



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



In the matter of:)
)
-----) ISCR Case No. 14-01194
)
Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Esquire, Department Counsel
For Applicant: *Pro se*

09/15/2014

Decision

Harvey, Mark, Administrative Judge:

Applicant’s statement of reasons (SOR) alleges 13 delinquent debts, totaling \$18,538, and foreclosure of her residence in 2009. In 2003, her husband passed away; she had lengthy periods of unemployment and underemployment; and she had serious medical problems. She paid one SOR debt, and two other SOR debts are in an established payment plan. She has established a track record of debt resolution. Financial considerations concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On November 13, 2013, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance application (SF 86) (Item 5). On May 20, 2014, the Department of Defense (DOD) 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 was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and it recommended that her case be submitted to an administrative judge for a determination whether her clearance should be granted, continued, denied, or revoked. (Item 1)

On June 15, 2014, Applicant responded to the SOR and indicated she waived her right to a hearing. (Item 4) A complete copy of the file of relevant material (FORM), dated July 24, 2014, was provided to her on August 4, 2014.¹ On August 25, 2014, Applicant responded to the FORM. The case was assigned to me on September 12, 2014.

Findings of Fact²

In her Answer to the SOR, Applicant admitted all of the SOR allegations, and she provided mitigating information. (Item 4) Her admissions are accepted as findings of fact.

Applicant is 60 years old, and she has worked for a defense contractor since September 2013 in mail services.³ She graduated from high school in 1972. (Item 6) She married in 1972, and her husband passed away in 2003. Her children were born in 1972, 1975, 1977, and 1979. She has never served in the military. She does not have any reportable criminal offenses, illegal drug use, or alcohol abuse. She disclosed her financial problems on her November 13, 2013 SF 86.

Financial Considerations

Applicant's history of delinquent debt is documented in her credit reports, January 16, 2014 Office of Personnel Management personnel subject interview (OPM PSI), SOR response, and FORM response. Her SOR alleges 13 delinquent debts, totaling \$18,538, and foreclosure of her residence in 2009, as follows: (1)-(2) ¶¶ 1.a (\$367) and 1.j (\$96) are telecommunications collection debts; (3)-(6) ¶¶ 1.b (\$1,237), 1.c (\$7,348), 1.i (\$2,373), and 1.l (\$4,861) are bank collection debts; and (7)-(13) ¶¶ 1.d (\$285), 1.e (\$695), 1.f (\$51), 1.g (\$207), 1.h (\$231), 1.k (\$303), and 1.m (\$384) are medical collection debts.

¹The Defense Office of Hearings and Appeals (DOHA) transmittal letter is dated July 24, 2014, and Applicant's receipt is dated August 4, 2014. 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 facts in this paragraph is Applicant's November 13, 2013 SF 86. (Item 5)

In 2000, Applicant's spouse of 28 years became ill and was confined to a wheelchair.⁴ As a result of his illness, Applicant and her spouse incurred some medical expenses, and in 2003, he died. Before he died, Applicant and her husband had good credit. (SOR response) Applicant was unable to make the payments on her residence, and in 2009, her bank foreclosed. Under state law there is no deficiency owed to the bank.

Applicant was unemployed from October 2003 to July 2005; from September 2007 to May 2009; and from October 2011 to April 2012.⁵ (Item 6) She was unemployed or a part-time housekeeper from May 2012 to August 2013. (Item 6) She had low-paying employment at a nonprofit entity from June 2009 to September 2011. Her current income is not part of the record. During her unemployment, she lived off of her credit cards and some of her husband's life insurance, and she received funds from her family. She has not received financial counseling.

Applicant suffered from medical problems after her spouse passed away in 2003. She had migraines and depression. In 2005, she had surgery after she broke her hip, and her seven SOR bills for medical treatment were not covered by health insurance. (Item 4)

Applicant is paying \$100 monthly to address the two medical debts in SOR ¶¶ 1.e (\$695) and 1.g (\$207). (SOR response) She paid the medical debt in SOR ¶ 1.f (\$51). (FORM response) Applicant said she has been making payments for six months, and the creditor wrote that Applicant's account for the debts in SOR ¶¶ 1.e and 1.g is in good standing. (FORM response)

On August 11, 2014, Applicant consulted a bankruptcy attorney about resolution of her debts under Chapter 7 of the Bankruptcy Code. (FORM response) Her attorney wrote that Applicant should not file for bankruptcy because most of her debts appeared to be barred from collection under the state's four year statute of limitations. (FORM response) Applicant elected not to file for bankruptcy.

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.*

⁴Unless stated otherwise, the source for the facts in this paragraph is Applicant's FORM response.

