

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

In the matter of:)
)
[REDACTED]) ISCR Case No. 12-10260
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

03/15/2016

Decision

HESS, Stephanie C., 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 (e-QIP) on May 30, 2012. On May 15, 2015, 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; Department of Defense 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.

The SOR was sent to Applicant on May 15, 2015. He received the SOR and on June 15, 2015, answered it and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on September 14, 2015. On September 17, 2015, a complete copy of the file of relevant material (FORM,) which included Government Exhibits (GX) 1 through 5, was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the

Government's evidence. She received the FORM and her Response was received by DOHA on December 23, 2015. Department Counsel made no objections to Applicant's Response.¹ I have admitted Applicant's Exhibits (AX) A through F. The case was assigned to me on February 23, 2016.

Findings of Fact

The SOR alleges a Chapter 7 bankruptcy and five delinquent debts totaling approximately \$20,719. In her Answer, Applicant admitted each of the allegations, but qualified each admission of SOR ¶¶ 1.b – 1.f with the repayment status of each debt. Her admissions in her Answer are incorporated in my findings of fact.

Applicant is a 51-year-old assembly technician employed by a defense contractor since June 1985. She attended community college from January 2008 until at least April 2012. She has held a DOD security clearance since 1985. (GX 2.) She has lived at the same residence since 2005 and currently resides with her domestic partner. (GX 2.)

Applicant filed a Chapter 7 bankruptcy in 1998, which was dismissed in 2000. She states that she filed bankruptcy after extricating herself from an abusive relationship which left her with substantial debt and without assets. (GX 1.) Several years later, she again experienced financial difficulties when her partner left her, taking her money and leaving her liable for their mutual financial obligations. She began using credit cards for living expenses, got financially overextended and, by 2010, became delinquent on multiple accounts. (GX 3.) In an effort to resolve her delinquent debts, she contracted with a credit-consolidation company and made numerous payments, which she erroneously thought were being applied to her debts. When she realized that the credit-consolidation company was not actually making the payments, she canceled their services. She then contacted each of her creditors and, prior to her Personal Subject Interview (PSI) in 2012, had entered payment agreements with each of them. (GX 1; GX 3.)

The delinquent debts are reflected in Applicant's credit bureau reports (CBRs) dated June 2012, and November 2014. (GX 4; GX 5.) She disclosed the bankruptcy in her Personal Subject Interview (PSI) (GX 3.) The debts alleged in SOR ¶ 1.b, 1.d, and 1.e have been settled in full. (AX A; AX B; AX C.)

Applicant and the creditor for the debt alleged in SOR ¶ 1.f entered a "Covenant to Forbear Collection" agreement effective September 2014, the terms of which require her to pay 71 monthly payments of \$125 for a total of \$8,960. She has paid approximately \$2,250 and continues to make the required payments. (AX D.)

Applicant was an authorized user, not the primary account holder or joint account holder, on the delinquent credit-card account of \$1,327, alleged in SOR ¶ 1.c. (GX 4;

¹ Applicant attached five documents to her Answer and submitted an additional document with her Response. For the purpose of clarity of the record, I admitted these documents as Applicant's Exhibits A through F. Applicant's response also included a copy of the FORM and copies of several administrative documents. I put these in the correspondence file.

AX F.) The account was charged off to profit and loss and was closed in 2010. (AX B.) There is no record evidence that Applicant is contractually liable for this debt, nor is there any evidence that this creditor has attempted to collect this debt from her.

Applicant has not incurred any delinquent debt since approximately 2010. The November 2014 CBR lists five previously delinquent accounts that have been either paid or settled in full. It also shows 14 accounts that were paid off without any delinquencies, seven of which have been closed by her request. She is current on all her ongoing financial obligations. (GX 4.)

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’s 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 CBRs, e-QIP, and PSI, 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 under this guideline 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, 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;

AG ¶ 20(d): the individual initiated 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. Applicant's bankruptcy was discharged in 2000, over 15 years ago, and the concern is mitigated by time. She also has not incurred any delinquencies since approximately 2010. Her conduct which resulted in her prior financial difficulties "does not cast doubt on [her] current reliability, trustworthiness, or good judgment."

AG ¶ 20(b) is established. Applicant experienced circumstances largely beyond her control when her two relationships ended. After the first relationship ended, she acted responsibly by resolving her debts through bankruptcy. After the second relationship ended, she again acted responsibly. First, she contracted with a credit-consolidation company. Then, after realizing that the company was not resolving her debts, she contacted her creditors, and, prior to her 2012 PSI, entered payment plans with each of them. She has fully resolved all but one of her debts and has been in repayment of that debt since approximately September 2014.

AG ¶ 20(c) is established. She has resolved or is resolving her delinquent debts and has not incurred any additional delinquencies since about 2010. Thus, there are "clear indications" that her financial problems are under control.

AG ¶ 20(d) is established. Of the four delinquent debts totaling \$19,392 alleged in the SOR for which Applicant is liable, she has settled in full three accounts totaling \$9,951. She has been in a repayment plan for the remaining debt of \$9,441 since approximately September 2014, with payments totaling about \$2,250. "Good faith" means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). A security clearance adjudication is an evaluation of an individual's judgment,

reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) A person is not required to establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

AG ¶ 20(e) is established. The record evidence shows that Applicant was an authorized user, not the primary account holder or joint account holder, of the delinquent credit-card account alleged in SOR ¶ 1.c. There is no evidence that the creditor attempted to collect this debt from her or that she is contractually liable on this account. Therefore, she has a reasonable basis to dispute the legitimacy of this debt and has provided documents which show she was merely an authorized user and that the account was charged off to profit and loss and closed in 2010. (AX B; AX F.)

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 I have also considered the following:

Applicant clearly recognized the importance of resolving her financial issues by proactively entering into repayment agreements with each of her creditors before receiving the SOR. She has been living within her means while repaying her creditors for several years. She voluntarily closed a number of her credit accounts, thus reducing her vulnerability to become overextended. Such actions are indicative of an individual who is reliable and trustworthy and who exercises good judgment. I am confident that Applicant will continue her good-faith effort to resolve her remaining delinquent debt.

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. 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

Subparagraph 1.a – 1.f:

For Applicant.

Conclusion

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

Stephanie C. Hess
Administrative Judge