



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-08406
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: John B. Glendon, Esq., Department Counsel
For Applicant: *Pro se*

July 31, 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 granted.

Statement of the Case

Applicant submitted a security clearance application on March 12, 2008. On December 23, 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 based on 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 adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

Applicant answered the SOR on February 3, 2009, and requested a decision on the record without a hearing. On March 20, 2009, she requested a hearing. Department

Counsel was ready to proceed on April 24, 2009. The case was assigned to me on April 27, 2009. DOHA issued a notice of hearing on April 28, 2009, scheduling the hearing for May 20, 2009. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 13 were admitted in evidence without objection. Applicant testified, presented the testimony of one witness, and submitted Applicant's Exhibits (AX) A through O, which were admitted without objection. I kept the record open until June 5, 2009, to enable Applicant to submit additional documentary evidence. She timely submitted AX P through Y, which were admitted without objection. Department Counsel's comments concerning AX P through Y are attached to the record as Hearing Exhibit I. The record closed on June 5, 2009, and DOHA received the transcript (Tr.) on the same day.

Amendment of SOR

At the hearing, Department Counsel pointed out that the last five allegations in the SOR were mislabeled as ¶¶ 1.h through 1.i. On my own motion, without objection from either party, the last five allegations were labeled as ¶¶ 1.j through 1.n (Tr. 22). The amendments are handwritten on the SOR.

Findings of Fact

In her answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.e through 1.h, 1.j, 1.l, and 1.m. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 42-year-old engineer technician (Tr. 51) employed by a defense contractor. She has worked for her current employer since May 1998.

Applicant served on active duty in the U.S. Army from March 1988 to December 1997 (AX C). She was discharged as a staff sergeant (E-6) and had been selected for promotion (Tr. 60). She testified she received a security clearance and eligibility for access to Sensitive Compartmented Information in May 1988, while she was on active duty (Tr. 63).

Applicant was married in May 1996 and divorced in September 1997. She remarried in March 2001 and was divorced in October 2005. She married for a third time in July 2007 and was separated in October 2007. She has a 12-year-old son from her first marriage. Her son has attention deficit disorder and asthma, requiring regular medical attention and expensive prescriptions (Tr. 88).

Applicant attended a community college part-time from January 2001 to December 2007. She also attended a university from March to December 2004 and took online college courses from January to May 2005. She has not yet received a degree from any of the institutions where she attended classes.

Applicant and her then-spouse filed a petition for Chapter 13 bankruptcy in July 2003. Applicant testified the bankruptcy was necessary because of her spouse's

uncontrolled spending (Tr. 54). The bankruptcy was discharged in September 2006 after they completed their Chapter 13 payment plan (GX 12). They divorced because of her spouse's spending habits (Tr. 56). The bankruptcy is alleged in SOR ¶ 1.m.

In December 2008, Applicant responded to DOHA interrogatories and submitted a personal financial statement (PFS). She reported net monthly income of \$2,021.56, expenses of \$2,072.94, and a negative net monthly remainder of \$51.38 (GX 5 at 15). This negative cash flow is alleged in SOR ¶ 1.n.

Applicant has sought and received financial counseling (AX O). After she submitted her PFS, she was able to negotiate a change in her home mortgage terms that reduced her monthly payments from \$1,005.44 to \$468.65 (Tr. 43-44). She also received a promotion and a pay raise in March 2009, increasing her gross pay by about \$140 per pay period (Tr. 52). She now earns a net pay of \$1,142 every two-week pay period, plus any overtime she works (Tr. 43-44). She usually works about ten hours of overtime, sometimes 20 hours, which increases her pay by \$300 to \$600 (Tr. 52).

The SOR alleges 12 delinquent debts (SOR ¶¶ 1.a-1.l). The table below summarizes the evidence regarding these debts.

SOR	Debt	Amount	Status	Evidence
1.a	Homeowners' Association	\$76	Paid	Answer to SOR
1.b	Homeowners' Association	\$466	Paid	Answer to SOR
1.c	Department Store	\$654	Included in Chap 13	AX F
1.d	Homeowners' Association	\$272	Paid	Answer to SOR
1.e	Student loan	\$1,000	Paying \$50 per month	AX K, L
1.f	Student loan	\$4,609	Paying \$50 per month	Answer to SOR AX B, H, I, J
1.g	Medical	\$75	Paid	AX G, U
1.h	College tuition	\$517	Paying \$50 per month	Tr. 80
1.i	Telephone	\$350	Paid	Answer to SOR AX E
1.j	College tuition	\$525	Same as 1.h	AX P
1.k	Electric bill	\$368	Paid	Answer to SOR, AX W
1.l	Cable bill	\$136	Paid	AX V

Applicant's mother has assisted her in paying off her delinquent debts. She has promised to repay her mother when she is able. She also has agreed to do chores and run errands for her mother in return for the loan (Tr. 90).

