



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-16242
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

June 23, 2008

Decision

FOREMAN, LeRoy F., Administrative Judge:

Applicant submitted her security clearance application on May 23, 2006. On March 16, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny her application, citing security concerns under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on March 24, 2008; answered it on April 14, 2008; and requested a hearing before an administrative judge. Department Counsel was ready to proceed on April 25, 2008, and the case was assigned to me on April 29, 2008. DOHA issued a notice of hearing on April 30, 2008, scheduling the hearing for May 20, 2008. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 6 were admitted in evidence without objection. Applicant testified on her

own behalf. I granted Applicant's request to keep the record open until June 20, 2008 to enable her to submit documentary evidence, but she submitted nothing. DOHA received the transcript of the hearing (Tr.) on June 2, 2008. The record closed on June 20, 2008. Eligibility for access to classified information is denied.

Evidentiary Ruling

Department Counsel offered GX 6, a personal subject interview extracted from a report of investigation, without calling an authenticating witness as required by the Directive ¶ E3.1.20. I explained the authentication requirement to Applicant, and she waived it (Tr. 26). Accordingly, I admitted GX 6 without authentication.

Findings of Fact

In her answer to the SOR, Applicant admitted the allegation in SOR ¶ 1.a that she previously received a Chapter 7 bankruptcy discharge. She admitted the delinquent debts alleged in SOR ¶¶ 1.d through 1.i, 1.q, 1.s, and 1.t. She admitted the debts alleged in SOR ¶¶ 1.j through 1.o and 1.y, but she disputed the amounts. Her admissions in her answer to the SOR and at the hearing are incorporated in my findings of fact. I make the following findings:

Applicant is a 45-year-old systems engineer for a federal contractor. She has worked for her current employer since April 2006. She has an associate's degree in electronics engineering. She was married in October 1982 and divorced in January 1986. She served in the U.S. Navy Reserve from April 1987 to January 2002. She holds an interim clearance, but she has never held a final security clearance.

The Chapter 7 bankruptcy discharge alleged in SOR ¶ 1.a occurred in January 1998, after a break-up of a domestic relationship. All the debts were in Applicant's name, and she could not afford to pay them alone. On the advice of an attorney, she filed a Chapter 7 petition for bankruptcy in September 1997 and received a discharge in January 1998 (Tr. 47).

The SOR alleges 26 debts totaling about \$44,861. In her answer to the SOR, she presented evidence that the four student loans alleged in SOR ¶¶ 1.u, 1.v, 1.w, and 1.x were no longer delinquent, leaving 22 delinquent debts totaling \$32,244. Of these 22 debts, 10 are for medical expenses. Applicant was diagnosed as epileptic in 2002, and most of the medical expenses were incurred for treatment while she did not have medical insurance (Tr. 30). Applicant testified she believes the medical debts alleged in SOR ¶¶ 1.b and 1.c are the same debt, but she did not provide any documentation to support her belief (Tr. 50). Applicant applied for a grant to pay the hospital bill alleged in SOR ¶ 1.b, but the paperwork was lost and she did not follow up. She admitted she "dropped the ball" in resolving this debt (Tr. 49).

Applicant moved from the west coast to the northeastern U.S. in December 2002 at her own expense, to pursue a personal relationship (Tr. 37). In June 2003, six

months after her move, she was laid off (Tr. 29-30). She immediately found other employment, but she quit her job in September 2003 because of a disagreement over her eligibility for overtime pay (Tr. 38). She was unemployed until January 2004 and could not draw unemployment benefits because she had voluntarily left her job (Tr. 40). After January 2004, she was employed steadily until March 2006 when she was terminated because of a disagreement with her district manager over the scope of her authority (Tr. 43). After a break of about four weeks, she began working for her current employer (Tr. 44).

Applicant has a domestic partner, and she pays most of her partner's living expenses, including her partner's car insurance (GX 6 at 3). Her partner has elected to provide unpaid child care for her grandchildren instead of working outside the home (Tr. 54).

The evidence concerning the debts alleged in the SOR is summarized in the table below.

SOR	Debt	Amount	Status at Hearing	Evidence
1.b	Medical	\$1,682	Unpaid	GX 3 at 1; GX 5
1.c	Medical	\$2,067	Unpaid	GX 3 at 1
1.d	Medical	\$276	Unpaid	GX 3 at 1
1.e	Medical	\$768	Unpaid	GX 3 at 1
1.f	Medical	\$282	Unpaid	GX 3 at 1
1.g	Medical	\$408	Unpaid	GX 3 at 1
1.h	Medical	\$273	Unpaid	GX 3 at 1
1.i	Medical	\$330	Unpaid	GX 3 at 1
1.j	Credit card	\$1,511	Unpaid	GX 3 at 2
1.k	Credit card	\$1,091	Unpaid	GX 3 at 2
1.l	Credit card	\$659	Unpaid	GX 3 at 2
1.m	Collection	\$748	Unpaid	GX 3 at 2
1.n	Collection	\$5,737	Unpaid	GX 3 at 2
1.o	Car repossession	\$12,607	Unpaid	GX 3 at 2
1.p	Cable box	\$262	Disputed, no proof	GX 4 at 10
1.q	Credit card	\$334	Unpaid	GX 3 at 2
1.r	Cell phone	\$138	Disputed, no proof	GX 4 at 14
1.s	Medical	\$1,128	Unpaid	GX 2 at Encl 1
1.t	Medical	\$999	Unpaid	GX 4 at 15
1.u	Student loan	\$3,228	Current	Enclosure to answer
1.v	Student loan	\$4,748	Current	Enclosure to answer
1.w	Student loan	\$3,576	Current	Enclosure to answer
1.x	Student loan	\$1,065	Current	Enclosure to answer
1.y	Credit card	\$3,864	Unpaid	GX 4 at 6
1.z	Collection	\$168	Disputed, no proof	GX 4 at 18
1.aa	Traffic ticket	\$627	Government conceded	Tr. 104

