



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 [Redacted]) ISCR Case No. 12-12070
)
 Applicant for Security Clearance)

Appearances

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

12/31/2015

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on March 27, 2012. On May 20, 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; 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 July 30, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on September 3, 2015, and the case was assigned to me on October 2, 2015. On October 8, 2015, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for October 28, 2015. I convened the hearing as scheduled. Government

Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through D, which were admitted without objection. I kept the record open until November 16, 2015, to enable her to submit additional evidence. She timely submitted AX E through J, which were received without objection.¹ DOHA received the transcript (Tr.) on November 5, 2015.

Findings of Fact

In her answer to the SOR, Applicant admitted the sole allegation of a delinquent mortgage loan, past due for \$136,407, with a total balance of \$438,599. However, she denied that the delinquent debt raised questions about her reliability, trustworthiness, and ability to protect classified information. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 49-year-old library technician. She was hired by a federal contractor in March 2012, contingent on obtaining a security clearance, but she has been unable to start working for the federal contractor until her SCA is adjudicated. In April 2013, she began working as a qualified developmental disabilities professional (QDDP)² to support herself while the decision on her SCA is pending. (AX C; Tr. 31, 49.)

Applicant has never held a DOD security clearance. However, she received favorable trustworthiness determinations from other federal agencies while working as a contractor employee in 2003 and 2010. (GX 1 at 37-38.)

Applicant has encountered several periods of unemployment. She was unemployed from May 2007 to December 2009. She worked as a library technician and assistant project manager from December 2009 to February 2011, when she was terminated for unsatisfactory performance. She was unemployed from February to August 2011 but held two one-month temporary jobs during that period. She was unemployed from September 2011 until April 2013, when she began working as a QDDP.

Applicant attended a university from January 2007 to June 2010 and received a bachelor's degree. She immediately began work on her master's degree in business administration with a concentration in acquisition, which she received in June 2012. She incurred 22 student loans totaling about \$190,300, which were all deferred when she submitted her SCA in March 2012. (GX 3; Tr. 36.) They were in forbearance until December 5, 2015 (AX E.) Starting in January 2016, she will be making monthly payments of \$200-\$300 on her student loans. (Tr. 38-39.)

¹ Department Counsel's "discovery" letter, transmitting GX 1 through 5 to Applicant, is attached to the record as Hearing Exhibit (HX) I. Department Counsel's list of exhibits is attached as HX II. His response to AX E through J is attached as HX III.

² A QDDP develops, coordinates, and monitors treatment for persons with developmental disabilities. (AX C at 4.) In her testimony, Applicant referred to the position as a qualified intellectual developmental professional (QIDP). (Tr. 31.)

Applicant is currently working toward another master's degree in health care services. She was unable to continue the deferment of her student loans when she began her most recent graduate program, because she was taking only one or two classes and was not a full-time student. She borrowed the tuition directly from the university and still owes about \$1,500 on the loan. (Tr. 33-37.)

Applicant married in December 1991 and divorced in June 1999. Her first husband died in July 2007 due to atherosclerotic cardiovascular disease and chronic alcoholism. (AX D.) She remarried in December 1999 and divorced in July 2010. She has a 25-year-old daughter from her first marriage and a 14-year-old son from her second marriage. The divorce decree obligated her second husband to pay child support of \$538 per month. (AX B.) Her daughter is a college graduate, lives with Applicant, and is looking for a job (Tr. 33.).

Applicant and first her husband purchased a home in 2003 for about \$175,000. (Tr. 42.) They refinanced their home several times, each time withdrawing their equity and increasing the amount borrowed. (AX G; AX I; AX J.) During a personal subject interview (PSI) in May 2012, Applicant told a security investigator that her home loan payments were 14 months past due, that she had submitted a request for a loan modification in May or June of 2011, and that the request was being processed. (GX 2 at 4.) The record contains no documentation of an application for loan modification in 2011. Applicant's April 2012 credit bureau report (CBR) reflected that her payment was 30 days past due on a variable-rate loan for \$333,000, opened in April 2006 and closed in February 2007. Her December 2014 CBR and September 2015 CBR reflect that her current loan was opened in February 2007. (GX 3 at 10; GX 5 at 3; AX I.) Her September 2015 CBR reflects that the balance on the loan is \$438,599, and the payments are past due in the amount of \$159,614.

Applicant still lives in the home, but she has not made any payments since she became unemployed in 2011. She testified that she told the lender that she wanted to resume making payments after she began working in 2013. (Tr. 49.) There is no evidence that she actually tendered any payments.

Applicant's only documented loan-modification request reflects that her request was denied in September 2015. The letter denying the request recommended that Applicant consider a deed in lieu of foreclosure, a short sale, or a short payoff, in which the borrower offers to pay less than the total balance of the loan. (AX A.) The denial letter informed Applicant that she could appeal the denial in writing within 15 days. She testified that she appealed the denial in writing and promised that she would provide a copy of her written appeal, but she did not include it in her post-hearing submission. (Tr. 55.)

In October 2015, Applicant submitted an application to the Neighborhood Assistance Corporation of America (NACA) for assistance. Although NACA offers counseling services as well as advocacy services, there is no evidence that Applicant received any financial counseling from NACA or any other agency. (AX F; AX H.)

Applicant's current take-home pay is about \$3,000 per month, and she receives \$538 in child support from her ex-husband. (AX C; Tr. 58.) Her household and living expenses are about \$1,200, leaving a net monthly remainder of more than \$2,000. She testified that she has spent the net remainder on electrical repairs, plumbing bills, and new appliances. (Tr. 65.) She does not have a savings account, but she testified that a friend holds her savings, which now total about \$4,000 or \$5,000. She does not use a bank savings account because it is too easy to withdraw the money and spend it. (Tr. 51.)

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"). Although only one delinquent debt is alleged, Applicant's failure to make any payments for more than four years constitutes a "history" within the meaning of AG ¶ 19(c).

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 not established. Applicant currently has only one delinquent debt, but it is recent and was not incurred under circumstances making it unlikely to recur.

AG ¶ 20(b) is not fully established. Applicant's unemployment from September 2011 until April 2013 was a condition largely beyond her control. Her unemployment from February through August 2011 was not a condition beyond her control, because she was terminated for unsatisfactory performance. Furthermore, she has not acted responsibly. She provided no documentation for her statement during the May 2012 PSI that she applied for a loan modification in May or June 2011. Furthermore, she has not positioned herself to qualify for a loan modification. In spite of making no loan payments for four years and having a substantial monthly remainder, she has accumulated virtually no savings. She has not explored any of the alternatives that were offered by her lender (a deed in lieu of foreclosure, short sale, or short payoff) when her most recent application for a loan modification was denied.

AG ¶¶ 20(c), 20(d), and 20(e) are not established. Applicant has not sought or received financial counseling, she has made no payments on the debt for more than four years, and she has not disputed the debt.

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 and have considered the factors in AG ¶ 2(a). 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 not mitigated the security raised by her delinquent mortgage loan. Accordingly, I conclude she has not 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): AGAINST APPLICANT

Subparagraph 1.a: Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman
Administrative Judge