



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-00340

Appearances

For Government: Pamela Benson, Esquire, Department Counsel
For Applicant: *Pro se*

05/19/2015

Decision

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) alleges three charged-off accounts totaling \$25,491 and four accounts past due in the amount of \$1,599. Her debts were caused by circumstances beyond her control. On March 11, 2015, her nonpriority, unsecured debts were discharged under Chapter 7 of the Bankruptcy Code. She received a fresh financial start, and she does not have any new delinquent debt. Financial considerations concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On September 13, 2013, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) (SF 86). (Item 2) On April 18, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant, pursuant to 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* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleged security concerns under Guideline F (financial considerations). (Item 1) The SOR detailed reasons why DOD could not make the affirmative finding under the Directive that it is clearly consistent with national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked. (Item 1)

On August 1, 2014, Applicant responded to the SOR allegations and waived her right to a hearing. (Item 1) A complete copy of the file of relevant material (FORM), dated March 23, 2015, was provided to her on April 8, 2015.¹ On April 16, 2015, Applicant responded to the FORM and provided additional mitigating evidence. On May 1, 2015, Department Counsel did not object to my consideration of the additional evidence. On May 7, 2015, the case was assigned to me.

Findings of Fact²

In her Answer to the SOR, Applicant admitted responsibility for the SOR debts. (Item 1) She also provided extenuating and mitigating information. (Item 1) Her admissions are accepted as findings of fact.

Applicant is a 36-year-old structural designer, who has worked for a defense contractor since September 2003.³ She completed an apprentice program in 2009. She did not disclose any degrees. She never served in the military. In 2004, she married, and her child was born in 2006. There is no evidence of disciplinary problems with her employer, illegal drug use, criminal offenses, or alcohol abuse.

Financial Considerations

In 2002, Applicant purchased a one-bedroom home with total living space of 590 square feet.⁴ In 2006, Applicant and her spouse had a child and purchased a larger residence for \$255,000 with a first and second mortgage. Their first house was rented by bad tenants, who did substantial damage to it; Applicant and her spouse used credit cards to make mortgage payments; and they were eventually unable to continue making payments on their first home's two mortgages. Applicant has a real estate agent that is assisting with the short sale of her first home, even though her attorney said her

¹The Defense Office of Hearings and Appeals (DOHA) transmittal letter is dated March 30, 2015, and Applicant's receipt is dated April 8, 2015. The DOHA transmittal letter informed Applicant that she had 30 days after her receipt to submit information.

²Some details have been excluded in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

³Unless stated otherwise, the source for the information in this paragraph is Applicant's September 13, 2013 Electronic Questionnaires for Investigations Processing (e-QIP) (SF 86). (Item 2)

⁴The source for the information in this paragraph is Applicant's April 16, 2015 FORM Response.

responsibility for the mortgages on her first home was discharged by her bankruptcy. Applicant and her spouse's second house is now worth about \$160,000.

Applicant's history of delinquent debt is documented in the following exhibits: her September 13, 2013 SF 86; her September 20, 2013, February 4, 2014, and March 19, 2015 credit reports; her bankruptcy documents from Public Access to Court Electronic Records (PACER); her SOR response; and her FORM response. (Items 1-6)

Applicant's SOR alleges three charged-off accounts totaling \$25,491 and four past-due accounts in the amount of \$1,599 as follows: ¶ 1.a is a credit card account past due in the amount of \$122 with a balance of \$1,671; ¶ 1.b is a credit card account past due in the amount of \$196 with a balance of \$3,899; ¶ 1.c is a charged-off bank account in the amount of \$13,160; ¶ 1.d is a past-due home equity loan past due in the amount of \$320 with a total balance of \$95,088 on Applicant's first house; ¶ 1.e is a charged-off bank debt in the amount of \$7,928; ¶ 1.f is a charged-off bank debt in the amount of \$4,403; and ¶ 1.g is a past-due home mortgage loan past due in the amount of \$961 with a total balance of \$89,326 on Applicant's first house. (Item 1)

On December 11, 2014, Applicant and her spouse filed for relief from their debts under Chapter 7 of the Bankruptcy Code.⁵ Their summary of schedules showed: A-real property assets of \$239,000; B-personal property assets of \$183,894; D-secured claims of \$442,789; E-unsecured priority claims of \$0; and F-unsecured nonpriority claims of \$31,518. On March 11, 2015, her nonpriority, unsecured debts were discharged under Chapter 7 of the Bankruptcy Code.

