



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 09-05253
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

July 26, 2011

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 February 26, 2009. On February 23, 2011, 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 March 9, 2011; answered it on April 22, 2011; and requested a hearing before an administrative judge. DOHA received the request on April 25, 2011. Department Counsel was ready to proceed on May 3, 2011, and the

case was assigned to me on May 5, 2011. DOHA issued a notice of hearing on May 11, 2011, scheduling the hearing for June 6, 2011. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 7 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through C, which were admitted without objection. I kept the record open until July 2, 2011, to enable Applicant to submit additional documentary evidence. She timely submitted AX D through G, which were admitted without objection. Department Counsel's comments regarding AX D through G are attached to the record as Hearing Exhibit I. DOHA received the transcript (Tr.) on June 13, 2011.

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 47-year-old human relations specialist employed by a defense contractor since December 2010. (Tr. 37.) She is a college graduate, having received a bachelor's degree in business administration in June 1999. She has worked for defense contractors since March 1994 and has held a security clearance since 1984. (Tr. 11, 25.)

Two of Applicant's coworkers, a retired Army lieutenant colonel and a retired command sergeant major, submitted statements on her behalf. They describe her as dedicated, exceptionally competent, honest, and trustworthy. (AX F; AX G.)

Applicant served on active duty in the U.S. Army from May 1983 to April 1994. She was in the inactive U.S. Army Reserve from April 1994 to September 1999 and the active U.S. Army Reserve from September 1999 to the present. She holds the rank of sergeant first class (pay grade E-7). She was called to active duty for 90 days in June 2008 through September 2008, and she served in support of Operations Iraqi Freedom and Enduring Freedom from July 2009 through February 2010. (Tr. 36.)

Applicant filed a petition for Chapter 7 bankruptcy in November 2000 and received a discharge in February 2001. (GX 5 at 1.) She testified that all her debt payments were current at the time she filed her bankruptcy petition and she had a "great" credit score, but she was financially overextended and filed her bankruptcy petition to avoid defaulting on any of her debts. (Tr. 32, 59.)

Applicant has held a real estate license since 2004. She testified that her experience in real estate motivated her to start acquiring investment properties. She testified that she has "a great passion for the real estate industry." (Tr. 69-70.)

Applicant purchased a rental property as an investment in March 2005, and her monthly mortgage payments were \$1,900 per month. She owes about \$212,000 for this property. It has been rented for most of the time. She fell behind on her payments when the property was vacant for a short time in 2008. (GX 2 at 24.) In April 2011, she

negotiated a “short payoff” for \$5,500, payable in six installments. (AX B.) She had made two of the six installment payments at the time of the hearing. The property is currently rented. (Tr. 46-48.) This debt is alleged in SOR ¶ 1.d.

Applicant purchased her primary residence, where she currently lives, in August 2005 for about \$588,000, borrowing about \$400,000. She refinanced the mortgage, increasing the debt to \$670,000. (GX 2 at 24.) She began falling behind on her payments in 2008. Foreclosure proceedings were initiated on this property but have been suspended. Applicant negotiated a payment plan in April 2009. However, at the time of the hearing, Applicant had not made any payments on this property for about six months, because she applied for a loan modification in February 2011 and was awaiting a decision on her application. (GX 2 at 13-17; Tr. 41-44.) As of the date the record closed, she had not received a modification of her loan and had not made any further payments. (AX D.) This debt is alleged in SOR ¶ 1.b.

Applicant purchased a second investment property in September 2006 for about \$410,000. She borrowed the entire purchase price. She made the \$2,800 mortgage payments for about a year from her own income and savings, and then rented the property for \$1,600 per month. The mortgage on this property was foreclosed in June 2008, but she still owes the lender about \$32,000. (Tr. 39-41.) She is attempting to negotiate a settlement or payment plan for this debt, but she had not reached an agreement as of the date the record closed. (AX D.) This debt is alleged in SOR ¶ 1.a.

In addition to the three delinquent mortgages, the SOR also alleged six other delinquent debts. These debts became delinquent in 2007-2008 and were unresolved when a security investigator questioned Applicant about her delinquent debts in May 2009. (GX 3 at 9-12.)

The three debts alleged in SOR ¶¶ 1.e, 1.f, and 1.i are still unresolved. Applicant wrote letters to the creditors in October 2009, after she was questioned by the security investigator and while she was on active duty and deployed overseas. (GX 2 at 6, 7, 11.) She received no response and “didn’t make another attempt until [she] was in trouble and needed to take care of these debts to secure [her] security clearance.” (Tr. 63.) She then contacted the creditors in SOR ¶ 1.e and 1.f by telephone, but the creditors were unable to locate her account information because the accounts were so old. (Tr. 61.) She tried to telephone the creditor alleged in SOR ¶ 1.i but encountered a telephone message that the creditor could not take her call due to technical problems. (Tr. 62-63.) As of the date the record closed, the creditors in SOR ¶¶ 1.e and 1.f had not located her account information, and she had not made telephonic contact with the creditor in SOR ¶ 1.i. (AX D.) She has not asked any of the credit reporting agencies to verify the validity of these three debts. (Tr. 67.)

Three debts alleged in the SOR were recently resolved. In April 2011, the delinquent \$91 gas bill alleged in SOR ¶ 1.h was paid in full. (AX A.) In July 2011, the delinquent \$430 telephone bill alleged in SOR ¶ 1.c was paid in full. (AX D.) Also in July

2011, the delinquent satellite television bill for \$392.33 alleged in SOR ¶ 1.g was settled for \$280. (AX E.)

