



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



In the matter of:)
)
) ISCR Case No. 12-11210
)
Applicant for Security Clearance)

Appearances

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

06/18/2013

Decision

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On December 10, 2012, the Department of Defense (DOD) issued Applicant 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 under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. In an undated document, Applicant answered the SOR and requested a

hearing. DOD received her Answer on January 23, 2013. The case was assigned to me on April 2, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Video Teleconference Hearing on April 9, 2013. The hearing was held as scheduled on April 30, 2013. At the hearing, Department Counsel offered exhibits (GE) 1 through 6 that were admitted into evidence without objection.¹ Applicant testified and offered exhibits (AE) A through G that were admitted into evidence without objection. Applicant's list of exhibits was marked as hearing exhibit (HE) 1 and the copy of the SOR that she provided was marked as HE 2. The record was left open until May 15, 2013, for the Applicant to submit additional matters. Applicant submitted documents that were marked as AE H through N and admitted into evidence without objection.² Department Counsel's emails indicating he had no objection to Applicant's post-hearing submissions was marked as HE 3. The transcript (Tr.) of the hearing was received on May 10, 2013.

Findings of Fact

Applicant is a 39-year-old administrative assistant who works for a defense contractor. She has worked for that contractor since July 2011. In December 1990, she enlisted in the Army Reserve while still in high school. In 1992, she graduated from high school. In April 1993, she was honorably discharged from the Army Reserve after becoming pregnant with her first child. She has been married since 1993 and has four children, ages 8, 15, 18, and 20. She is about eight courses short of earning a bachelor's degree. She held a security clearance for about ten years without incident.³

The SOR asserted that Applicant had 24 delinquent debts totaling \$24,730. In her Answer to the SOR, Applicant admitted all of the allegations. Her admissions are incorporated as findings as fact.⁴

In 1998, Applicant's husband received a job opportunity in another state. They moved to that other state and purchased a home there. At that time, she was pregnant and intended to remain at home to raise their children. Her husband, however, did not receive the job he was promised. At that time, Applicant began working in a retail store. Her husband obtained side jobs to help make ends meet. They entered into a debt management program for a period of time. In 2000, they filed Chapter 13 bankruptcy.

¹ Department Counsel offered GE 6 (Chapter 13 bankruptcy records) as a rebuttal exhibit. Applicant did not have an opportunity to examine GE 6 before or during the hearing. GE 6 was conditionally admitted into evidence subject to any objections Applicant had after having an opportunity to examine that document. After receiving that document, Applicant posed no objections. See HE 3 and Tr. at 73-78.

² Applicant initially submitted AE N in an electronic format that neither Department Counsel nor I were able to open. On May 31, 2013, she resubmitted it in a format that we could open.

³ Tr. at 6-7, 14-21, 34-36, 73; GE 1; AE J, K.

⁴ Applicant's Answer to the SOR; GE 4, 5; HE 2.

They completed paying on that Chapter 13 bankruptcy plan in 2005. Details of that bankruptcy are not known, but it is presumed she and her husband received a discharge of any debts that were not fully paid in that bankruptcy.⁵

In 2005, Applicant became pregnant and decided to stop working outside the home so that she could raise her children. In 2007, she and her husband purchased two rental properties that each cost about \$140,000. They rented one property for \$1,600 and the other for \$1,700. They, however, had unreliable tenants who failed to pay the rent. Around this time, her husband also had his salary significantly reduced. Initially, his annual salary was about \$80,000. His employer, however, lost a major contract that resulted in his annual salary being reduced to about \$40,000. This reduction in salary caused them financial problems. As things started to get rough financially, she decided to start working again and obtained a job in which she earned about \$41,000 a year. Both of the rental properties were foreclosed. Applicant does not owe any deficiencies on the foreclosed properties.⁶