Applicant's March 19, 2015 credit report indicates zero past due for all accounts. (Item 5) There is no evidence of any post-bankruptcy legally enforceable delinquent accounts or that the creditors in the SOR are seeking payment of any deficiency. She received credit counseling as part of her bankruptcy process.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no 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 applicant's 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.

⁵The source for the information in this paragraph is Applicant's bankruptcy documentation. (Item 6)

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the revised adjudicative guidelines. These guidelines 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 overarching 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.

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 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 "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), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It 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. 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

Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

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.

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability or unwillingness to satisfy debts;" and "(c) a history of not meeting financial obligations." Applicant's history of delinquent debt is documented in her credit reports, SF 86, bankruptcy filing, SOR response, and FORM response. Her SOR alleges three charged-off accounts totaling \$25,491 and four accounts in the past-due amount of \$1,599. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five 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;⁶ and

⁶The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does

(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 conduct in resolving her debts warrants full application of AG ¶¶ 20(a) through 20(c). Her financial problems were affected by circumstances largely beyond her control. Applicant and her husband needed a larger home; they purchased a residence; and they rented their old home. The tenants damaged their old home, and the real estate market substantially declined. The fair market value of their two properties was substantially less than their mortgages. Their two properties were "underwater."

Applicant's delinquent debts "occurred under such circumstances that [are] unlikely to recur and [do] not cast doubt on [her] current reliability, trustworthiness, or good judgment." The 2008-2009 real estate crash was the most precipitous nationwide decline in real estate in decades. It is unlikely to recur. Moreover, Applicant has learned from her experience with tenants. She received financial counseling; there are clear indications that the problem is resolved; and her finances are under control.

AG ¶¶ 20(d) and 20(e) are not applicable. She did not dispute her responsibility for any SOR debts.

In sum, Applicant fell behind on her debts primarily because of the real estate crash and problems with her tenant. On March 11, 2015, her delinquent debts were discharged utilizing Chapter 7 of the Bankruptcy Code. She has taken reasonable actions to rehabilitate her finances by obtaining a bankruptcy-discharge of her debts. She does not have debts that are currently delinquent. Her efforts are sufficient to mitigate financial considerations security concerns.

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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

(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 have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under Guideline F, but some warrant additional comment.

Applicant is a 36-year-old structural designer, who has worked for a defense contractor since September 2003. She completed an apprentice program in 2009. There is no evidence of disciplinary problems with her employer, illegal drug use, criminal offenses, or alcohol abuse. She is sufficiently mature to understand and comply with her security responsibilities. There is every indication that she is loyal to the United States and her employer. The real estate crash in 2008 and 2009 and her tenant's failure to comply with their responsibilities caused her financial woes. On March 11, 2015, her debts were discharged under Chapter 7 of the Bankruptcy Code, and she received a fresh financial start. Her March 19, 2015 credit report indicates zero past due for all accounts. There is no evidence of any post-bankruptcy legally enforceable delinquent accounts or that the creditors in the SOR are seeking payment of any deficiency. She received credit counseling as part of her bankruptcy process. Applicant understands what she needs to do to establish and maintain her financial responsibility. I am confident she will maintain her financial responsibility.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude financial considerations concerns are mitigated.

Formal Findings

Formal findings For or Against Applicant 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: FOR APPLICANT

Subparagraphs 1.a to 1.g: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Mark Harvey
Administrative Judge