⁵Unless stated otherwise, the source for the facts in this paragraph and the next paragraph is Applicant's January 16, 2014 Office of Personnel Management (OPM) personal subject interview (PSI). (Item 6)

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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the 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 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." In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). Applicant's history of delinquent debt is documented in her credit reports, OPM PSI, SOR response, and FORM response. Several of Applicant's debts became delinquent more than ten years ago after her husband died. Her SOR alleges 13 delinquent debts, totaling \$18,538, and foreclosure of her residence in 2009. 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; 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.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's eligibility for a security clearance, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

AG ¶¶ 20(d) and 20(e) are not applicable. Applicant's has multiple delinquent debts, and she did not provide documented proof to substantiate the basis of any disputed debts and evidence of actions to resolve the dispute. She did not provide evidence that she established and maintained contact with all of her creditors.⁶

A recent Appeal Board decision illustrates the analysis for applying AG ¶¶ 20(a) and 20(b). In ISCR Case No. 09-08533 (App. Bd. Oct. 6, 2010), the applicant had \$41,000 in delinquent credit card debt and defaulted on a home loan generating a \$162,000 delinquent debt. *Id.* at 2. That applicant filed for bankruptcy the same month the Administrative Judge issued her decision. *Id.* at 1-2. The applicant in ISCR Case No. 09-08533 was recently divorced, had been unemployed for 10 months, and had childcare responsibilities. Her former husband was inconsistent in his payment of child support to her. The Appeal Board determined that AG ¶ 20(a) was "clearly applicable (debt occurred under such circumstances that it is unlikely to recur and [the debt] does not cast doubt on the individual's current reliability, trustworthiness, or good judgment)"

⁶Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

even though that applicant's debts were unresolved at the time the Administrative Judge's decision was issued. *Id.* at 3. The Appeal Board also decided that the record evidence raised the applicability of AG ¶ 20(b) because of the absence of evidence⁷ of irresponsible behavior, poor judgment, unreliability, or lack of trustworthiness. *Id.* at 4.

Applicant's conduct in resolving her debts warrants full application of AG ¶¶ 20(a), 20(b), and 20(c). She paid about \$600 to address her medical debts in the last six months. She paid one medical debt, and she brought two medical debts to current status. Although she did not receive financial counseling, there are clear indications that the problem is being resolved or is under control.

Applicant's illness, the death of her husband, underemployment, and unemployment are circumstances largely beyond her control. Before her husband's death, she had good credit. She understands what she must do to establish and maintain her financial responsibility.⁸ The Appeal Board explained that circumstances beyond one's control can cause unresolved debt, and are not necessarily a bar to having access to classified information stating:

However, the Board has previously noted that an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his [or her] circumstances and develop a reasonable plan for repayment, accompanied by "concomitant conduct," that is, actions which evidence a serious intent to effectuate the plan. See ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008).

ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009). Circumstances beyond her control adversely affected her finances, and now that she is employed in the mailroom, she is addressing her delinquent debts, and her financial problems are unlikely to recur. Her delinquent SOR debts do not cast doubt on her current reliability, trustworthiness, or good judgment. Her efforts are sufficient to fully 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):

⁷Applicant has the burden of proving the applicability of any mitigating conditions, and the burden to disprove a mitigating condition never shifts to the Government.

⁸The Appeal Board has indicated that promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sept. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)).

(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 that guideline, but some warrant additional comment.

Applicant is 60 years old, and she has worked for a defense contractor since September 2013 in mail services. She married in 1972; her husband passed away in 2003; and her four children are adults. She does not have any reportable criminal offenses, illegal drug use, or alcohol abuse. She disclosed her financial problems on her November 13, 2013 SF 86. She is sufficiently mature to understand and comply with her security responsibilities. There is every indication that she is loyal to the United States the DoD, and her employer.

Applicant had lengthy periods of unemployment and underemployment. She had serious medical and financial problems after her husband died in 2003. These circumstances largely beyond her control are unlikely to recur now that she has employment in the mailroom. Her SOR alleges 13 delinquent debts, totaling \$18,538 and a foreclosure in 2009. Seven of those SOR debts are medical in origin. She paid one medical debt and two other medical debts are in established payment plans. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has . . . established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination). There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a

time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted).

Applicant is an intelligent person, and she understands what she needs to do to establish and maintain her financial responsibility. There is simply no reason not to trust her. Moreover, she established a “meaningful track record” of debt repayment. I am confident she will maintain her financial responsibility.⁹

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. Eligibility for access to classified information is granted.

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.n: For Applicant

Conclusion

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

Mark Harvey
Administrative Judge

⁹Of course, the Government can re-validate Applicant’s financial status at any time through credit reports, investigation, and additional interrogatories. Approval of a clearance now does not bar the Government from subsequently revoking it, if warranted. “The Government has the right to reconsider the security significance of past conduct or circumstances in light of more recent conduct having negative security significance.” ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012). Violation of a promise made in a security context to pay legitimate debts also raises judgment concerns under Guideline E, and may support future revocation of a security clearance. An administrative judge does not have “authority to grant an interim, conditional, or probationary clearance.” ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012) (citing ISCR Case No. 10-03646 at 2 (App. Bd. Dec. 28, 2011)). See also ISCR Case No. 04-03907 at 2 (App. Bd. Sep. 18, 2006) (stating, “The Board has no authority to grant [a]pplicant a conditional or probationary security clearance to allow her the opportunity to have a security clearance while she works on her financial problems.”). This footnote does not imply that this Applicant’s clearance is conditional.