



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-03003
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

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

November 22, 2010

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 January 16, 2009. On April 9, 2010, 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. DOHA acted 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) implemented by the Department of Defense on September 1, 2006.

Applicant received the SOR on April 13, 2010; answered it on May 4, 2010; and requested a hearing before an administrative judge. DOHA received the request on May

10, 2010. Department Counsel was ready to proceed on June 30, 2010, and the case was assigned to an administrative judge on July 7, 2010. DOHA issued a notice of hearing on July 21, 2010, scheduling it for August 31, 2010. The case was reassigned to me on August 19, 2010, to resolve a scheduling conflict. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 23 were admitted in evidence without objection. Department Counsel also submitted a demonstrative exhibit summarizing the Government evidence, which was marked as Hearing Exhibit (HX) I. Applicant testified, presented the testimony of one witness, and submitted Applicant's Exhibits (AX) A through C, which were admitted without objection. I kept the record open until September 17, 2010, to enable Applicant to submit additional documentary evidence. She did not submit any additional evidence. DOHA received the transcript (Tr.) on September 8, 2010.

Findings of Fact

In her answer to the SOR, Applicant admitted all the allegations in the SOR. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 57-year-old employee of a defense contractor providing security alarm monitoring. She has worked for her current employer since October 2008. She has never married, but she has a 36-year-old son. She has never held a security clearance.

Applicant worked as an emergency-call operator for a local police department from March 1987 to October 1996. She was terminated after a personal dispute with her supervisor. (Tr. 43.) After moving to another state and being unemployed for about six months, she was hired to perform maintenance at a condominium. She began working as a security operator in March 1999. She was laid off when the company reorganized in October 2005. She also worked part-time as a head cook from April 2005 to May 2008, at about half her pay as a security operator. She was rehired for a security job by her previous employer in October 2007, and she worked there until she began her current job in October 2008. During her periods of unemployment and underemployment she fell behind on her house payments, car payments, and credit card payments. (GX 1 at 11-13; GX 3 at 3; Tr. 43-48.)

Applicant filed a petition for Chapter 13 bankruptcy in October 2007. It was dismissed in March 2008 for failure to make the payments required by the bankruptcy plan. (GX 12, 13, and 14.) Applicant filed a second petition for Chapter 13 bankruptcy in July 2008. The petition was dismissed in August 2008 for failure to file the required documents. (GX 9, 10, and 11.) The court records reflect that Applicant completed the required counseling for both bankruptcy filings. The two bankruptcy filings are alleged in SOR ¶¶ 1.a and 1.b.

In addition to the two bankruptcy filings, the SOR alleges 15 delinquent debts totaling more than \$100,000. Applicant's home was foreclosed and the property was sold, but she does not know if she owes a deficiency. The debts alleged in SOR ¶¶ 1.c

and 1.e are the first and second mortgages on the home, in the amounts of \$46,640 and \$5,910 respectively.

The debt in SOR ¶ 1.f (\$49) was for a book ordered by her roommate in her name. Applicant has not paid the debt or disputed it.

The debt alleged in SOR ¶ 1.g (\$8,968) is for a deficiency and related charges after Applicant's car was repossessed. It was included in Applicant's 2007 bankruptcy petition, and it is unresolved. (GX 13.)

The debts alleged in SOR ¶¶ 1.d, 1.h-1.j, and 1.l-1.q were included in the two bankruptcies that were dismissed. (GX 13 and 14) The debts are unresolved.

The debt alleged in SOR ¶ 1.k is a judgment for state taxes that was filed in July 1998, before Applicant's two bankruptcy filings. (GX 21.) It is unresolved.

Applicant has been receiving medical treatment for adult attention-deficit hyperactivity disorder and a depressive disorder since 2007. Her doctor continues to see her on a regular basis, and believes she is doing well in treatment. Her doctor has found her to be a caring, conscientious, reliable, hard-working person. (AX C.)

As of the date of her hearing, Applicant was current on her rent payments and utility bills. She had \$7 in her savings account and her checking account was overdrawn. She has no credit cards. She drives a 15-year-old car that is paid for. After paying her living expenses, she has a net monthly remainder of about \$100 to \$200. (Tr. 55-56, 75.)

In her responses to DOHA interrogatories, her answer to the SOR, and at the hearing, Applicant has repeatedly expressed her intention to resolve her delinquent debts. (GX 2; GX 3 at 3; Answer to SOR at 4; Tr. 92-94.) As of the date the record closed, the delinquent debts alleged in the SOR remained unresolved.

A retired law enforcement officer who has known Applicant for eight years as a friend and neighbor regards her as hard working, loyal, dedicated, and patriotic. He is aware that she has serious financial problems. (AX B.)

Applicant's supervisor has known her for 11 years. Applicant had worked for the same supervisor at another security company, and her supervisor recruited her for her current job because of her good character and trustworthiness. She recently promoted Applicant to a supervisory position because of her dependability. Her supervisor was generally aware of her financial problems, and she hoped that the promotion would help Applicant resolve her financial problems. The supervisor has no hesitation in recommending Applicant for a clearance. (Tr. 81-84.)

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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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 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. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

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:

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.

Applicant’s financial history raises two disqualifying conditions under this guideline: AG ¶ 19(a) (“inability or unwillingness to satisfy debts”) and AG ¶ 19(c) (“a history of not meeting financial obligations”), 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). This mitigating condition is not established because Applicant’s delinquent debts are numerous, ongoing, and not the result of 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. Applicant’s loss of employment in 1996 was caused in large part by her conduct. Furthermore, she has not acted responsibly to resolve her delinquent debts. She has been continuously employed for three years, since October 2007, but she has made virtually no progress in resolving her financial problems.

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). Applicant

completed the required counseling in connection with her bankruptcy petitions, but this mitigating condition is not established because her financial problems are 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 there is no evidence of payments or other resolution of her delinquent debts.

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). This mitigating condition is not established because Applicant has admitted all the debts.

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. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant was candid and sincere at the hearing. All the evidence indicates that she sincerely wishes to right her financial ship, but she has not gone beyond promises and good intentions. She does not have a plan for resolving her problems. Her supervisor’s strong endorsement and demonstration of trust in Applicant is impressive, but it is not enough to overcome the security concerns raised by Applicant’s long history of financial neglect.

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 on the allegations in the SOR:

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

Subparagraphs 1.a-1.q:

Against Applicant

Conclusion

I conclude that 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