



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



In the matter of:)
)
) ISCR Case No. 09-03635
)
)
Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esquire, Department Counsel
For Applicant: *Pro se*

October 27, 2010

Decision

RIVERA, Juan J., Administrative Judge:

Applicant made some efforts prior to receipt of her SOR to resolve her financial problems, caused in part because of circumstances beyond her control. She acted with some responsibility under the circumstances. She now understands the importance of having and maintaining financial responsibility. Her recent behavior shows some judgment and reliability. She mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on February 16, 2009. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to grant Applicant's request for a security clearance.

¹ Required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; and Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992.

On March 5, 2010, DOHA issued Applicant a Statement of Reasons (SOR), which specified the basis for its decision - security concerns raised under Guideline F (Financial Considerations) of the Adjudicative Guidelines (AG).²

On March 31, 2010, Applicant responded to the SOR allegations and initially elected to have her case decided on the written record. On June 23, 2010, she requested a hearing before an administrative judge. (Hearing Exhibit (HE) 1) The case was assigned to me on July 2, 2010, to determine whether a clearance should be granted or denied. DOHA issued a notice of hearing on July 16, 2010. The hearing was convened as scheduled on August 5, 2010. The Government offered Exhibits (GE) 1 through 4, which were admitted without objection. Applicant testified. Post-hearing, she submitted Exhibit (AE) 1, which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on August 12, 2010.

Findings of Fact

Applicant admitted all SOR allegations, except for SOR ¶ 1.h, which she denied. Her admissions are incorporated as findings of fact. After a thorough review of the evidence of record, and having considered Applicant's demeanor and testimony, I make the following additional findings of fact.

Applicant is a 42-year-old administrative assistant employed by a defense contractor. She married her husband in November 1993, and they have two children, ages 16 and 13. She completed her associate's degree (electronic technician) in 1996, and her bachelor of science degree in 2006. She financed her education primarily through student loans. She is currently pursuing a degree in education with the goal of becoming a teacher.

Applicant was hired by her current employer, a government contractor, in 1999 and has been consistently working for her employer since. Because of her position, Applicant has had access to classified information at the secret level from 2000 to present. There is no evidence that Applicant has compromised or caused others to compromise classified information.

Applicant's background investigation addressed her financial situation, which revealed she had financial problems. The SOR alleges six delinquent student loans (SOR ¶¶ 1.a-1.f), a mortgage foreclosure with a loan balance of \$279,000 (SOR ¶ 1.g), and one delinquent medical account owing \$116 (SOR ¶ 1.h).

Applicant testified that between 2000 and 2004, she and her husband engaged in frivolous and reckless spending using their credit cards. Thereafter, they have been struggling to pay their debts for many years. They unsuccessfully attempted to take control of their financial situation by refinancing their home and taking home equity

² Adjudication of this case is controlled by the AGs, implemented by the DOD on September 1, 2006.

loans to consolidate their debts. Apparently, some of their refinancing involved adjustable rate mortgage loans that spiraled out of control. Even though she and her spouse had been consistently employed since 1999, they could not afford the \$2,035 mortgage payment and their day-to-day living expenses, and their home was foreclosed.

Applicant and her spouse bought a home in 2000 for approximately \$150,000. Her initial monthly mortgage payment was around \$1,200. Between 2000 and 2008, when she defaulted on the mortgage and it was foreclosed, Applicant and her spouse refinanced their home three times and took two home equity loans against the property. According to Applicant, the refinancing and home equity loans were taken primarily to consolidate their debts. At the time of the foreclosure, her monthly mortgage payment was around \$2,035, and she owed \$279,000. To her knowledge, the house has not been sold and is still in the market. Applicant does not know whether she will be legally responsible for any remaining balance on the mortgage after the sale of her home.

Between 2002 and 2006, Applicant took seven student loans to pay for her college education in two different academic institutions. As of June 10, 2010, she owes approximately \$17,400. Initially, she was able to make some payments, and the loans were deferred while she attended college. Applicant defaulted on her student loans during 2005-2007. Her student loans became delinquent when she started having problems paying her mortgage and her day-to-day living expenses. In 2007, she established a payment plan for her student loans, but she was unable to make her payments consistently. Sometime in late 2009 – early 2010, she defaulted on the student loans again. In 2010, Applicant entered into another payment agreement to pay \$194 a month for a certain period to redeem her student loans. She made payments in June, July, and August 2010, to a collection company. She is trying to redeem her student loans to establish a new payment plan with Sallie Mae.

Applicant explained that she and her husband separated for one year. As a single mother, she received financial assistance from the government. She also developed breast cancer in 2007 and underwent a radical mastectomy. She developed diabetes. Applicant claimed her medical problems and subsequent expenses adversely impacted her ability to pay her debts. Her documents show that since 2007, her medical expenses totaled approximately \$75,000. Her health insurance paid for most of her medical expenses. According to Applicant, her co-pay share for her current expenses total approximately \$660. She intends to pay it by making a monthly payment of \$100 until the debt is paid. She failed to indicate when she plans to start the promised payments. Applicant stated that she intends to pay her medical bills first. She then intends to increase her student loan payments by \$100 a month to accelerate the payment of her student loans.

Applicant acquired the debt alleged in SOR ¶ 1.h as a result of medical treatment she received in 2000-2001. She claimed the medical provider failed to promptly file the claim with her insurer. Later, the insurer denied the claim because it was untimely filed. She offered to pay the medical provider her share of the debt (her co-pay), and the

provider refused it. Applicant believes she is not responsible for the debt because the medical provider was negligent filing the claim.