In June 2008, Applicant and her husband filed Chapter 13 bankruptcy again so that they could save their primary residence from foreclosure and their vehicles from repossession. Applicant received financial counseling before filing bankruptcy. This bankruptcy petition reflected that their total assets were \$258,657 and their total liabilities were \$329,512. Their monthly income was \$5,916 and their monthly expenditures were \$4,447, which left them a net monthly income of \$1,468. In October 2008, the Chapter 13 Plan was confirmed. Under that plan, Applicant and her husband were required to pay \$1,476 for the first 3 months and \$1,508 for the remaining 57 months. The plan was later modified on four occasions, but the details of those modifications are unknown. On April 20, 2010, and June 15, 2010, the bankruptcy trustee filed motions to dismiss the bankruptcy because Applicant and her husband were in default under the plan. The Chapter 13 bankruptcy was dismissed on June 15, 2010. The trustee's report indicated that payments totaling \$13,780 in principal and \$6,927 in interest were paid under the plan. Those payments were made only towards the secured debts. None of Applicant's debts were fully resolved during the Chapter 13 bankruptcy. Applicant indicated that she and her husband stopped paying on the Chapter 13 bankruptcy because they wanted to handle the debts themselves.⁷

In her response to interrogatories on July 31, 2012, Applicant indicated that she joined her company's group legal services program with the intention of challenging incorrect information on her credit reports and having the legal service provider

⁵ Tr. at 19-21, 34, 37-38, 58-61; GE 2; AE A, H.

⁶ Tr. at 58-63, 68-69; GE 6 (page 29 of 63). It is not totally clear from the evidence whether Applicant's husband's salary was reduced from \$80,000 to \$40,000 before their first or second Chapter 13 bankruptcy filing. The preponderance of the evidence, however, supports a finding that reduction occurred before the second bankruptcy filing. See Applicant's Personal Subject Interview in GE 2.

⁷ Tr. at 37-38, 58-61; GE 1, 2, 6; AE H.

negotiate settlement amounts with creditors. She provided a list of the debts that would be challenged and those that would be negotiated and settled. No evidence was presented to show that the identified debts were disputed or the others were negotiated and settled.⁸

At the hearing, Department Counsel and Applicant had the following exchange:

Department Counsel: All right. Ma'am, when you indicated in your filings back to DOHA about the status of these debts, I believe you indicated that you chose -- you and your husband elected to withdraw from this confirmed Chapter 13 plan, so that you could tackle the debts on your own and try to restore your credit, without the direct supervision of the trustee. Is that a fair statement of what you said?

Applicant: Yes.

Department Counsel: Okay. Now having withdrawn from this Chapter 13 in the summer of 2010, do you have any documents to show what you did, as far as trying to resolve any of these debts? Any by that, I mean did you pay any things off separately by yourselves? What actions did you take after you withdrew from the plan?

Applicant: Once we withdrew from the plan, honestly we did not pursue at that time to get everything paid off. At that time, we were -- we had one sick child and one getting ready to start college, and we put that on top of our bills. We made that a priority.

So we did not pursue like we should have responsibly, to get everything taken care of in that Chapter 13. We really didn't start doing that until the latter part of last year.⁹

In late April 2013, Applicant hired a law firm (a different law firm than the group legal services program noted above) to examine her credit reports and verify and/or challenge information on her credit reports. She indicated that the debts in SOR ¶ 1.a, 1.b, 1.f, 1.i, and 1.q were disputed with the help of that law firm and no longer appeared on her credit report. She provided a credit report dated April 11, 2013, to show those debts no longer appear on that document. That credit report, however, apparently predated her agreement with the law firm. No documentation was presented to show that she has a reasonable basis for disputing the legitimacy of those debts, which she

⁸ GE 2.

⁹ Tr. at 56-57.

admitted in her Answer to the SOR. The alleged debts and their status are reflected in the following table.¹⁰

| SOR/DEBT | AMOUNT | STATUS | EVIDENCE |
|---------------------------------------------|---------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|
| SOR 1.a – medical account in collection | \$482 | Applicant testified that this debt was incurred in 1999 or 2000 and was resolved in her first Chapter 13 bankruptcy. She also testified that it was no longer reflected on her credit reports. Credit reports, however, indicated that this account was placed for collection in December 2008. This account is unresolved. | Tr. at 37-38; GE 2, 4, 5; AE B. |
| SOR 1.b – telephone account in collection | \$541 | This account was placed for collection in June 2008. In her post-hearing submission, Applicant indicated that this account was still past due. She indicated that she plans to pay \$25 a month towards this account starting in August 2013. This account is unresolved. | Tr. at 38-39; GE 2, 4, 5; AE B, D, I. |
| SOR 1.c – medical account in collection | \$956 | This account was placed for collection in March 2007. In her post-hearing submission, Applicant indicated that she has not been able to verify this account even though it was included in her second Chapter 13 bankruptcy. She indicated that she planned to dispute it. This account is unresolved. | Tr. at 39-41; GE 2, 4, 5, 6; AE I. |
| SOR 1.d – credit card account in collection | \$483 | The date of last activity on this account was in March 2006. In her post-hearing submission, Applicant indicated that this account was outstanding. She indicated that she plans to pay \$50 a month towards this account starting in August 2013. This account is unresolved. | Tr. at 41; GE 2, 4, 5; AE B, D. |

