



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



In the matter of:)
)
) ISCR Case No. 14-01232
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

10/22/2014

Decision

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Clearance is denied.

Statement of the Case

On May 9, 2014, 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 make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. On May 27, 2014, Applicant answered the SOR and elected to have her case decided on the written record in lieu of a hearing. On

July 16, 2014, Department Counsel compiled the Government's File of Relevant Material (FORM) that contained documents identified as Items 1 through 8.

On July 15, 2014, the Defense Office of Hearings and Appeals (DOHA) forwarded to Applicant a copy of the FORM with instructions to submit any objections or any additional matters within 30 days of its receipt. Applicant received the FORM on July 21, 2014, and did not submit any objections or additional matters within the allotted period. The case was assigned to me on October 8, 2014. Items 1 through 8 in the FORM are admitted into evidence.

Findings of Fact

Applicant is a 36-year-old employee of a federal contractor. She has been working for her current employer since November 2013. She has attended college since 2008 and expects to complete her degree soon. She is married and has two minor children. She has held a security clearance since about 1999.¹

The SOR alleged that Applicant had 37 delinquent debts totaling \$36,597 and was charged with issuing bad checks of less than \$100 on two occasions. In her Answer to the SOR, Applicant admitted each allegation with comments. Her admissions are incorporated as findings of fact.²

Applicant attributed her financial problems to a period of unemployment from April to November 2013, a reduction in her husband's working hours in about 2010, and medical insurance not covering all of her family's medical expenses. From 2008 to 2013, she was employed by a federal contractor until she was released from that job for not having enough knowledge of her duties to handle the workload. The circumstances surrounding the reduction of her husband's working hours and the impacts of those cuts on their finances are unknown. In her security clearance application, she acknowledged that some of her financial problems were caused by mismanagement of her finances and indicated that she traveled as a tourist to islands near the Caribbean in 2008 and twice in 2013. She also indicated that she has obtained a part-time job to assist in paying the delinquent debts, but did not provide information of the impact this second job had on reducing her delinquent debts.³

SOR ¶ 1.a – charged-off account for \$26,733. This is a secured bank debt that was charged off in August 2012. In her Answer to the SOR, Applicant indicated that she made a payment of \$1,600 in December (presumably 2013) and is scheduled to make

¹ Items 4 and 8.

² Items 1 and 3.

³ Items 3, 4, and 8.

monthly payments starting in June 2014 in the amount of \$200. She provided no proof of any payments toward this debt.⁴

SOR ¶¶ 1.b and 1.c – accounts 120 days or more past due in amounts totaling \$1,444. These are educational loans that are being processed for consolidation. Applicant submitted documents from the creditor dated May 23, 2014, reflecting the consolidation request was almost complete. She indicated that the consolidation will result in lower monthly payments. The total amount of the consolidated educational loans will be \$13,016. She did not provide any information that she has made any payments to date.⁵

SOR ¶ 1.d – collection account for \$1,883. The debt is owed to a state government. Applicant provided documentation that she made a \$50 payment toward this debt in January 2014. In her Answer to the SOR, she indicated that she will commence making \$25 monthly payments in June 2014 and will continue doing so until the debt was paid. Besides the \$50 payment, no proof of additional payments was provided.⁶

SOR ¶ 1.e and 1.f – delinquent accounts for \$604 and \$603. Both accounts have the same account number. The evidence supports Applicant's claim that these are duplicate debts. I find in favor of Applicant on SOR ¶ 1.f. In her Answer to the SOR, she indicated that she would start making monthly payments of \$10 on the debt in SOR ¶ 1.e in June (presumably 2014). She provided no proof of payments toward the debt.⁷

SOR ¶¶ 1.g-1.kk – delinquent accounts totaling \$5,330. These accounts consist of 28 medical debts and 3 consumer debts. Some of these delinquencies date back to 2007 and 2008. Many are debts of less than \$100. In her Answer to the SOR, Applicant referenced a payment schedule for these debts. The proposed payments under that schedule runs from June of one year (presumably 2014) to September of the following year. She provided no proof of any payments towards these debts.⁸

SOR ¶¶ 1.ll-1.mm – bad check charges. Court records reflected that Applicant was charged with uttering a bad check of less than \$100 in August 2005 and again in April 2011. Both of charges were placed on the “stet” (inactive) docket. In her Answer to

⁴ Items 1, 3, and 5.

⁵ Items 3 and 5.

⁶ Items 3 and 5.

⁷ Items 1, 3, and 5.

⁸ Items 1 and 3.

the SOR, she indicated that these bad checks were paid at the prosecutor's office as soon as the notices were received.⁹

No evidence was submitted showing Applicant received financial counseling. She provided no evidence concerning the quality of her professional performance, the level of responsibility of her duties, or her track record with respect to handling sensitive information and compliance with security procedures. She submitted no character references describing her judgment, trustworthiness, integrity, or reliability.¹⁰

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 AGs. 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 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, 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

⁹ Items 3, 6, and 7.

¹⁰ Items 1-8.

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.

Applicant’s accumulation of delinquent debts that she was unable or unwilling to pay over an extended period is sufficient to raise the following disqualifying conditions under AG ¶ 19.

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Four 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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's delinquent debts are on-going, significant, and long-standing. Based on the record evidence, I cannot find that her financial problems are unlikely to recur. Her delinquent debts continue to cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant attributed her financial problems to a period of unemployment, the reduction of her husband's working hours, and medical insurance not covering all of her family's medical debts. Few details are known about the reduction of her husband's working hours. Additionally, Applicant failed to meet her burden of establishing that she acted responsibly under the circumstances in addressing her financial problems over the years. Some of the delinquent debts date back a number of years. Except for a seven month period, she was regularly employed since 2008. Little is known about her overall financial situation. The amount of her monthly income, expenses, and debt payments are unknown. In contrast, she acknowledged that some of her financial problems were caused by mismanagement of her finances and indicated that she traveled as a tourist to islands near the Caribbean in 2008 and twice in 2013. From the evidence presented, I cannot determine that she took responsible steps under the circumstances to resolve these debts. AG ¶ 20(b) does not apply.

Applicant provided proof of a \$50 payment on one delinquent debt. In general, she failed to establish a meaningful track record of payments or debt reduction. Insufficient evidence has been presented to conclude that her financial problems are under control or are being resolved. AG ¶¶ 20(c) and 20(d) 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.

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.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case, including the whole-person factors. Despite the presence of some mitigation, Applicant's financial problems remain a security concern for the reasons stated above. Overall, the record evidence leaves me with questions and doubts about Applicant's suitability for a security clearance. Therefore, I conclude Applicant has not mitigated the security concerns arising under Guideline F.

Formal Findings

Formal findings on the allegations set forth in the SOR are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a–1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g–1.kk:	Against Applicant
Subparagraphs 1.ll– 1.mm:	For Applicant

Decision

In light of all the circumstances presented by the record, 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