



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 09-02071
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

December 17, 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 a security clearance application on September 11, 2008. On July 17, 2009, the Defense Office of Hearings and Appeals (DOHA) sent her 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 adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

Applicant received the SOR on July 24, 2009; answered it on August 12, 2009; and requested a hearing before an administrative judge. DOHA received the request on

August 13, 2009. Department Counsel was ready to proceed on August 31, 2009, and the case was assigned to me on September 2, 2009. DOHA issued a notice of hearing on September 2, 2009, scheduling the hearing for September 24, 2009. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibit (AX) A, which was admitted without objection. I kept the record open until October 9, 2009, to allow her to submit additional documentary evidence, but she submitted no additional evidence. DOHA received the transcript (Tr.) on October 2, 2009.

Findings of Fact

In her answer to the SOR, Applicant admitted the 19 delinquent debts totaling about \$37,000 alleged in SOR ¶¶ 1.a-1.s. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 31-year-old communications technician employed by a defense contractor. She has worked for her current employer since July 2007. She served on active duty in the U.S. Navy from May 1998 to March 2007. She held a security clearance in the Navy and retained it when she began working for her current employer.

Applicant has never been married, but she has six children by five fathers. The first four children were born while she was in the Navy. Two of her children live with her parents (GX 2 at 10). Her 5-year-old son is autistic (GX 2 at 9). Only the father of the youngest children, one-year-old twin girls, pays child support (GX 2 at 10; Tr. 46).

In April 2009, Applicant submitted a personal financial statement reflecting net monthly income of \$3,348, and expenses of \$2,730. It does not reflect any debt payments (GX 2 at 4).

The debts underlying the judgments alleged in SOR ¶¶ 1.a-1.e were incurred when Applicant moved out of various apartments before the expiration of her leases (Tr. 51-54). She testified the judgment in SOR ¶ 1.g was for a loan obtained by identity theft, and that she told the creditor that the loan was fraudulent. When the creditor sued her, she did not appear in court and a default judgment was entered against her (GX 4 at 1; Tr. 43-44).

Applicant testified the medical debts in SOR ¶¶ 1.i-1.m were incurred for her twins and were the responsibility of their father (Tr. 38). She testified she had initiated legal action to compel their father to pay the medical bills (Tr. 60-61). I kept the record open to allow her to produce documents showing their father's obligation to pay the medical bills and any documents pertaining to legal action she initiated to enforce them (Tr. 67-70). She did not produce any documentation.

Applicant testified the debt for cell phone service alleged in SOR ¶ 1.s was incurred by her sister. She has taken no action to dispute this debt.

Applicant testified that her pay has been garnished to satisfy the judgments in SOR ¶¶ 1.a-1.e. When those judgments are satisfied, garnishments will be applied to the \$13,743 car repossession deficiency in SOR ¶ 1.n and the \$4,343 judgment for the unpaid personal loan in SOR ¶ 1.g (Tr. 56-57). Her pay statements for the two-week periods ending on March 20, 2009, and April 3, 2009, reflected wage garnishments of \$1,771 (GX 2 at 31. 33). At the hearing, Applicant submitted a pay statement for the period ending on September 4, 2009, reflecting a wage garnishment of \$3,475 (AX A). She has not done anything to resolve the remaining debts (Tr. 59).

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 commonsense 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 SOR alleges six unsatisfied judgments (SOR ¶¶ 1.a-1.e and 1.g), a car repossession deficiency (SOR ¶ 1.n), five medical debts (SOR ¶¶ 1.i-1.m), and seven other delinquent debts. 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(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.” The evidence raises all three disqualifying conditions, shifting the burden to Applicant 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 is not established because Applicant's debts are ongoing, numerous, and did not occur under circumstances making them 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). Both prongs, i.e., conditions beyond the person's control and responsible conduct, must be established. The medical expenses for Applicant's twin daughters were beyond her control, but she has not acted responsibly. Her reaction to all her debts has been passive, allowing judgments to be entered against her and allowing her pay to be garnished. She was given additional time to produce evidence of her children's father's agreement to pay the medical bills, but she produced nothing. I conclude this mitigating condition 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 produced no evidence of counseling and her financial 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). This mitigating condition is not established because Applicant has done virtually nothing to resolve her debts. Her response has been passive, allowing judgments to be entered against her and allowing her pay to be garnished.

Security concerns under this guideline also can be mitigated 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). At the hearing, Applicant disputed the judgment in SOR ¶ 1.g and the cell phone bill in SOR ¶ 1.s, but she has done nothing to contest those debts. She allowed a default judgment to be entered against her for the debt in SOR ¶ 1.g and has not filed a credit report dispute for the cell phone debt in SOR ¶ 1.s that she attributes to her sister. She produced no additional evidence after the hearing, even though she testified at the hearing that such evidence was available.

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 relevant 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. 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 continue her eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

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

Subparagraphs 1.a-1.s:

Against Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman
Administrative Judge