¹⁰ GE 5; AE B, C, D, G. Debts may fall off credit reports for various reasons, including the passage of time.

| | | | |
|------------------------------------------------------------|---------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|
| SOR 1.e – returned check | \$301 | This account was opened in April 2008. Applicant testified that she received a letter from the district attorney’s office about this debt and paid it in about 2009. It was still reflected on her credit report dated April 11, 2012. Insufficient evidence was presented to show this account was resolved. | Tr. at 41-43, 70; GE 2, 5; AE B, D. |
| SOR 1.f – collection account | \$421 | The date of last activity on this account was August 2008. Applicant testified that she had no recollection of this debt, but thought it was resolved in her second Chapter 13 bankruptcy. Insufficient evidence was presented to show this account was resolved. | Tr. at 43; GE 2, 4, 5; AE B. |
| SOR 1.g – loan in collection for repossessed vehicle | \$4,375 | In her post-hearing submission, Applicant indicated she contacted this creditor and was informed this account has not been paid. She noted the creditor is willing to work with her on resolving this debt and she will start making monthly payments of \$75 in the future. This account is unresolved. Its balance is now \$5,688 | Tr. at 43-44; GE 2, 4, 5; AE B, D, I. |
| SOR 1.h – loan in collection for repossessed vehicle | \$6,866 | The date of last activity on this account was October 2007. Insufficient evidence was presented to show this debt was resolved. | Tr. at 44-45; GE 2, 4, 5; AE B, D. |
| SOR 1.i – tax loan in collection | \$525 | Applicant testified that this debt was paid in 2003 or 2004, but provided no proof. Her credit report dated April 11, 2012, reflected that the date of last activity on this debt was May 2008. Insufficient evidence has been presented to show this account was resolved. | Tr. at 45-46, 70; GE 2, 4, 5; AE B, D. |

| | | | |
|----------------------------------------------|---------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------|
| SOR 1.j – bank account in collection | \$2,589 | In her post-hearing submission, Applicant indicated that the balance of this account is now \$2,800. She noted that she was working on a settlement agreement. This account is not resolved. | Tr. at 46-47; GE 4, 5; AE B, I. |
| SOR 1.k – telephone account in collection | \$265 | In her post-hearing submission, Applicant indicated the creditor could not locate this account and told her it was either charged off or paid when she obtained her current cell phone account with that same company. Insufficient evidence was presented to show this account was resolved. | Tr. at 47; GE 2, 4; AE D, I, M; HE 3. |
| SOR 1.l – returned check | \$271 | The date of last activity on this account was April 2008. Insufficient evidence was presented to show this debt was resolved. | Tr. at 47-48; GE 2, 4, 5; AE B, D. |
| SOR 1.m – cable TV account in collection | \$608 | Applicant testified that she returned the cable TV equipment that was the basis for this debt. She provided no proof that this account was disputed. | Tr. at 48-50, 70-71; GE 2, 4; AE C, D. |
| SOR 1.n – bank account in collection | \$546 | The date of last activity for this debt was July 2009. Applicant indicated that she was in the process of disputing this debt, but provided no documentation showing she has a reasonable basis for disputing its legitimacy. | Tr. at 50-51; GE 2, 4; AE D. |
| SOR 1.o – medical account in collection | \$175 | The date of last activity for this debt was February 2009. Applicant did not know the status of this debt. | Tr. at 51-52; GE 2, 4; AE C, D. |
| SOR 1.p – retail store account in collection | \$199 | The date of last activity on this debt is November 2003. Applicant testified this account was for a returned check that she paid, but she provided no proof of payment. | Tr. at 52, 71; GE 2, 4; AE D. |

