documentary evidence. She timely submitted AX D, which was admitted without objection. Department Counsel's comments regarding AX D are attached to the record as Hearing Exhibit I. DOHA received the transcript (Tr.) on March 4, 2015.

Findings of Fact

In her answer to the SOR, Applicant admitted all the allegations. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 59-year-old employee of a defense contractor. She has a high school education. She has worked as a cleaner at a naval shipyard since August 2011. She worked in various part-time jobs involving animal care from August 1996 to September 2010. She was unemployed from September 2010 to August 2011. She has never held a security clearance.

While working in her animal-care jobs, Applicant had a reputation for hard work, dedication, honesty, and trustworthiness. (AX B.) At the shipyard, she has earned a reputation for dedication and trustworthiness. (AX C.)

Applicant married in April 1973 and divorced in May 2006. She and her ex-husband have a 40-year-old son, a 38-year-old daughter, and a 37-year-old son. Applicant has cohabitated with her current "boyfriend" since January 2007.

Applicant admitted the 12 debts alleged in the SOR, totaling about \$29,646. Six are medical debts totaling about \$2,332. Her admissions are corroborated by her credit reports. (GX 3; GX 4.)

Applicant injured her foot in July 2006. It became infected, requiring multiple hospital and doctor visits. She did not have medical insurance at the time, resulting in the six medical debts alleged in the SOR. (Tr. 46-47; 60-61.)

Applicant was working three part-time jobs for a veterinarian (kennel manager, grounds keeper, and night cleaner), when she broke her hand trying to handle a 180-pound dog in June 2007. Most of her medical expenses were covered by insurance, but she was unable to work for about three months. When she was able to perform light duty, she found that the veterinarian had replaced her. Three months later, the veterinarian rehired her as a kennel worker, but she earned less money because she was no longer the kennel manager and someone else had been hired for the grounds keeping and cleaning services. (Tr. 24-25.)

Applicant worked for about a month as a kennel worker, and then her son asked her to join him in another state. Her son has a form of muscular dystrophy, has two

small children, and needed help. She joined her son but was unable to find a full-time job. She held two part-time jobs, but they totaled less than 40 hours per week. She moved to another state where her brother lived, and she found a part-time job at a pet store, but still was unable to find full-time work. (Tr. 40.) She returned to her home state in September 2010.

In October 2010, Applicant learned that her sister had lung cancer. She cared for her sister until she passed away in March 2011. Applicant was unemployed while caring for her sister, and remained unemployed until she began her current job in August 2011. (Tr. 25-26.) In her current job, she works the night shift so that she can spend time with her daughter, who has mild mental retardation and behavioral problems. She works overtime every other weekend. (Tr. 27.)

Applicant's daughter lives with her. Her younger son is in jail, and she gives him about \$40 every other week for "canteen money." (Tr. 31-32.) Her cohabitant is unemployed, and his only income is a veteran's disability payment of \$129 per month for a back injury. (Tr. 32-33.) She pays the living expenses for her daughter and cohabitant, with no contributions from them. (Tr. 34.)

Applicant has no active credit cards. She drives a 27-year-old car, with no car loan. (Tr. 18, 54.) She pays cash for everything. Her personal financial statement (PFS) submitted to DOHA in February 2014 reflected net monthly income of \$2,048, expenses of \$1,368, and a net remainder of about \$680. The PFS does not include payments on any of the debts alleged in the SOR. (GX 2, Personal Financial Statement.)

Applicant is now earning more money than she has ever earned. She was earning \$10-13 per hour in her animal-care jobs, and she now makes about \$20 per hour. (Tr. 58.) She now has medical insurance.

Applicant consulted with her attorney about a debt consolidation plan. The attorney told her, "[Y]ou will probably be dead before you get it paid off." (Tr. 53.) Applicant filed a petition for Chapter 7 bankruptcy on February 25, 2015. (AX D.) At the time of the hearing, she had completed one of the two on-line financial counseling courses required by the bankruptcy court. (Tr. 66.)

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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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." See 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. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

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; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

The concern under this guideline is set out in AG ¶ 18:

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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual 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).

Applicant's admissions, corroborated by her credit reports, establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations").

The following mitigating conditions are potentially relevant:

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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

AG ¶ 20(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; and

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

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

AG ¶ 20(b) is established. Applicant has encountered numerous conditions beyond her control: her marital breakup in May 2006; a serious foot injury in July 2006, at a time when she did not have medical insurance; a hand injury in July 2007 that resulted in loss of employment followed by underemployment; her underemployment while assisting her partially-disabled brother; her unemployment while caring for her terminally-ill sister; and the expenses of caring for her daughter, who suffers from mild retardation and behavioral problems. Applicant has acted responsibly under the circumstances. She has worked multiple jobs in an effort to support herself and her family. Her low income and inability to meet daily living expenses precluded her from negotiating with creditors. She obtained legal advice, explored the possibility of debt consolidation, and eventually filed a petition for Chapter 7 bankruptcy.

AG ¶ 20(c) is established. Applicant sought legal advice, and her Chapter 7 bankruptcy will resolve her current financial problems. Applicant did not present evidence of the specific debts listed in her bankruptcy petition. However, absent fraud, in a no-asset bankruptcy, all unsecured, nonpriority debts are discharged when the bankruptcy court grants a discharge, even if they are not listed on a bankruptcy schedule. See *Judd v. Wolfe*, 78 F.3d 110, 114 (3d Cir. 1996).

AG ¶ 20(d) is not established. Chapter 7 bankruptcy is a legally permissible resolution of delinquent debts, and in this case was the only viable option. However, a bankruptcy discharge does not constitute a “good-faith effort” within the meaning of this mitigating condition. See ISCR Case No. 03-20327 (App. Bd. Oct. 26, 2006).

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(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.

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 has limited education and lacks the credentials that would lead to a high-paying job. Her financial world began to fall apart in May 2006, when she and her husband divorced, leaving her with substantially reduced income. For most of the time since her divorce, she has worked multiple jobs in an effort to support herself and her family. In spite of her limited income, she has done her best to help her brother, who suffers from a debilitating illness, and her daughter, who has mental and behavioral problems. Her job at the shipyard is her best hope of regaining financial stability and preparing for retirement. She is capable of discharging all her current obligations, if she is relieved of the burden of old debts. At the hearing, she presented herself as candid, sincere, embarrassed by her financial problems, and determined to overcome them.

A security-clearance adjudication is not a debt-collection procedure. It is an evaluation of an individual's judgment, reliability, and trustworthiness. (ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.)) Applicant's persistence and diligence in spite of repeated financial setbacks and personal hardships speak volumes about her judgment, reliability, and trustworthiness.

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 based on her financial problems. Accordingly, I conclude she 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

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

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

Subparagraphs 1.a-1.i:

For Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge