



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



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|----------------------------------|---|------------------------|
| In the matter of: |) | |
| |) | |
| ----- |) | ISCR Case No. 08-02042 |
| SSN: ----- |) | |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

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

July 24, 2008

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted her security clearance application on April 24, 2007. On March 18, 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. 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 31, 2008; answered it on April 17, 2008; and requested a hearing before an administrative judge. DOHA received the request on April 21, 2008. Department Counsel was ready to proceed on April 29, 2008, and the case was assigned to me on May 8, 2008. DOHA issued a notice of hearing on May 12, 2008, scheduling the hearing for May 29, 2008. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 7 were admitted in evidence without objection. Applicant testified on her own behalf, and submitted Applicant's Exhibits (AX) A through P, which were admitted without objection. I granted Applicant's request to keep the record open until June 13, 2008 to enable her to submit additional documentary evidence. On June 5, 2008, Applicant requested additional time to submit evidence, and I extended the deadline until June 27, 2008. Her request and my ruling are attached to the record as Hearing Exhibit (HX) I. Applicant timely submitted AX Q through WW, and they were admitted without objection. Department Counsel's response to AX Q through WW is attached to the record as HX II. Applicant's reply to Department Counsel was marked as AX WW instead of a hearing exhibit because of its testimonial nature. Department Counsel's comments regarding AX WW are attached as HX III. DOHA received the transcript (Tr.) on June 5, 2008. The record closed on July 15, 2008.

Evidentiary Ruling

Department Counsel offered GX 5, 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. 25-28). Accordingly, I admitted GX 5 without authentication.

Findings of Fact

In her answer to the SOR, Applicant admitted all the allegations, but she explained that the debts alleged in SOR ¶¶ 1.l and 1.r had been satisfied by garnishment. Her admissions in her answer to the SOR and at the hearing are incorporated in my findings of fact.

Applicant is a 49-year-old personnel clerk employed by a federal contractor. She served on active duty in the U.S. Army from February 1978 until she accepted early retirement as a sergeant (pay grade E-5) in September 1994. She held a security clearance while in the Army. After she retired, she worked at a discount retail store and four separate temporary jobs as a government contractor's employee (Tr. 47). She worked as a warehouse supervisor from April 1999 to August 2003, when she quit her job because of a disagreement about compensatory time. She was unemployed from August 2003 to May 2004 (Tr. 48-49). She has worked for her current employer since May 2004. She does not have a current security clearance.

Applicant's immediate supervisor considers her a trusted and valuable employee (GX 2 at 2). He describes her as a person with a "large heart" who cares about the people she serves (AX H). Her program manager considers her highly self-motivated,

dedicated to team building, and “willing to go the extra mile” to do her job (AX A). She received a letter of commendation in December 2006 and an award for excellence in December 2007 (AX B and C). At the hearing, she presented copies of numerous handwritten notes from military personnel, thanking her for her help, consideration, and attentiveness to their needs (AX D-G).

Applicant is unmarried, but she has a 25-year-old daughter with three children. Applicant testifies she helps her daughter “abundantly” with financial support, because the father of her children is financially irresponsible (Tr. 42). She also gives money to her older brother, who promises to repay her but never does (Tr. 42, 59-60). She testified she purchased a townhouse in 1999, and accrued most of her debts between 2001 and 2003. When Applicant quit her job in 2003, the debts alleged in SOR ¶¶ 1.a, 1.d, 1.e, 1.f, 1.h, 1.i, 1.j, 1.k, and 1.n already were delinquent (GX 3, GX 4). After the mortgage on her townhouse was foreclosed, she moved in with her boyfriend and “just gave up” on meeting her financial obligations (Tr. 42, 50).

Between June 23 and June 25, 2008, Applicant resolved all the delinquent debts alleged in the SOR. She borrowed money from her aunt to resolve the debts, and she is now obligated to pay her aunt \$1,000 per month until the debt is paid. She told her aunt she needed to pay off her delinquent debts in order obtain a security clearance (AX XX). Several other delinquent debts not alleged in the SOR also were paid off at the same time, including a delinquent debt of \$5,121 to an instrumentality of the U.S. (AX W).

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

| SOR | Debt | Amount | Status | Evidence |
|------------|----------------------|---------------|---|------------------|
| 1.a | Medical | \$140 | Paid, 6-23-08 | AX R, Y |
| 1.b | Utility bill | \$351 | Paid, 6-23-08 | AX Z, AA, BB, CC |
| 1.c | Credit card | \$360 | Paid, 6-23-08 | AX S |
| 1.d | Credit card | \$1,837 | Partial payment, 6-24-08 | AX DD |
| 1.e | Credit card | \$2,851 | Compromised and paid, 6-23-08 | AX T, EE, FF |
| 1.f | Credit card | \$2,996 | Paid, 6-24-08 | AX GG |
| 1.g | Utility bill | \$351 | Same as 1.b | Tr. 18 |
| 1.h | Collection | \$1,003 | Paid, 6-24-08 | AX HH |
| 1.i | Mail order | \$232 | Paid, 6-24-08 | AX II |
| 1.j | Clothing | \$2,216 | Compromised and paid, 6-24-08 | AX JJ |
| 1.k | Credit card | \$3,600 | Partial payment, 6-25-08 | AX VV |
| 1.l | Credit card | \$6,193 | Satisfied by garnishment | Answer; AX WW |
| 1.m | Bank loan | \$3,061 | Satisfied | AX V, AX KK |
| 1.n | Clothing | \$932 | Compromised and paid, 6-24-08 | AX LL, MM |
| 1.o | Credit card | \$1,158 | Partial payment, 6-24-08 | AX NN |
| 1.p | Credit card | \$760 | Settled 6-24-08 | Tr. 65; AX P, JJ |
| 1.q | Mortgage Foreclosure | \$85,578 | Department Counsel conceded allegation is unfounded | Tr. 18 |
| 1.r | Judgment | \$8,347 | Same as 1.l | Answer; AX WW |

During an interview with a security investigator in June 2007, Applicant attributed her financial problems to “bad financial judgments” and mismanagement of her money (GX 5 at 3). At the hearing, she testified her bad financial judgments included paying too much for a car that needed extensive repairs, and allowing her daughter to go on a beach vacation in 2001 and run up a large credit card balance (Tr. 74-75).

Applicant once consulted with a financial planner but dropped out of the program after a couple of payments. She also considered bankruptcy, but decided to handle her debts herself (Tr. 73-74).

Applicant’s current net pay is about \$1,600 per month (Tr. 66). She receives \$878 per month in military retired pay (Tr. 67). She has no car payment because she uses her boyfriend’s car. Her boyfriend pays the mortgage but she contributes about \$300 per month for groceries, \$400 for household expenses, \$200 for her grandchildren, \$220 for credit card payments, and \$170 for her cell phone, leaving a monthly remainder of about \$1,118.

Applicant recently inherited an interest in real property from her mother. At the hearing, she stated her intent to ask the executor of the estate to allow one of her siblings to purchase her interest in the property as a means of raising funds to pay her delinquent debts (Tr. 78). In her post-hearing submissions, she did not submit any further evidence regarding her interest in this property.

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 SOR alleges 18 delinquent debts totaling about \$113,080. The evidence shows that the debts alleged in SOR ¶¶ 1.b and 1.g are the same debt, and the debts alleged in SOR ¶¶ 1.l and 1.r are the same debt. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant’s favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). Accordingly, I resolve SOR ¶¶ 1.b and 1.l. in Applicant’s favor.

Department counsel conceded that the \$85,578 mortgage foreclosure debt in SOR ¶ 1.q could not be established by substantial evidence. Accordingly, I have resolved SOR ¶ 1.q in Applicant’s favor.

The concern under this guideline 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), (b), (c), and (e). Her loans to her irresponsible older brother and allowing her daughter to incur a large credit card debt on a beach vacation were "irresponsible" within the meaning of AG ¶ 19(b).

Since the government produced substantial evidence to raise several disqualifying conditions, 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 is a compound mitigating condition, with three disjunctive prongs and one conjunctive prong. It may be established by showing the conduct was "so long ago," or "so infrequent," or "occurred under such circumstances that it is unlikely to recur." If any of the three disjunctive prongs are established, the mitigating condition is not fully established unless the conduct "does not cast doubt on the individual's current reliability, trustworthiness, or good judgment."

The first two prongs of AG ¶ 20(a) ("so long ago" and "so infrequent") are not established, because Applicant accumulated numerous delinquent debts, several of which were not resolved until after the hearing. They did not arise because of unusual circumstances that are "unlikely to recur." Her conduct in responding to financial

problems by “just giving up” casts doubt on her current reliability, trustworthiness, and good judgment. I conclude AG ¶ 20(a) is not established.

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 persons’s control and responsible conduct, must be established. Applicant’s loss of employment in August 2003 was voluntary, and she already had numerous delinquent debts when she quit her job. Her response, by “just giving up,” was not responsible. I conclude 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 also has two prongs that may be either disjunctive or conjunctive. If the person has received counseling, it must also be shown that there are clear indications the problem is being resolved or under control. However, if the person has not received counseling, this mitigating condition may still apply if there are clear indications that the problem is being resolved or under control. Applicant sought and received financial counseling for a short period, but she terminated her participation after making a couple payments. Applicant now has the debts alleged in the SOR under control, but she did so by incurring a new debt to her aunt, on which the monthly payments will consume all of her net remainder, leaving nothing for unexpected expenses. It is too soon to tell whether she has her finances under control. I conclude AG ¶ 20(c) is not established.

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). Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance. Applicant held a clearance while in the Army, and she knew her delinquent debts would raise security concerns, but she did virtually nothing until she received the SOR. None of the debts except the debt satisfied by garnishment were resolved until after the hearing. When she borrowed money from her aunt, she told her aunt she needed the money to pay off her delinquent debts so that she could obtain a security clearance. The evidence shows her motivation for resolving the debts was not a sense of obligation, but rather a desire to obtain a clearance. I conclude AG ¶ 20(d) 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 served honorably in the U.S. Army for 17 years, and held a clearance for many years, apparently without incident. She is a kind and caring person, as evidenced by the numerous expressions of gratitude from those whom she has helped in her role as a personnel clerk. She has given money to her brother and daughter without regard for her own financial needs.

Applicant was candid and sincere at the hearing. Nevertheless, her financial track record leaves me with doubt whether she will exercise financial discipline once the pressure of obtaining a clearance is removed. The debt alleged in SOR ¶¶ 1.l and 1.r was resolved by garnishment, not any voluntary action by Applicant. She has neglected her delinquent debts for more than four years. She responded to the pressure of obtaining a clearance by borrowing money from her aunt, substituting a large new debt for numerous delinquent debts. Doubts about her current reliability, trustworthiness, and good judgment will persist until she establishes a record of financial responsibility. Perhaps, in a year or so, she will establish such a record, if she timely repays the loan to her aunt and does not accumulate any more delinquent debts. See Directive ¶¶ E3.1.37 through E3.1.39 (reconsideration authorized after one year). 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:

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

| | |
|------------------------|-------------------|
| Subparagraph 1.a: | Against Applicant |
| Subparagraph 1.b: | For Applicant |
| Subparagraphs 1.c-1.k: | Against Applicant |
| Subparagraph 1.l: | For Applicant |
| Subparagraphs 1.m-1.p: | Against Applicant |
| Subparagraph 1.q: | For Applicant |
| Subparagraph 1.r: | Against Applicant |

Conclusion

In light of all of the circumstances, 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