



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 12-10927
)
 Applicant for Security Clearance)

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

02/23/2016

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 May 4, 2012. On July 10, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF 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 the DOD on September 1, 2006.

Applicant answered the SOR on September 3, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on October 29, 2015, and the case was assigned to me on October 30, 2015. On the same day, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was

scheduled for November 19, 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 F, which were admitted without objection. I kept the record open until December 11, 2015, to enable Applicant to submit additional documentary evidence. She did not submit any additional evidence. DOHA received the transcript (Tr.) on December 2, 2015.

Findings of Fact

In her answer to the SOR, Applicant admitted SOR ¶¶ 1.a-1.e, 1.g, and 1.h. She denied SOR ¶ 1.f. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 37-year-old employee of a defense contractor. She has worked for defense contractors since September 2011. Her duties include payroll, accounts payable, and hiring. Her duties require visits to secure areas within naval shipyards. (Tr. 30-31.) She worked in several private-sector jobs from March 2002 to March 2011, with periods of unemployment from June 2004 to November 2007, January to December 2010, and March 2011 to September 2011. She has never held a security clearance.

Applicant married in April 1996 and divorced in December 1998. She married again in March 2002, separated in April 2007, and divorced in 2013. She has three children, ages 21, 17, and 1. The two younger children live with her. (Tr. 33.)

Applicant earns \$16.50 per hour, and her work week varies between 40 and 70 hours. Her take-home pay for an average week is between \$700 and \$900. She recently purchased a home, and her monthly payments are \$1,278. She owns a vehicle, and her monthly payments on the loan are \$300. She usually has a net monthly remainder of \$400-\$500. (Tr. 32-34.)

Applicant filed a Chapter 7 bankruptcy petition in February 2010. Her petition reflected that she completed the financial counseling required by the court in January 2010. Her petition listed \$91,649 in liabilities, including a \$40,000 debt for federal income taxes for tax year 2006. The debts other than the tax debt were discharged in May 2010. She testified that the discharged debts were attributable to joint credit-card debts during the marriage and debts incurred by her ex-husband in the operation of his business. Her husband left her in 2007 and she was unable to locate him until 2013. (GX 4; Tr. 34-38.) The bankruptcy is alleged in SOR ¶ 1.h.

In October 2012, Applicant obtained a support order requiring her then husband to pay child support of \$528.43 per month. The order also required him to pay 50% of any medical and dental expenses incurred by each child in excess of \$250 for any calendar year. (AX C.) As of November 19, 2015, he was \$51,419 in arrears. (AX D.)

The Internal Revenue Service filed a tax lien against Applicant and her husband for \$27,697 in September 2007. The lien is alleged in SOR ¶ 1.g. (GX 3 at 4; Tr. 38-39.)

She testified that she began a payment plan in June 2013 to pay \$250 per month on the delinquent taxes. (Tr. 38-40; AX E.) At some time in 2015, her monthly payments were reduced to \$100. The combination of seized tax refunds and monthly payments reduced her tax debt to \$4,126 as of October 28, 2015. (AX F.)

Applicant's November 2014 credit bureau report (CBR) reflected six medical debts for \$561 (SOR ¶ 1.a); \$278 (SOR ¶ 1.b); \$261 (SOR ¶ 1.c); \$138 (SOR ¶ 1.d); \$127 (SOR ¶ 1.e); and \$74 (SOR ¶ 1.f). (GX 3 at 1-2.) All the debts were referred for collection in 2012 or 2013. She testified that she was unable to identify the creditors, determine the basis for the debts, or find any contact information for the creditors. (Tr. 48.) The CBRs submitted by Department Counsel (GX 2 and 3) contain no contact information for the medical debts. The CBR's simply label the debt as "medical," list the collection agency as "collection/attorney fees," and list the collection agency's file number. They did not identify the original creditor or the collection agency, and they do not list an address or telephone number at which the original creditor or collection agency can be contacted.

Applicant testified that she had not considered disputing the medical debts as a means of identifying the creditors, because she did not know how to dispute information in the CBR. (Tr. 49.) However, she obtained a copy of her CBR in January 2015, which listed contact information for the debt in SOR ¶ 1.f, and she submitted evidence that she paid that debt in full. (AX A.) Applicant's November 2014 CBR (GX 3) reflects no past-due accounts and no collection accounts except for the six medical debts.

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 CBRs, 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 partially established. The medical debts were referred for collection more than three years ago. The federal tax debt was incurred in 2007. Although the tax debt is not yet fully resolved, it and the bankruptcy are not likely to recur now that Applicant has divorced her irresponsible husband.

AG ¶ 20(b) is established. Applicant encountered unexpected medical expenses for herself and her children. Her husband abandoned her, leaving her responsible for marital debts as well as his business debts. Her ex-husband owes her more than \$51,000 in child support. She acted responsibly by obtaining a Chapter 7 discharge, negotiating a payment agreement for the tax debt, consistently making timely payments on the tax debt, resolving the one medical debt for which she was able to find contact

information, and remaining current on her other financial obligations reflected in her most recent CBR.

AG ¶ 20(c) is established. Applicant completed the counseling required by the bankruptcy court. Her most recent CBR reflects that her financial situation is under control.

AG ¶ 20(d) is established. Applicant paid the one medical debt for which she found contact information and is making regular payments on her tax debt.

AG ¶ 20(e) is not established. Applicant was unable to identify the creditors or collection agencies for five of the six medical debts alleged in the SOR, but she did not dispute the debts because she did not know how to file a dispute.

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 was candid, sincere, and credible at the hearing. She has no previous experience with the security-clearance process, and she has limited experienced with decoding CBRs. The fact that she paid the one medical debt for which she found contact information indicates that she would have resolved the other medical debts if the CBRs were less cryptic.

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.) Applicant has demonstrated her good judgment,

reliability, and trustworthiness by diligently addressing the financial problems thrust upon her by her unreliable ex-husband.

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

Subparagraphs 1.a-1.h:

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