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|----------------------------------------------|---------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|
| SOR 1.q – collection account | \$255 | The date of last activity on this debt is January 2010. Applicant indicated that this debt may be a duplicate of SOR ¶ 1.m. No proof was provided to support her claim. | Tr. at 52-53, 71; GE 2, 4; AE B. |
| SOR 1.r – retail store account in collection | \$1,309 | The date of last activity on this debt was September 2007. Applicant thought this debt could have been paid in her bankruptcy. The evidence presented does not support her claim. | Tr. at 53; GE 2, 4, 6; AE D. |
| SOR 1.s – medical account in collection | \$921 | This debt was placed for collection in September 2009. Applicant believed this debt was a duplicate of SOR ¶¶ 1.b and 1.w. No proof was provided to support her claim. | Tr. at 54-56, 71; GE 2, 4, 5; AE C. |
| SOR 1.t – medical account in collection | \$141 | In her post-hearing submission, Applicant indicated this account was outstanding and that she planned to pay it on June 15, 2013. This account is unresolved. | Tr. at 54; GE 2, 4; AE C, I. |
| SOR 1.u – collection account | \$319 | This debt was placed for collection in November 2008. No evidence was presented to show this debt was resolved. | Tr. at 55; GE 2, 4; AE C. |
| SOR 1.v – medical account in collection | \$241 | This debt was placed for collection in September 2009. No evidence was presented to show this debt was resolved. | Tr. at 55, 71; GE 2, 4; AE C. |
| SOR 1.w – medical account in collection | \$162 | This debt was placed for collection in September 2009. No evidence was presented to show this debt was resolved. | Tr. at 55-56, 71; GE 2, 4; AE C. |
| SOR 1.x – credit card account in collection | \$1,797 | Applicant testified that she was unsure of the status of this debt. No evidence was presented to show this debt was resolved. | Tr. at 56; GE 2, 4. |

In her response to interrogatories, Applicant indicated that she and her husband were current on their monthly payments for their home, vehicles, student loans, and credit cards. She indicated that their monthly mortgage payments were reduced from \$2,300 to \$1,416 and their monthly vehicle payments were reduced from \$970 to \$800. Applicant testified that she had about \$50,000 in student loans in deferment. In her post-hearing submission, she presented an account statement showing that she was

past-due \$300 on one of her student loans for \$3,420. Her monthly payments on that loan were \$50 and she had not made any prior payments on it.¹¹

Applicant submitted reference letters from friends and coworkers that attest to her honesty, reliability, and dependability. She is a hard worker and a valued employee. Her performance evaluations from September 2011 to December 2012 reflected that she met or exceeded expectations. She is actively involved in her church.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 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

¹¹ Tr. 64-67; GE 2; AE F, L.

¹² AE E, H, J, K.

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 accumulated delinquent debts totaling over \$24,000 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.

Applicant's financial problems are significant, ongoing, and cast doubt on her current reliability, trustworthiness, and good judgment. I am unable to find that her financial problems are unlikely to recur. AG ¶ 20(a) does not apply.

In about 2008, Applicant's husband lost a significant portion of his salary. His reduction in salary contributed to their financial problems. They had tenants who failed to pay them rent. Those were conditions beyond their control. To merit full credit under AG ¶ 20(b), an individual must have acted responsibly under the circumstances. Here, Applicant filed Chapter 13 bankruptcy in June 2008. As part of that bankruptcy, she would have received financial counseling. In 2010, Applicant and her husband intentionally defaulted on the bankruptcy so that they could resolve the debts themselves. Since the default, they have failed to take any meaningful action to resolve the debts. In responding to interrogatories in July 2012, she indicated that she joined a group legal services program to verify and dispute certain debts. At that hearing, she provided documents showing she hired another law firm to challenge incorrect information on her credit reports. She provided no documentation to show that she had a reasonable basis for disputing the legitimacy of the alleged debts. Some debts are no longer reflected on her

credit reports, but they may have fallen off due to the passage of time. Insufficient evidence has been provided to conclude that any of Applicant debts were resolved in a responsible manner. At this point, I am unable to find that her financial problems are being resolved or are under control. AG ¶ 20(b) partially applies. AG ¶¶ 20(c), 20(d) and 20(e) do not 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.

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. AG ¶ 2(c).

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 is highly thought of by her friends and coworkers. She is a valued employee. Nevertheless, she has a long history of financial problems. She has failed to present evidence to show that those problems will be resolved within a reasonable period. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the alleged 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: | AGAINST APPLICANT |
| Subparagraphs 1.a – 1.x: | 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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

James F. Duffy
Administrative Judge