



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-05613
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

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

April 30, 2009

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 (SF 86) on August 3, 2008. On December 22, 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 received the SOR on January 8, 2009; answered it on January 22, 2009; and requested determination on the record without a hearing. Department Counsel submitted the government's written case on February 10, 2009. On February 19, 2009, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the government's evidence. Applicant received the FORM on February 27, 2009, but she did not submit any additional information. The case was assigned to me on April 23, 2009.

Findings of Fact

In her answer to the SOR (Government Exhibit (GX) 2), Applicant admitted all the allegations in the SOR except ¶¶ 1.f and 1.h. Her admissions are incorporated in my findings of fact.

Applicant is a 42-year-old regional operations manager for a defense contractor. She has worked for her current employer since August 2008. Her SF 86 indicates she received a State Department clearance in September 2007, but she has never held a clearance from the Department of Defense.

Applicant was married in March 1997, and divorced in September 1999. She has a 19-year-old son, a 17-year-old son, and a 15-year-old daughter, none of whom reside with her. SOR ¶ 1.d alleges she owes a child support arrearage of about \$24,646. In response to DOHA interrogatories, she submitted what appears to be a voucher from the local Division of Support Enforcement, dated December 19, 2003, reflecting a refund of \$35.54 (GX 6 at 11-12). She has submitted no evidence of the current status of her child support account.

Applicant's SF 86 reflects employment by various employers from October 1998 until her current employment began in August 2008. She was unemployed from December 2001 to April 2002, January to June 2003, June to November 2004, and May 2006 to March 2007.

The debt alleged in SOR ¶ 1.b arose when Applicant and an ex-boyfriend jointly purchased a truck, and the ex-boyfriend failed to make payments. After the creditor refused to accept late payments from Applicant, the vehicle was repossessed. Applicant refuses to pay this debt.

The debt alleged in SOR ¶ 1.g arose when Applicant purchased a car and found it was defective. When the seller refused to repair it under the warranty, Applicant surrendered the car, and the creditor obtained a judgment against her (GX 7). She refuses to pay this debt.

Applicant denied owing the tuition debt alleged in SOR ¶ 1.f, claiming it was paid. She has not produced any documentation of payment.

The table below summarizes the evidence concerning the debts alleged in the SOR.

SOR	Debt	Amount	Status	Evidence
1.a	Cell phone	\$272	Unpaid	GX 2, GX 4, GX 5
1.b	Car repossession	\$14,166	Unpaid	GX 2, GX 4-6
1.c	Collection account	\$244	Unpaid	GX 2, GX 4
1.d	Child support	\$24,646	Unpaid	GX 2, GX 4
1.e	Collection account	\$1,084	Unpaid	GX 2, GX 4
1.f	College tuition	\$480	Unpaid	GX 4, GX 5
1.g	Car loan (judgment)	\$8,742	Unpaid	GX 2, GX 4-7
1.h	Satellite TV	\$72	Paid	GX 4 at 1, GX 6 at 9
1.i	Utility bill	\$155	Unpaid	GX 2, GX 5
1.j	Utility bill	\$224	Unpaid	GX 2, GX 5 at 6

Applicant submitted a personal financial statement in response to DOHA interrogatories on August 20, 2008. It reflects net monthly income of \$3,260, expenses of \$1,753, debt payments of \$50, and a net remainder of \$1,457. She owns a 2001 truck that is paid for (GX 6 at 14).

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 ten delinquent debts totaling about \$50,085. 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 potentially disqualifying conditions under this guideline are relevant. AG ¶ 19(a) is raised where there is an “inability or unwillingness to satisfy debts.” 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 these three disqualifying conditions, shifting the burden to her 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). 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.” This mitigating condition is not established because Applicant’s delinquent debts are numerous, not yet satisfied, and did not arise under unusual conditions.

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). Applicant’s periods of unemployment were beyond her control, but she has been continuously employed for more than two years and has done virtually nothing to address the delinquent debts alleged in the SOR. 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 is not established because there is no evidence of financial counseling and her situation is not under control.

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). Good faith means acting 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). Applicant provided proof that the debt alleged in SOR ¶ 1.h was paid. She asserted in her answer to the SOR that she was making payments on the debts alleged in SOR ¶¶ 1.c, 1.e, and 1.i, but she presented no documentation to support her assertion. She has refused to pay the debts alleged in SOR ¶¶ 1.b and 1.g. This mitigating condition 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). Although Applicant disagrees with some of the debts, she provided no documented proof of the

basis for her dispute. There is no evidence she has asked to have any debts deleted from her credit reports. This mitigating condition 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. 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 mature adult, gainfully employed, and earning enough to have a substantial net remainder each month. Because she requested a determination on the record, my ability to assess her candor, sincerity, and credibility has been limited. 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 her financial history. 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 on the allegations set forth in the SOR, as required by Directive ¶ E3.1.25:

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

Subparagraphs 1.a-1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i-1.j:	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