



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



In the matter of:)
)
) ISCR Case No. 14-01423
)
Applicant for Security Clearance)

Appearances

For Government: John Bayard Glendon, Esq., Deputy Chief Department Counsel
For Applicant: *Pro se*

07/08/2015

Decision

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate security concerns under Guidelines H (drug involvement) and F (financial considerations). Clearance is denied.

Statement of the Case

On October 18, 2013, Applicant submitted a security clearance application (SCA).¹ Based on a review of Applicant’s SCA and the ensuing investigation, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) on June 13, 2014, 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*, dated January 2, 1992, as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG) implemented on September 1, 2006. The SOR alleged security concerns under Guidelines H and F.

¹ The SCA was a Questionnaire for National Security Positions.

On August 6, 2014, Applicant answered the SOR and elected to have her case decided on the written record in lieu of a hearing. On February 25, 2015, Department Counsel prepared a File of Relevant Material (FORM) that contained documents marked as Items 1 through 5. On March 11, 2015, Applicant received a copy of the FORM and was given 30 days from its receipt to submit objections and supply additional information. She did not submit a response to the FORM. The case was assigned to me on June 12, 2015.

Findings of Fact

Under Guideline H, the SOR alleged that Applicant used marijuana in varying frequency from 1982 to March 2013 (SOR ¶ 1.a). Under Guideline F, the SOR alleged that she had nine delinquent debts totaling \$13,425 (SOR ¶¶ 2.a-2.i). In her Answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a and 2.a-2.f. Her admissions are incorporated as findings of fact.²

Applicant is a 51-year-old administrative assistance who has been working for a defense contractor since October 2013. In her SCA, she did not list any educational degrees or diplomas. Her first three marriages ended in divorce. She separated from her current husband in September 2013. She has three children, ages 27, 29, and 35. This is the first time that she has sought to obtain a security clearance.³

In her SCA, Applicant disclosed that she used marijuana from August 1982 to March 2013. She also indicated that, within the past seven years, she used marijuana on a few occasions and further stated:

In my young adult life through my early 40's I sporadically used marijuana. The last time I used was in March 2013, I was going through a major marital breakdown, and I took a couple of puffs at the suggestion of a person who was helping me move. Prior to that I can't remember the last time I used.

Applicant attributed her financial problems to periods of unemployment and marital problems. After being laid off from jobs, she was unemployed from September 2012 to October 2013 and from June 2010 to December 2010. Her income was reduced by close to 75% during the periods of unemployment, and she encountered difficulty finding new jobs. She stated that she discovered her husband had been gambling and paying for another person's living expenses for the five years that they were together. After discovering what he was doing, she "walked away" from the marriage. She indicated that bills snowballed, and she defaulted on debts.⁴

² Items 1, 2, 3.

³ Item 4.

⁴ Items 2, 3, 4.

A credit report dated November 27, 2013, contains substantial evidence of each alleged debt. These debts have dates of last activity or dates of assignment to collection that range from July 2010 to September 2013. In her Answer to the SOR, Applicant stated that she made payment arrangements for the debts in SOR ¶¶ 2.c, 2.d, and 2.e, but failed to provide any proof of payments. She submitted no evidence showing that any of the debts have been paid, disputed, or otherwise resolved.⁵

Little is known about Applicant's current financial situation. She provided no evidence that she received financial counseling. She did not provide a monthly budget. It is unknown whether she has any discretionary income remaining each month after payment of her expenses.

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 unfavorable, in reaching a 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.

⁵ Items 2, 3.

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 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 H, Drug Involvement

AG ¶ 24 expresses the security concern for drug involvement:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual’s reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person’s ability or willingness to comply with laws, rules, and regulations.

(a) Drugs are defined as mood and behavior altering substances, and include:

(1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and

(2) inhalants and other similar substances;

(b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

The guideline lists several conditions that could raise disqualifying security concerns under AG ¶ 25. Two are potentially applicable in this case:

(a) any drug abuse; and

(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant sporadically used marijuana from August 1982 to March 2013. Both AG ¶¶ 25(a) and 25(c) apply in this case.

Two mitigating conditions under AG ¶ 26 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

(b) a demonstrated intent not to abuse any drugs in the future, such as: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; (4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant sporadically used marijuana over a period of about 31 years. The terms "sporadically" and "on a few occasions" are subject to varying interpretations. Details about the exact scope of her marijuana use are unknown. She last used it approximately 28 months ago when she was 49 years old. A person who helped her move was the individual who last provided her marijuana. It is unknown whether she still associates with that individual or with anyone else who may use marijuana. She did not provide a statement of intent with automatic revocation of clearance for any future violation. Insufficient evidence was presented to establish that her use of marijuana is unlikely to recur. Based on the evidence presented, her long history of "sporadic" marijuana use casts doubt on her reliability, trustworthiness, and good judgment. AG ¶¶ 26(a) and 26(b) do not apply.

Guideline F, Financial Considerations

The security 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 admissions and the record evidence established two disqualifying conditions in AG ¶ 19:

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

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.

Applicant incurred delinquent debts because she experienced periods of unemployment and marital problems. Those were conditions beyond her control, but she failed to establish that she has acted responsibly in addressing the debts since

obtaining her current job in October 2013. She claimed that she entered into repayment arrangements for three debts, but provided no proof of any payments. She provided no proof that she has disputed or otherwise resolved any of the debts. No evidence was presented that she received financial counseling. Based on the evidence presented, her financial problems continue to cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 20(b) partially applies. None of the other mitigating conditions apply.

Whole-Person Concept

In the adjudication process, an administrative judge must carefully weigh a number of variables known as the whole-person concept. Available information about the applicant as well as the factors listed in AG ¶ 2(a) should be considered in reaching a determination.⁶ In this case, I gave due consideration to the information in the record about Applicant and concluded the favorable information does not outweigh the security concerns at issue. Applicant failed to meet her burden of persuasion. Her drug involvement and financial problems raise doubts about her suitability for security clearance. Following the *Egan* decision and the “clearly consistent with the national interest” standard, doubts about granting Applicant’s eligibility for a security clearance must be resolved in favor of national security.

Formal Findings

Formal findings as required by Section E3.1.25 of Enclosure 3 of the Directive are:

| | |
|---------------------------|-------------------|
| Paragraph 1, Guideline H: | Against Applicant |
| Subparagraph 1.a: | Against Applicant |
| Paragraph 2, Guideline F: | Against Applicant |
| Subparagraphs 2.a-2.i: | Against Applicant |

⁶ The adjudicative process factors listed at AG ¶ 2(a) are as follows:

(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.

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 Applicant eligibility for a security clearance. Clearance is denied.

James F. Duffy
Administrative Judge