



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
 --- 1) ISCR Case No. 14-06943
)
 Applicant for Security Clearance)

Appearances

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

03/01/2016

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding financial considerations. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On January 9, 2014, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.² On May 15, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to her, under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified*

¹ It should be noted that the Statement of Reasons (SOR) was issued using Applicant's marital last name. Since she is no longer married, and has not been married since 1997, she prefers to be known by her maiden name. Hence, the caption of this Decision differs from the SOR.

² GE 1 (e-QIP, dated January 9, 2014).

Information (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline F (Financial Considerations), and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

It is unclear when Applicant received the SOR as there is no receipt in the case file. On June 9, 2015, Applicant responded to two of the SOR allegations. On June 10, 2015, she responded to the remaining SOR allegation and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on September 14, 2015. The case was assigned to me on September 18, 2015. A Notice of Hearing was issued on September 28, 2015, and I convened the hearing as scheduled on October 27, 2015.

During the hearing, three Government exhibits (GE 1 through GE 3) and six Applicant exhibits (AE A through AE F) were admitted into evidence without objection. Applicant testified. The transcript (Tr.) was received on November 6, 2015. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity. She timely submitted a number of documents, which were marked as AE G through AE O, and admitted into evidence without objection. The record closed on November 4, 2015.

Findings of Fact

In her Answers to the SOR, Applicant admitted all of the factual allegations pertaining to financial considerations (§§ 1.a. through 1.c.). Applicant's answers are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 37-year-old employee of a defense contractor. She has been a "sense and warn" operator, and now a site lead, since July 2013.³ She also held different positions with other defense contractors since December 2010.⁴ Applicant has continuously been "deployed" serving overseas in both Iraq and Afghanistan since December 2010.⁵ A June 1997 high school graduate,⁶ Applicant earned a bachelor's degree in business in March 2015.⁷ She enlisted in the U.S. Air Force Inactive Reserve

³ GE 1, *supra* note 2, at 11-12; Tr. at 26.

⁴ GE 1, *supra* note 2, at 12-16.

⁵ GE 1, *supra* note 2, at 11-16.

⁶ AE K (Record of Military Processing – Armed Forces of the United States (DD Form 1996), dated June 26, 2002), at 2.

⁷ Tr. at 6, 28.

in June 2002.⁸ She has been called to active duty on several occasions for periods up to five months, and has been honorably released from active duty each time.⁹ To date, Applicant has been awarded the following awards and decorations: the Air Force Outstanding Unit Award (with one cluster), the Air Reserve Forces Meritorious Service Medal, the National Defense Service Medal, the Global War on Terrorism Service Medal, and the Air Force Training Ribbon.¹⁰ It is unclear when she was granted a secret security clearance.¹¹ Applicant was married in November 1997 and divorced in January 2003.¹² She has one daughter, born in 1997.¹³

Financial Considerations

Applicant's mother was a believer in real estate investment, and she persuaded Applicant to join her in two such ventures over the years. In about 2001, over Applicant's husband's objections, although Applicant was a public school teacher's assistant earning about \$15,000 per year, at her mother's urgings, Applicant "invested" in one residence as the owner for her mother. Her mother was to handle the finances, collect rent, and pay the mortgage. Unspecified difficulties ensued, and Applicant's mother fell behind in the mortgage payments. In order to save the house from foreclosure, Applicant's mother urged her to file for bankruptcy to give them more time to sell the property. Being naïve and placing trust in her mother's guidance, in about May 2002, Applicant filed for bankruptcy under Chapter 13. The property was sold and the bankruptcy action was withdrawn and dismissed in October 2002.¹⁴ There was no deficiency owed by Applicant.

