



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-04301
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline H. Jeffreys, Esq., Department Counsel
For Applicant: *Pro se*

March 3, 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 August 29, 2008 (Government Exhibit (GX) 5). On October 2, 2009, 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 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant received the SOR on October 5, 2009; answered it on October 21, 2009; and requested determination on the record without a hearing. DOHA received her response on October 26, 2009. Department Counsel submitted the government's written case on November 23, 2009. On November 24, 2009, 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 December 1, 2009. She did not respond. The case was assigned to me on February 4, 2010.

Findings of Fact

Applicant is a 39-year-old computer programmer employed by a federal contractor since June 2002. She served on active duty in the U.S. Navy from June 1989 to May 1997. She married in September 1989 and divorced in August 2005. Four children were born during the marriage. She received a security clearance in June 2003.

Applicant and her husband filed a petition for Chapter 7 bankruptcy in December 1996, and they received a discharge in April 1997 (SOR ¶ 1.a). The record does not reflect the amount or sources of indebtedness that were discharged.

The SOR alleges 11 delinquent debts totaling about \$22,383. In her answer to the SOR, she admitted all the debts. The table below summarizes Applicant's responses to DOHA interrogatories in June 2009 and her answer to the SOR.

SOR	Debt	Amount	Responses June 09	Answer to SOR
1.b	Unpaid rent	\$1,387	Paying \$50 per month	Will pay by Dec. 2010
1.c	Telephone/cable	\$1,091	Will pay by Dec. 09	Will pay by Dec. 2010
1.d	Telephone/cable	\$867	Will pay by Dec. 09	Will pay by Dec. 2010
1.e	Collection account	\$581	None	Payment agreement; will pay by Nov. 09
1.f	Auto repossession	\$8,687	Will pay by Dec. 2010	Admits; no payments or promise to pay
1.g	Auto repossession	\$1,428	Will pay by Dec. 09	Admits; no payments or promise to pay
1.h-1.j	Student Loans	\$8,160	None	Loans consolidated in July 09 and creditors paid
1.k	Car Insurance	\$143	None	Will pay by Jan. 2010
1.l	Payday loan	\$50	Will pay by Sep.09	Will pay by Jan. 2010

Applicant submitted no documentation of the payment agreement for the debt alleged in SOR ¶ 1.e or payments on any of the debts. She submitted a copy of her

student loan consolidation agreement, but she produced no evidence of any payments on the consolidation loan.

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 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 AG ¶¶ 19(a), (c), and (e), 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.” This mitigating condition is not established because Applicant has not submitted any evidence that the delinquent debts were caused by conditions

beyond her control. Her divorce in August 2005 may have been a circumstance beyond her control, but she produced no evidence that it caused 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). This mitigating condition is not established because Applicant produced no evidence, other than the Chapter 7 bankruptcy in 1996, that she has sought or received financial counseling.

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 produced evidence to show that her student loans alleged in SOR ¶¶ 1.h-1.j were resolved by a consolidation loan. She claimed that she was paying \$50 per month on the debt in SOR ¶ 1.b, but produced no documentary evidence to support her claim. Similarly, she claimed she had a payment agreement for the debt alleged in SOR ¶ 1.e, but she produced no documentary evidence of an agreement or any payments pursuant to the agreement. She has made successive promises to pay her delinquent debts but has not kept her promises. I conclude AG ¶ 20(d) is established for the student loans in SOR ¶¶ 1.h-1.j, but not for the remaining 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 not disputed any of 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 is a mature adult. She served in the U.S. Navy for almost eight years, and she has been employed by a federal contractor for almost eight years. She has a long history of financial problems. She has made repeated promises to resolve her debts, but has not done so. She has made claims of payments and payment agreements but has not supported her claims with documentation. She has resolved the three delinquent student loans, but in doing so she has incurred a substantial new debt, and she has not produced any evidence that she is making timely payments on her consolidation loan. She has been unable to pay the deficiencies on her two vehicle repossessions and has no concrete plan to resolve them.

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.g:	Against Applicant
Subparagraphs 1.h-1.j:	For Applicant
Subparagraphs 1.k-1.l:	Against 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