



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



In the matter of:)
)
) ISCR Case No. 12-09002¹
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

01/28/2016

Decision

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate security concerns under Guideline F (financial considerations). Clearance is denied.

Statement of the Case

On March 26, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). Based on a review of Applicant’s e-QIP and the ensuing background investigation, Department of Defense (DOD) adjudicators issued Applicant a Statement of Reasons (SOR) on January 20, 2015, under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented by DOD on September 1, 2006. The SOR alleged security concerns under the financial considerations guideline.

¹ The wrong ISCR Case Number was listed on the SOR. Department Counsel pointed out the error in the FORM and made a handwritten correction to the SOR.

On February 19, 2015, Applicant answered the SOR and elected to have her case decided on the written record in lieu of a hearing. On June 12, 2015, Department Counsel prepared a File of Relevant Material (FORM) that contained documents marked as Items 1 through 4. On June 24, 2015, Applicant received a copy of the FORM and was given 30 days from its receipt to submit objections and supply additional information. Applicant did not submit a response to the FORM. The case was assigned to me on December 28, 2015.

Findings of Fact

The SOR alleged that Applicant had six delinquent debts totaling \$14,745 (SOR ¶¶ 1.a-1.f). In her Answer to the SOR, Applicant admitted each debt. Her admissions are incorporated as findings of fact.²

Applicant is a 30-year-old software engineer who has been working for a defense contractor since September 2011. She graduated from high school in 2003 and earned a bachelor's degree in 2011. She has never been married and has no children. This is apparently the first time that she has sought to obtain a security clearance.³

The delinquent debts consist of four student loans, a cell phone account, and a utility bill. A credit report dated October 7, 2014, reflected that all of the delinquent debts had dates of last activity in 2009.⁴

In her Answer to the SOR, Applicant stated that she paid all of her bills on time before 2008. In 2007, her father passed away. At that time, she began assisting her sisters financially. She obtained cell phones for her sisters and signed a car loan for one of them. One sister defaulted on the car loan and cell telephone account. The car was repossessed. She also had a roommate who vacated the premises and left her with the bills. Her e-QIP listed periods of unemployment from June 2008 to January 2010 and from November 2010 to September 2011.⁵

Applicant also stated that, since obtaining her current job, she has been paying the bills in a slow but consistent manner. She indicated that her tax refund of \$2,500 went toward payment of the student loans and that she has been paying at least \$600 a month toward those loans. She also stated she paid \$750 toward the other debts and indicated that she entered into a repayment plan with the cell phone company. She provided no documents confirming any of the payments that she mentioned.⁶

² Items 1, 2.

³ Item 3.

⁴ Item 4.

⁵ Items 3, 4.

⁶ Item 2.

Applicant provided no evidence that she received financial counseling. She did not provide a monthly budget. In her Answer to the SOR, she claimed she could pay \$1,800 a month toward the delinquent debt, but provided no documentary evidence supporting that claim.⁷

In the FORM, Department Counsel pointed out that without documentary proof to corroborate Applicant's assertions and demonstrate what progress she had made in repaying the debts, it is impossible to determine whether she has acted responsibly under the circumstances. As noted above, Applicant did not respond to the FORM.

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 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 unfavorable, in reaching a 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

⁷ Item 2.

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 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.

Applicant’s admissions and the record evidence established two disqualifying conditions in AG ¶ 19:

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

Four 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; and

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

In 2007, Applicant's father passed away. She assisted her sisters financially. One of her sisters defaulted on a car loan that Applicant signed for her and on another account she opened for her. Applicant also experienced periods of unemployment and had a roommate default on a lease. These were circumstances beyond her control. However, Applicant failed to present any evidence corroborating that she has made payments or payment plans to resolve the delinquent debts. In the absence of such documentation, insufficient evidence has been presented to conclude that Applicant has acted responsibly under the circumstances or that her financial problems are under control and are being resolved. No evidence was presented that she received financial counseling. Her financial problems continue to cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 20(b) partially applies. AG ¶¶ 20(a), 20(c), and 20(d) do not apply

Whole-Person Concept

In the adjudication process, an administrative judge must carefully weigh a number of variables known as the whole-person concept. Available information about the applicant as well as the factors listed in AG ¶ 2(a) should be considered in reaching a determination.⁸ In this case, I gave due consideration to the information about

⁸ The adjudicative process factors listed at AG ¶ 2(a) are as follows:

(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

Applicant in the record and concluded the favorable information, including the mitigating evidence, does not outweigh the security concerns at issue. Applicant failed to meet her burden of persuasion. Her financial problems leave me with doubts as to her current eligibility to access classified information. Following the *Egan* decision and the “clearly consistent with the national interest” standard, doubts about granting Applicant’s eligibility for a security clearance must be resolved in favor of national security.

Formal Findings

Formal findings as required by Section E3.1.25 of Enclosure 3 of the Directive are:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a – 1.f:	Against Applicant

Decision

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance is denied.

James F. Duffy
Administrative Judge

pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.