Applicant's net monthly income is about \$6,186. She has expenses and debt payments of about \$3,200 per month, leaving her with a net remainder of almost \$3,000. Her debt payments are lower than they were six months ago, because she has not been making payments on the mortgage for her primary residence. Due in part to her reduced debt payments, she has accumulated about \$17,000 in her checking account. (GX 2 at 3; Tr. 53-54.)

Applicant's security clearance application reflects that she vacationed on seven-day winter cruises every year from 2001 through 2007. (GX 1 at 23-24.) She testified that she has not taken any pleasure trips since 2007. (Tr. 57.)

Applicant has stated repeatedly that she is able and willing to resolve the debts alleged in SOR ¶¶ 1.e, 1.f, and 1.i. (Answer to SOR; AX D; Tr. 31-32, 77.) She testified that she had an appointment with a credit counselor for the week following the hearing. (Tr. 64-65.) As of the date the record closed, she had submitted no evidence that she kept that appointment.

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, an administrative judge applies these guidelines 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 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).

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 three delinquent home mortgages in amounts of about \$32,000 (SOR ¶ 1.a), \$53,022 (SOR ¶ 1.b), and \$43,000 (SOR ¶ 1.d); a delinquent telephone bill for \$430 (SOR ¶ 1.c); three delinquent credit card accounts in amounts of about \$2,143 (SOR ¶ 1.e), \$1,113 (SOR ¶ 1.f), and \$1,025 (SOR ¶ 1.i); a delinquent satellite television account for \$392 (SOR ¶ 1.g); and a delinquent gas bill for about \$91 (SOR ¶ 1.h). The SOR also alleges that Applicant filed a Chapter 7 bankruptcy petition in November 2000 and received a discharge in 2001 (SOR ¶ 1.j).

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 problems arose because she purchased three homes between March 2005 and September 2006, including two investment properties, relying on potential rental income from her two investment properties to make the mortgage payments. For one of the investment properties, she borrowed the entire purchase price. Her rental income was insufficient to enable her to pay the three mortgages, her credit card debts, and her living expenses. The following disqualifying conditions are established by the evidence:

AG ¶ 19(a): inability or unwillingness to satisfy debts;

AG ¶ 19(c): a history of not meeting financial obligations; and

AG ¶ 19(e): 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.

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, recent, and did not occur under circumstances making them unlikely to recur. Applicant's track record of overextending herself began in 2000 and continued after her bankruptcy discharge in 2001, as she purchased real estate and gambled on the rental market to make the mortgage payments.

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). Applicant's inability to rent her properties for amounts sufficient to cover her mortgage payments was a condition beyond her control, but her decision to overextend herself and gamble on the real estate rental market was a voluntary decision. The second prong of this mitigating condition also is not established because she took no meaningful steps to resolve her financial difficulties until after she learned from a security investigator in May 2009 that her financial situation raised security concerns. I conclude that this mitigating condition was 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). Applicant testified that she intended to seek financial counseling, but she submitted no evidence

of counseling as of the date the record closed. This mitigating condition is not established.

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 every debt alleged in the SOR. An applicant need only establish a plan to resolve financial problems and take significant actions to implement the plan. There 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. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

On the other hand, evidence of past irresponsibility is not mitigated when payment of debts is motivated by the pressure of qualifying for a security clearance rather than a sense of obligation. Furthermore, an applicant must do more than show that he or she relied on a legally available option such as bankruptcy in order to establish “good faith” within the meaning of this mitigating condition. See ISCR Case No. 06-14521 at 2 (App. Bd. Oct. 15, 2007).

Applicant has not resolved the delinquent mortgages alleged in SOR ¶¶ 1.a and 1.b. She is making payments on a “short payoff” of the mortgage alleged in SOR ¶ 1.c, but she did not resolve this debt until April 2011, even though she fell behind on her payments in 2008. She did not contact the creditors in SOR ¶¶ 1.e, 1.f, and 1.i until she was questioned about the debts in May 2009, and these debts remain unresolved. Because she had neglected her delinquent debts for so long, she had difficulty tracking down her creditors and retrieving her delinquent accounts. She resolved the three small debts in SOR ¶¶ 1.c, 1.g, and 1.h, but only after she received the SOR and realized that her security clearance was in jeopardy. I conclude that AG ¶ 20(d) is not established.

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 applicable because Applicant has not disputed any of the debts alleged in the SOR.

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 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, well-educated adult with a long history of public service. She has worked for contractors for many years, has extensive military service, and has held a clearance for 26 years. She has earned the respect of her coworkers. She was candid and sincere at the hearing.

On the other hand, Applicant also has a history of financially overextending herself. She became overextended because of consumer debts in 2000 and obtained a Chapter 7 bankruptcy discharge in 2001. She took expensive vacations every year from 2001 through 2007. She purchased an investment property in March 2005, counting on the rental market to make the mortgage payments. She purchased her primary residence in August 2005, taking on the obligation of a large mortgage and increasing her debt by refinancing the mortgage. In 2006, she purchased a second investment property, borrowing the entire purchase price and again gambling on the rental market to make the mortgage payments. By 2007, she was again financially overextended, but she took no meaningful actions to resolve her delinquent debts until she realized that her security clearance was in jeopardy.

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.j:

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