In 2007, Applicant's mother's zest for real estate investment was reignited, and once again she urged Applicant to take another plunge into the real estate market. Applicant voiced some reservations especially since the last scheme did not work out well, but her mother assured her that this time she would be able to handle it without any financial assistance from Applicant. Following her mother's guidance, Applicant purchased a duplex for \$522,000. The monthly mortgage payments were \$4,528. Unspecified difficulties again ensued, and Applicant's mother fell behind in the mortgage payments. When Applicant learned about the delinquency, the property was already in a

⁸ AE K (Enlistment/Reenlistment Document Armed Forces of the United States (DD Form 4), dated June 26, 2002), at 2.

⁹ AE H (Certificate of Release or Discharge from Active Duty (DD Form 214), dated January 31, 2003); AE I (DD Form 214, dated January 20, 2008); AE J (DD Form 214, dated September 30, 2010).

¹⁰ AE J, *supra* note 7.

¹¹ GE 1, *supra* note 2, at 35-36.

¹² GE 1, *supra* note 2, at 22.

¹³ GE 1, *supra* note 2, at 27.

¹⁴ Applicant's Answer to the SOR, dated June 10, 2015; AE O (Bankruptcy File Extract, dated July 31, 2003); AE C (Letter, dated October 1, 2015); Tr. at 34-39, 49-50.

pre-foreclosure status. In order to save the house from foreclosure, Applicant's mother again urged her to file for bankruptcy to give them more time to sell the property. In about October 2009, Applicant filed for bankruptcy under Chapter 13. The bankruptcy action was withdrawn and dismissed in December 2009. After lengthy negotiations with a succession of mortgage lenders holding the mortgage, tenants were evicted and the property was finally sold as a short sale for \$85,000 in October 2015.¹⁵ There was no deficiency owed by Applicant.

Applicant's present gross annual salary is \$189,000.¹⁶ Her financial issues are now resolved and she has no other delinquent accounts.¹⁷ Applicant spoke with a representative of a credit improvement law firm to assist her when the short-sale information becomes public, but she has not obtained any formal financial counseling.¹⁸ Nevertheless, Applicant's financial problems have been resolved and, in the absence of other delinquent debts, her finances are under control.

Work Performance and Character References

Applicant's Supervisory Special Agent in an extremely sensitive overseas nation, has no reservation in supporting Applicant's application for a security clearance. He characterized her as trustworthy, reliable, and honest.¹⁹ The Senior Guard Shift Supervisor added that Applicant is trustworthy, very honest, dependable, respectful, and dedicated.²⁰ A company president who has known and worked with Applicant for a number of years is effusive in his support for her. He noted that her attributes are honor, integrity, respect, trust, loyalty, confidence, and patience.²¹

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."²² As Commander in Chief,

¹⁵ GE 1, *supra* note 2, at 37-39; GE 2 (Combined Experian and TransUnion Credit Report, dated January 30, 2014), at 9, 14; Applicant's Answer to the SOR, dated June 9, 2015; AE A (Letter, undated); AE G (Bankruptcy Order to Close, dated December 3, 2009); AE F (Residential Contract of Sale, dated August 16, 2014); AE L (Closing Instructions – Approved Property Sale, dated September 10, 2015); AE M (Settlement Statement (Form HUD-1), dated October 20, 2015); AE C, *supra* note 14; Tr. at 38-46, 51-52.

¹⁶ Tr. at 48. Although Applicant indicated that she would furnish me with a Personal Financial Statement, and she subsequently did submit a Defense Security Service (DSS) Form 154, Personal Financial Statement which was marked as AE N, there are no entries on the form as it is blank.

¹⁷ Tr. at 58; GE 3 (Equifax Credit Report, dated November 4, 2014), at 2, reflecting no delinquency trades.

¹⁸ Tr. at 59.

¹⁹ AE B (Character Reference, dated October 7, 2015).

²⁰ AE E (Character Reference, undated).

²¹ AE D (Character Reference, dated October 22, 2015).

²² *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

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. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”²³

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”²⁴ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government.²⁵

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. 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 as to potential, rather than actual, risk of compromise of classified information.

²³ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

²⁴ “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “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).

²⁵ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Furthermore, “security clearance determinations should err, if they must, on the side of denials.”²⁶

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.”²⁷ 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 as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations 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. . . .

