



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



In the matter of:)	
)	
)	ISCR Case No. 14-02309
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

03/16/2015

Decision

DUFFY, James F., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is granted.

Statement of the Case

On August 28, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) 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 CAF could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant Applicant access to classified information. On September 11, 2014,

Applicant answered the SOR and requested a hearing. This case was assigned to me on November 5, 2014. On November 24, 2014, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing scheduling the hearing for December 11, 2014. The hearing was held as scheduled.

At the hearing, Department Counsel offered Government's Exhibits (GE) 1 through 8, while Applicant testified, called a witness to testify in her behalf, and offered Applicant's Exhibits (AE) A through I. The record of the hearing was held open until January 8, 2015, to provide the Applicant the opportunity to submit additional documents. She submitted documents that were marked as AE J through AA. All proffered exhibits were admitted into evidence without objection. The transcript (Tr.) of the hearing was received on December 23, 2014.

Findings of Fact

Applicant is a 46-year-old security clerk who works for a federal contractor. She has worked for that company since June 2013. She graduated from high school in 1987 and attended college for almost two years. She is divorced and has no children. She has held a security clearance for about 12 years without incident.¹

The SOR alleged that Applicant filed Chapter 7 bankruptcy in September 2005, which resulted in a discharge of debts in December 2005 (SOR ¶ 1.a), that she filed Chapter 13 bankruptcy in September 2010, which was dismissed in December 2011 (SOR ¶ 1.b), and that she filed Chapter 13 bankruptcy in May 2012, which was dismissed in December 2012 (SOR ¶ 1.c). In her Answer to the SOR, she admitted the allegations with explanations. Her admissions are incorporated as findings of fact.²

In about 1992, Applicant began supporting her ailing mother. She estimated that she provided her mother about \$400 to \$450 per month in support. In April 2000, Applicant purchased a home solely in her name. In February 2002, she was laid off from a job that she had held for three years. While unemployed, she used her savings to pay the mortgage and other bills. She remained unemployed for about 12 weeks before obtaining a job in which she earned about \$33,000. She had difficulty keeping up with her home expenses such as repairs to the roof and air conditioning unit. In January 2005, she sold her home, but did not make enough money from the sale to pay all of her debts. She did not qualify for a consolidation loan from a bank. She tried to obtain a loan from her ailing father; however, he declined to assist her and advised her to file bankruptcy. She indicated that she was young and followed her father's advice. In September 2005, Applicant filed Chapter 7 bankruptcy. Her bankruptcy petition listed \$16,025 in assets and \$41,091 in liabilities. In December 2005, she was granted a

¹ Tr. 6-8; GE 1.

² Applicant's Answer to the SOR.

Chapter 7 bankruptcy discharge. After the bankruptcy, her financial situation remained stable for a number of years.³

After her mother passed away in February 2009, Applicant was burdened with debts from supporting her mother as well as burial expenses. She again fell behind on her debts. In September 2010, she filed Chapter 13 bankruptcy. Her bankruptcy petition listed \$9,904 in assets and \$22,947 in liabilities. The Chapter 13 plan initially called for her to pay the trustee \$500 per month with those payments increasing to \$550 for the last 56 months of the plan. In September 2011, she married, left her job in which she was earning about \$59,000 annually, and moved to another state to live with her husband.⁴

In October 2011, Applicant's Chapter 13 plan was modified to permit her to suspend making payments for September, October, and November 2011; from that point her monthly payments increased to \$613; and she was placed in a six-month probationary status. If she failed to make a monthly payment during the probationary period, the trustee could obtain an order dismissing the bankruptcy without further notice. She had difficulty finding a job in the new state. She first worked as a sales associate in a retail store and then as an officer manager for a healthcare provider. She earned considerably less than the job she had before moving to the new state. She described her marriage as "horribly bad," indicating that her husband had a bad temper. He refused to help her with her debts. In January 2012, she separated from her husband and moved back to her former state. She again had difficulty in finding employment upon returning, but eventually obtained a job in March 2012. In May 2012, the bankruptcy was dismissed when Applicant missed the April 2012 payment.⁵

Based on her attorney's advice, Applicant immediately refiled Chapter 13 bankruptcy in May 2012. In this bankruptcy petition, she listed \$8,238 in assets and \$34,084 in liabilities. Her bankruptcy petition indicated that she would start a security clerk job in June 2012. The petition listed that her net monthly income was \$2,063 and her monthly expenses were \$1,763, which left her a net monthly remainder of \$300. Her Chapter 13 plan provided that she would pay the trustee \$300 per month. In June 2012, she was divorced and was saddled with some of bills from the marriage, including a furniture debt that her ex-husband had initially agreed to pay but failed to do so. He also refused to return the furniture. She sold all of her property to pay debts and continued to struggle financially. In October 2012, she was again placed in a six-month bankruptcy probationary status and her monthly payments were increased to \$320 for the remaining 55 months of the plan. In December 2012, the Chapter 13 bankruptcy was dismissed.⁶

³ Tr. 40-41; GE 3; Applicant's Answer to the SOR.