After the hearing, Applicant submitted another PFS reflecting net monthly income of \$3,144, expenses of \$2,352, and a remainder of \$731 (AX S). This PFS indicates a mortgage payment of \$1,003, not the reduced payment of \$468 provided for in her loan modification agreement.

Applicant has disputed the college tuition debt alleged in SOR ¶ 1.j. She believes it is the same debt as SOR ¶ 1.h. She provided records from the National Student Loan Data System indicating she had tuition bills from the institution alleged in SOR ¶ 1.h but not the institution identified by the collection agency as the original creditor (AX Q and R). She testified she had an oral agreement to pay \$50 per month by automatic deduction from her checking account (Tr. 81), but she provided no documentation of the payments on this debt.

Applicant's immediate supervisor submitted a statement on her behalf. Her supervisor has known Applicant for the last eight years and describes her as reliable, trustworthy, and competent. Applicant has a reputation for being dependable and "can be counted on to go the extra mile" to carry out her duties (AX D).

Applicant's aunt testified on her behalf. The witness has known Applicant since she was born. She regards Applicant as a good mother and a hard worker. She does not like to ask family members for help. In both of her two previous marriages, Applicant was the primary breadwinner. Applicant lives modestly. She once owned an expensive car, but she sold it when she realized it was "way beyond her means," and she now drives a car that she has owned for 13 or 14 years (Tr. 36-41). It is a 17-year-old economy car (Tr. 87).

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 overarching 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 made “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 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 are relevant. AG ¶ 19(a) is raised by an “inability or unwillingness to satisfy debts.” AG ¶ 19(b) is a two-pronged condition that is raised by “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 by “a history of not meeting financial obligations.” AG ¶ 19(e) is raised by “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 applicable to her purchase of an expensive imported car, but the evidence reflects that she quickly realized that she could not afford it, and she sold it. There is no evidence that the purchase of this vehicle contributed to her financial difficulties. Accordingly, I conclude AG ¶ 19(b) is not raised.

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 mitigating condition does not apply because Applicant’s debts are numerous, not yet fully solved, and did not occur under circumstances unlikely to recur.

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). The debts incurred during Applicant’s first two marriages were resolved by her Chapter 13 bankruptcy. She was the breadwinner during these two marriages and she presented no evidence that the loss of the spouse’s income contributed to her problems. She presented no evidence that her current marriage and separation contributed to her financial difficulties. Her son’s medical condition is a circumstance beyond her control, but she presented no evidence that his medical expenses have contributed to her financial problems. I conclude AG ¶ 20(b) does not apply.

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 established, because Applicant obtained financial counseling and she has her financial situation 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 has presented evidence that the debt in SOR ¶ 1.c was included in her bankruptcy, and that she has paid or is making payments on all other debts. She did not document her payments on the debt in SOR ¶ 1.h; however, in the context of her vigorous efforts to resolve all her debts, I am confident this debt is not being ignored.

An applicant is not required, as a matter of law, to establish resolution of each and every debt alleged in the SOR. See ADP Case No. 06-18900 (App. Bd. Jun. 6, 2008). An applicant need only establish a plan to resolve financial problems and take significant actions to implement the plan. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). There also is no requirement that an applicant make payments on all delinquent debts simultaneously. I conclude AG ¶ 20(d) is 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 commonsense 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 with a long record of military and civilian service. She has held a clearance since 1988, apparently without incident. She has worked for her current employer for 11 years and is highly regarded by her supervisor. Most of her debts are for educational expenses. She lives frugally and drives a 17-year-old car. It has taken her a while to gain the financial discipline she needs, but she appears to have benefited from financial counseling, and she has taken aggressive steps, with the help of her mother, to achieve financial stability.

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 mitigated the security concerns based on financial considerations. Accordingly, I conclude she has carried her burden of showing that it is clearly consistent with the national interest to continue 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): FOR APPLICANT

Subparagraphs 1.a-1.n: For Applicant

Conclusion

In light of all of the circumstances, it is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

LeRoy F. Foreman
Administrative Judge