Applicant's monthly take-home pay at her current job is about \$2,600 (Tr. 69). She testified she lives paycheck to paycheck (Tr. 55). She is paying \$50 per month more than is required on her student loans, but is not making payments on any other delinquent debts. She has no active credit card accounts (Tr. 73). She drives an eight-year-old car that she paid for with an income tax refund (Tr. 71-72). She has not participated in any financial counseling (Tr. 76).

Policies

"[N]o 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.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants 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 and modified.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the revised adjudicative guidelines (AG). 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 over-arching adjudicative goal is a fair, impartial and common sense 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 protect or 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.

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. Thus, a decision to deny a security clearance is not necessarily a determination as to the loyalty of the applicant. 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 his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[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 relating to Guideline F 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.

Several disqualifying conditions under this guideline could raise a security concern and may be disqualifying in this case. AG ¶ 19(a) is raised where there is an "inability or unwillingness to satisfy debts." AG ¶ 19(b) is a two-pronged condition that is raised where there is "indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt." AG ¶ 19(c) is raised when there is "a history of not meeting financial obligations." AG ¶ 19(e) is raised when there is "consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis." Applicant's financial history raises AG ¶¶ 19(a), (c) and (e). AG ¶ 19(b) is not raised because there is no evidence of frivolous or irresponsible spending.

Since the government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a), (c), and (e), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Security concerns based on financial problems can be mitigated by showing that “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.” AG ¶ 20(a). This condition is not established, because Applicant has numerous debts that are currently delinquent, and her marginal financial situation makes continued or further delinquencies likely. At present, she lives from paycheck to paycheck, with virtually nothing in reserve for unexpected expenses.

Security concerns under this guideline also can be mitigated by showing that “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.” AG ¶ 20(b). Both prongs, i.e., conditions beyond the person’s control and responsible conduct, must be established.

Applicant’s bankruptcy in January 1998 was the result of a domestic breakup, a circumstance beyond her control, and it was a reasonable response to her financial situation. Applicant’s medical bills were circumstances beyond her control, but in several instances her lack of medical insurance was due to her voluntary decision to quit a job or change jobs. Her unemployment from September 2003 to January 2004 was not a circumstance beyond her control, because it was the result of her decision to quit her job. Her four-week period of unemployment in 2006 was a circumstance beyond her control, but many of the debts were already delinquent at the time. Although Applicant has been employed steadily for more than two years, she has done virtually nothing to settle or pay her debts, except for her student loans. She has not sought professional help. She admitted at the hearing that she “dropped the ball” on an opportunity for a grant that would have covered her largest medical debt. I conclude that the second prong of AG ¶ 20(b) is not established.

Security concerns under this guideline also can be mitigated by showing 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.” AG ¶ 20(c). This mitigating condition is not established because Applicant has not sought financial counseling.

Security concerns under this guideline also can be mitigated by showing that “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” AG ¶ 20(d). The concept of good faith “requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.” ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). With the exception of her student loans, Applicant has done virtually nothing to resolve her debts. I conclude AG ¶ 20(d) is not established.

Security concerns under this guideline also can be mitigating by showing “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.” AG ¶ 20(e). Applicant asserted at the hearing that she disputed the debts alleged in SOR ¶¶ 1.p, 1.r, and 1.z, but she provided no documentation, either at the hearing or during the period the record was kept open after the hearing. AG ¶ 20(e) is not established.

Whole Person Concept

Under the whole person concept, an 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. An 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 common sense judgment based upon careful consideration of the guidelines and the whole person concept. Some of the factors in AG ¶ 2(a) were addressed above, but some warrant additional comment.

Applicant is an intelligent woman. She was sincere, open, and credible at the hearing. Unfortunately, she has been unwilling or unable to take a systematic, aggressive, disciplined approach to her financial situation. Except for her student loans, she has done virtually nothing to resolve her delinquent debts. She brought no documentation to the hearing, even though she had been questioned repeatedly about her financial situation before the hearing and knew that her debts raised security concerns. She presented no evidence after the hearing even though the record was kept open at her request.

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on financial considerations. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

Formal Findings

I make the following formal findings for or against Applicant on the allegations set forth in the SOR, as required by Directive ¶ E3.1.25 of Enclosure 3:

Paragraph 1, Guideline F (Financial Considerations): AGAINST APPLICANT

Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.t:	Against Applicant
Subparagraphs 1.u-1.x:	For Applicant
Subparagraphs 1.y-1.z:	Against Applicant
Subparagraph 1.aa:	For Applicant

Conclusion

In light of all of 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. Eligibility for access to classified information is denied.

LeRoy F. Foreman
Administrative Judge