⁴ Tr. 41-43, 50, 53-56; GE 1, 2, 4; Applicant's Answer to the SOR.

⁵ Tr. 41-44; GE 2, 4; Applicant's Answer to the SOR.

⁶ Tr. 41-44, 52, 59-63; GE 1, 2, 5; Applicant's Answer to the SOR.

In June 2013, Applicant obtained a new job with an annual salary of about \$49,000. She moved to another city for that job. Shortly after arriving in the new city, her car was repossessed, and the creditor sought to collect a \$5,000 loan deficiency. In October 2013, she filed Chapter 7 bankruptcy. Her latest bankruptcy petition listed \$11,081 in assets and \$58,935 in liabilities. Her net monthly income and monthly expenses were both listed as \$2,585. All of the debts from the prior Chapter 13 bankruptcies were included in the Chapter 7 bankruptcy. In February 2014, she was granted a bankruptcy discharge. She testified that she has incurred no new delinquent debts since her bankruptcy discharge.⁷

At the hearing, Department Counsel noted that Applicant reported in her latest bankruptcy petition that she owed past-due federal and state taxes, which are not usually discharged in a bankruptcy. The bankruptcy petition admitted into evidence did not contain a Schedule E, the list of creditors holding unsecured priority claims, which usually lists past-due taxes. She testified that she thought those taxes were resolved through the withholding of her income tax refunds. In her post hearing submission, she provided the Schedule E that reflected she owed \$731 in state taxes and \$3,108 in federal taxes. She also presented documentation showing that her outstanding federal tax obligation has been reduced to \$1,218 and her state tax obligation has been reduced to \$406. She stated that she entered into repayment agreement with the Internal Revenue Service in which payments will be automatically withdrawn from her checking account, but provided no documentation confirming that arrangement. Additionally, she stated that the state taxing authority does not enter into repayment agreements, but she would make monthly payments to resolve that debt.⁸

Applicant received financial counseling to file bankruptcy. In her post-hearing submission, she presented a Personal Financial Statement that reflected she had a net monthly income of \$3,100, total monthly expenses of \$1,759, and total monthly debt payments of \$777, which left her a net monthly remainder of \$564. Applicant also presented a letter showing that she was offered a security job with a new employer in which she will earn \$53,000 annually. She was planning to start that new job in February 2015.⁹

Applicant's supervisor testified that Applicant is a trustworthy individual and valued employee. Applicant presented letters of reference from friends and coworkers attesting to her dedication and good nature. She received a certificate of excellence for her outstanding work performance in 2014. Her work contributions were also recognized during a 2014 Defense Security Service vulnerability assessment of her company's

⁷ Tr. 44-48, 50, 56-63; GE 2, 5; AE B, C, D, E; Applicant's Answer to the SOR.

⁸ Tr. 67-73; AE L, M, N, O, Q.

⁹ Tr. 63-67; AE D, P, AA.

security program. Her performance appraisal for 2014 graded her as “4” (exceeds expectations) on a scale ranging from 1 to 5.¹⁰

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 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, 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 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.*

¹⁰ Tr. 19-27; AE A, E, F, G, H, K.

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant filed bankruptcy petitions in 2005, 2010, 2012, and 2013. She received bankruptcy discharges in 2005 and 2014. This evidence is sufficient to raise the above disqualifying conditions.

Four 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.

From 1992 to 2009, Applicant supported her ailing mother. She was unemployed from February to April 2002 and encountered financial problems in maintaining a home. In 2005, she filed Chapter 7 bankruptcy and received a discharge of her debts. In 2009, her mother passed away and she was burdened with the burial expenses. She married in 2011, left her job, and moved to another state to reside with her husband. Her marriage failed. She returned to her home state and had difficulty finding a well-paying job. In 2012, she was divorced. Her mother's medical problems as well as her unemployment, divorce, and underemployment were conditions beyond her control that contributed to her financial problems. She twice tried to resolve her delinquent debts through Chapter 13 bankruptcies, but those efforts were unsuccessful. In October 2013, she filed Chapter 7 bankruptcy and received a discharge of her debts. Her decision to file Chapter 7 bankruptcy was not unreasonable under the circumstances. She has taken steps to resolve the remaining relatively small past-due tax debts. Her financial problems are under control, are being resolved, and are unlikely to recur. She is financially stable. AG ¶¶ 20(b) and 20(c) apply. AG ¶ 20(a) partially applies. AG ¶ 20(d) does 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.

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 considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. 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 a valued employee. Her supervisor testified that she is trustworthy. She encountered financial difficulties beyond her control, but resolved those problems through bankruptcy proceedings. She is now financially stable. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant mitigated the financial considerations security concerns.

Formal Findings

Formal findings 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-1.c: For Applicant

Decision

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

James F. Duffy
Administrative Judge