Applicant and her spouse have a combined monthly net income of \$4,336. She testified her husband started a second part-time job in September 2010, seeking additional income to pay their debts. Their current rent is \$1,095. Her monthly expenses total \$2,682. She disclosed debts totaling approximately \$586 (Sperry Visa \$293, education loans \$194, medical debts \$100). Her monthly net remainder is approximately \$1,065.

Applicant accepted responsibility for her financial obligations and stated her financial problems were due, in part, to her and her husbands' financial irresponsibility and ignorance. She claimed they are currently doing the best they can to resolve their financial problems. Applicant and her husband can afford to pay their rent, their day-to-day living expenses, and their debts. She testified she never would do anything illegal or against the United States because she has too much to lose.

Applicant appears to be a good employee. She is a devoted mother, daughter, and wife. She received some financial counseling from her mother many years ago. Her mother helped her to establish a budget and advised her to stay away from using credit cards. Applicant claimed she sometimes follows her budget, but not regularly. At her hearing, she acknowledged that she should have followed her mother's advice and stayed away from abusing her credit cards. She has not participated in any recent financial counseling. She intends to visit her employer's credit union, sometime in the near future, to ask for financial counseling and assistance to prepare a budget.

Policies

The President of the United States 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. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant 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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs 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 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 to reach his decision.

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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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. See *also* Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or 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 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 or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[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

Under Guideline F, the security concern is that 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. AG ¶ 18.

Between 2000 and 2004, Applicant and her husband engaged in frivolous and reckless spending at the expense of their credit. They have been struggling ever since to pay their debts. They unsuccessfully attempted to take control of their financial situation by refinancing three times the home they bought in 2000, and by taking two home equity loans to consolidate their debts. Some of their refinancing involved adjustable rate mortgage loans that spiraled out of control. Even though she and her spouse have been consistently employed since 1999, they could not afford to pay their mortgage payments, their day-to-day living expenses, and their accrued debts. Applicant's home was foreclosed with an outstanding balance of \$279,000.

Applicant owes approximately \$17,400 as a result of seven student loans she took to pay for her college education between 2002 and 2006. She has been delinquent paying her student loans at least twice. She also owes a \$116 medical debt dating back to 2001. AG ¶ 19(a): "inability or unwillingness to satisfy debts" and AG ¶ 19(c): "a history of not meeting financial obligations" apply.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

- (a) 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;
- (b) 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;
- (c) 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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (e) 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; and
- (f) the affluence resulted from a legal source of income.

Applicant's being a single mother with limited financial support (albeit for one year), as well as her medical problems may be considered as circumstances beyond her control, which contributed to her inability to pay her debts. I find AG ¶ 20(b) partially applies, but does not fully mitigate the financial concerns. Applicant's evidence is not

sufficient to show she acted responsibly under the circumstances. Her financial problems are primarily the result of her financial irresponsibility (abusing her credit and living beyond her means), the continued acquisition of debt without the resolution of prior delinquent debts, and her negligence (she did not educate herself prior to refinancing her home). All of these factors were within her control.

Notwithstanding, Applicant's credit reports and her documentary evidence show her past efforts to pay her student loans, the resolution of other non-SOR debts, and the consolidation of debts (refinancing of her home) prior to receipt of the SOR. Applicant made efforts to resolve her debts and did not just ignore her delinquent debts. She has made three consecutive payments on her current student loan payment plan. Her actions show some reliability and trustworthiness. Based on her household's combined income, she has the ability to continue with her current payment plan to redeem the student loans. Currently, she appears to have the financial means to pay for her day-to-day living expenses and her outstanding debt. The only concern left is whether she will be required to pay any remaining mortgage deficiency after the sale of the foreclosed home. Not considering the possible foreclosed mortgage deficiency, Applicant would be in control of her financial situation.

Applicant's behavior shows she has been making some effort to be financially responsible. Because of the security clearance process and the possibility of her losing her job, she now understands the importance of having and maintaining financial responsibility. She appears to have learned from her mistakes and her financial problems are not likely to continue.

Whole-Person Concept

Under the whole-person concept, the 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. The 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.

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. AG ¶ 2(c). I have incorporated in my whole-person analysis my comments on the analysis of Guideline F.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has worked for a government contractor for approximately 12 years. She has possessed a security clearance for around 10 years. There is no evidence she has ever compromised or caused others to compromise classified information. She is considered to be a valuable employee. She is a good mother, wife, and daughter. These factors show some responsibility, good judgment, and mitigation. Applicant also established some circumstances beyond her control, which contributed to her inability to pay her debts.

Applicant's financial problems were primarily the result of her financial irresponsibility (abusing her credit and living beyond her means), the continued acquisition of debt without the resolution of prior delinquent debts, and her negligence (she did not educate herself prior to refinancing her home).

Applicant negotiated payments on her student loans, resolved other non-SOR debts, and attempted the consolidation of debts (refinancing of her home) prior to receipt of the SOR. She made efforts to resolve her debts and did not just ignore her delinquent debts. She has made three consecutive payments on her current student loan payment plan. Her actions show some reliability and trustworthiness.

Applicant should have been more responsible in addressing her financial problems. Notwithstanding, I find her actions are sufficient to show she acted with some responsibility under the circumstances. Considering the evidence as a whole, I find Applicant has demonstrated she understands the importance of having and maintaining financial responsibility. Her recent behavior shows some judgment and reliability.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a - 1.h:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant eligibility for a security clearance for Applicant. Eligibility for a security clearance is granted.

JUAN J. RIVERA
Administrative Judge