



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 09-04229
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Jr., Esq., Department Counsel
For Applicant: *Pro se*

May 24, 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 her security clearance application on March 18, 2009. On January 19, 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 revised adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

Applicant received the SOR on January 26, 2010; answered it on February 5, 2010; and requested determination on the record without a hearing. DOHA received her

response on February 10, 2010. Department Counsel submitted the government's written case on March 16, 2010. On March 19, 2010, 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 March 28, 2010, and she responded on April 26, 2010. The case was assigned to me on May 6, 2010.

Findings of Fact

In her answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a, 1.b, 1.i, 1.j, and 1.l. Her admissions are incorporated in my findings of fact.

Applicant is a 29-year-old administrative assistant employed by a defense contractor since March 2009. She previously worked for another defense contractor as an executive assistant from June 2006 to March 2009. She attended college but did not receive a degree. She has never held a security clearance.

Applicant accumulated 12 delinquent debts totaling about \$44,000. She admitted all the debts except the student loans alleged in SOR ¶¶ 1.c-1.h and 1.k. In a statement to a security investigator in April 2009, she attributed her financial problems to poor judgment and lack of understanding. (GX 5 at 5.) She repeated that explanation in her response to the FORM. She enrolled in a debt management program, but terminated it after one debt was paid because it was too expensive. Applicant's personal financial statement (PFS), submitted in response to DOHA interrogatories, reflects net monthly income of \$2,600, expenses of \$1,460, and a net remainder of \$780. (GX 6 at 9.)

In Applicant's response to DOHA interrogatories, she promised to pay the debt alleged in SOR ¶ 1.l. (GX 6 at 8.) It apparently was paid, because it does not appear on the two credit reports submitted by the government. (GX 7 and 8.)

In Applicant's response to the FORM, she stated that the creditors alleged in SOR ¶¶ 1.a and 1.i have refused to accept a payment plan, that she will begin making monthly payments in May 2010 on the debt alleged in SOR ¶ 1.b, and that she has been making monthly payments of \$100 since September 2009 on the debt alleged in SOR ¶ 1.j. She also stated that the student loans alleged in SOR ¶¶ 1.c-1.j and 1.k have been consolidated and she has been paying \$200 per month since December 2009. She did not provide any documentary proof of her settlement negotiations, payment plans, or payments made.

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 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 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. 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 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." Applicant's financial history raises all 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). This mitigating condition is not established because Applicant's debts are numerous, ongoing, and did not occur under unusual circumstances.

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). This mitigating condition is not established. Applicant has admitted that her financial problems are the result of poor judgment.

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 received financial counseling. However the second prong of this mitigating condition is not established, because she has not provided documentary evidence that her problems are being resolved.

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).

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, nor is there a requirement that the debts alleged in the SOR be paid first. *Id.*

Applicant receives some credit under AG ¶ 20(d). She has resolved the debt alleged in SOR ¶ 1.i. She worked with a credit counseling service until she found it too expensive. She has contacted all her creditors. However, despite being informed by DOHA that documentation is necessary, she has not provided proof of payments on her student loans or the creditor alleged in SOR ¶ 1.i. Thus, she does not receive full credit under this mitigating condition.

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). Applicant denied the student loans in her response to the SOR, she now admits them and states she is making payments. Thus, this mitigating condition is not applicable.

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 Guidelines 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 admits that she is financially inexperienced. She also is unfamiliar with the security clearance process. She now appears to understand what she must do to resolve security concerns raised by her financial situation. However, even if she has started making payments on the student loans and the debt in SOR ¶ 1.j, she has not had sufficient time to establish a track record of financial responsibility. See Directive ¶ E3.1.37-E3.1.40 (reconsideration authorized after one year).

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 for or against Applicant 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.k:
Subparagraph 1.l:

Against Applicant
For 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