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly, under AG ¶ 19(c), a “history of not meeting financial obligations” may raise security concerns. Applicant’s financial problems arose in 2002 and again in 2009 when she filed for bankruptcy under Chapter 13 in an effort to forestall foreclosure proceedings on two real estate properties. Both petitions were subsequently withdrawn and the bankruptcy proceedings dismissed. AG ¶¶ 19(a) and 19(c) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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.” Also, under AG ¶ 20(b), financial security concerns may be mitigated where “the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of

²⁶ *Egan*, 484 U.S. at 531.

²⁷ See Exec. Or. 10865 § 7.

employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances.” Evidence that “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” is potentially mitigating under AG ¶ 20(c).

AG ¶¶ 20(a) and 20(c) apply. AG ¶ 20(b) partially applies. Applicant’s financial problems were not caused by frivolous or irresponsible spending, and she did not spend beyond her means. Instead, she relied on her mother’s guidance and advice in assisting her mother to obtain mortgages to two pieces of real estate in 2001 and 2007. Her mother promised to handle all of the finances pertaining to the properties, including renting them and paying the mortgages. Unfortunately, for some unexplained reasons, her mother was unable to make the monthly mortgage payments, and both properties went into a pre-foreclosure status. Once again, complying with her mother’s wishes, Applicant sought protection against the foreclosures by voluntarily filing for bankruptcy under Chapter 13 on two separate occasions. The tactics worked, for both petitions were eventually withdrawn and the bankruptcies dismissed. Both houses were sold, and no deficiencies remained. To her credit, Applicant acknowledged having made poor decisions in her early 20s and failing to understand the importance of her financial issues. She acknowledged being financially naïve and relied on her mother’s guidance. Because of her loyalty to her mother, she was burned twice financially. Those two incidents, while of an identical nature and not beyond her control, were isolated and infrequent actions generated by a young woman’s love and loyalty to her mother. They were not caused by Applicant’s greed or financial missteps. In each instance, the real estate issues were resolved. The financial situation has improved and stabilized. Applicant has a sizeable annual salary and no other delinquencies. There are clear indications that Applicant’s financial problems are under control. She has matured financially and, while not engaging a financial counselor, she did inquire about the potential damage to her credit once the most recent short sale becomes public. It appears that Applicant’s financial issues occurred under such circumstances that they are unlikely to recur. Applicant’s actions, under the circumstances confronting her, no longer cast doubt on her current reliability, trustworthiness, or good judgment.²⁸

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):

- (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

²⁸ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

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. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.²⁹

There is some evidence against mitigating Applicant's conduct. Applicant made two poor decisions in her 20s when she relied on her mother's guidance and purchased two pieces of investment real estate in 2001 and 2007. Because of her mother's failures to make the promised monthly mortgage payments, the first house went into pre-foreclosure status. She filed for bankruptcy protection under Chapter 13, and withdrew her petition in 2002. Having already been burned and forewarned, nevertheless, in 2007, the scenario again took place when Applicant's mother came around for a second real estate transaction. The same scenario unfolded with different, more recent, dates. Applicant failed to understand the consequences of her financial actions.

The mitigating evidence under the whole-person concept is more substantial. Applicant has an outstanding reputation in the workplace. She has spent several years "deployed" in very sensitive and dangerous locations. Applicant was financially naïve. She was also a respectful, loyal, and trusting daughter. On each of the two occasions, Applicant commenced a course of conduct to address and resolve her financial problems. Applicant has resolved both of her debts and there are no deficiencies. She has no other delinquent accounts. There are clear indications that Applicant's financial problems are under control. Her actions under the circumstances confronting her do not cast doubt on her current reliability, trustworthiness, or good judgment.

Overall, the evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has mitigated the security concerns arising from her financial considerations. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant

²⁹ See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

Subparagraph 1.c:

For Applicant

Conclusion

In light of all of 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 access to classified information is granted.

ROBERT ROBINSON GALES
Administrative Judge