



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



In the matter of:)
)
) ISCR Case No. 09-07569
)
)
Applicant for Security Clearance)

Appearances

For Government: Candace Lei Garcia, Esquire, Department Counsel
For Applicant: *Pro se*

January 31, 2011

Decision

RIVERA, Juan J., Administrative Judge:

Applicant acquired 14 debts totaling over \$38,000 that have been delinquent for a number of years. She presented limited documentary evidence to establish financial responsibility in the acquisition of the debts, good-faith efforts in the resolution of the debts, or a current track record of financial responsibility. There are not clear indications that her financial problems are being resolved or are under control. Clearance denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on July 30, 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, as revised.

On July 16, 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

Applicant answered the SOR on August 9, 2010. She elected to have her case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM), dated September 16, 2010, was provided to her by cover letter dated September 17, 2010. Applicant received her copy of the FORM on September 27, 2010. Applicant was given 30 days from the date she received the FORM to submit any objections and information in mitigation or extenuation. She did not respond, and the case was assigned to me on November 8, 2010, to determine whether a clearance should be granted or denied.

Findings of Fact

Applicant admitted 15 of the 16 factual allegations in the SOR. She denied SOR ¶ 1.o, claiming she paid this debt. Her admissions are incorporated as findings of fact. After a thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 44-year-old security officer employed by a defense contractor since November 1998. Applicant stated she was granted access to classified information at the secret level shortly after she was hired. There is no evidence she has ever compromised or caused others to compromise classified information. Before she started working for her current employer, she worked for another Government agency, but she provided no information about the duration of that job. Applicant is single and has no children.

In her SCA, Applicant disclosed that she filed for Chapter 7 bankruptcy protection in 2005, and was discharged of approximately \$37,000 in liabilities. She also disclosed that in the last seven years she had been over 180 days delinquent on some debts, that she was currently 90 days delinquent on other debts (including a \$252,000 mortgage); that she defaulted on a \$12,000 loan, and that she had some delinquent debts which were charged off.

In September 2009, Applicant was interviewed by a Government background investigator about her delinquent debts and her overall financial situation. During the interview, she explained that she and another woman purchased a home together. In 2001, the other woman moved away and she became responsible for the payment of the mortgage and other debts. She sold the home in October 2002. However, she had to file for Chapter 7 bankruptcy protection, because she was making both the mortgage and her apartment rent payments, and she became delinquent on many of her debts.

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

She claimed that after her February 2005 bankruptcy discharge she did not have any financial problems until late 2008.

Applicant told the investigator that, in late 2008-early 2009, she developed several health issues that caused her to incur numerous medical expenses. Additionally, her medical issues forced her to be out of work during six weeks from September to October 2009. Applicant indicated her limited income was not sufficient to pay for her medical expenses, day-to-day living expenses, and her accrued debts. She attributed her current financial problems to her medical problems and her period of underemployment. At the September 2009 interview, Applicant averred she was now working regularly and anticipated getting control of her financial situation, and that she intended to pay her delinquent debts as soon as possible.

A review of Applicant's April 2010 credit report (FORM Item 7) shows that Applicant disputed one debt not alleged in the SOR; she is current on a modified mortgage payment agreement; and she settled and paid for less than the amount owed on some small debts not alleged in the SOR. Applicant claimed she paid the debt alleged in SOR 1.0 in 1995. The debt is not listed in the April 2010 SOR. I find this allegation for Applicant.

Applicant's April 2010 personal financial statement indicates a monthly income of approximately \$2,000 (apparently from a medical stipend). Her monthly expenses were: \$240 for groceries; \$64 for utilities; \$1,100 for car expenses; and \$350 for medical expenses. She listed the following monthly debt payments: \$1,755 (Apparently this is a mortgage payment on a \$250,000 mortgage. The April 2010 credit report shows Applicant is current on a modified mortgage payment arrangement.); \$530 for a car note payment (owing \$6,000); \$560 (on a \$20,000 debt); \$105 (on a \$1,000 debt); and \$10 (on a \$67 debt). It is not clear from the sparse available information whether some of the SOR debts are included in the debts she was paying.

Applicant presented no updated information concerning her monthly income, living expenses, or the debts she pays on a monthly basis. In her April 2009 personal financial statement, Applicant implied she was living with someone who may be contributing financially to the household expenses. However, she provided no documentary evidence to support the implication. Overall, Applicant presented little or no documentary evidence of any debt payments, contacts or negotiations with creditors, debt disputes, or of any efforts to otherwise resolve her delinquent SOR debts since she acquired them.

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.

The SOR alleges, and Applicant admitted, she acquired 14 debts totaling nearly \$38,000 that have been delinquent for a number of years. 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 sparse favorable evidence fails to fully raise the applicability of any mitigating condition. Her financial problems are ongoing and the evidence fails to show they occurred under such circumstances that they are unlikely to recur. AG ¶ 20(a) does not apply.

Applicant presented some evidence to establish circumstances beyond her control contributing to her inability to pay her debts, e.g., her health problems and her period of underemployment. Notwithstanding, Applicant's documentary evidence is not sufficient to show that she acted responsibly in the acquisition of her debts, that she made good-faith efforts to resolve her debts, and that she has a track record of financial responsibility. AG ¶¶ 20(b) and (d) do not apply.

AG ¶ 20(c) does not apply because there are not clear indications that her financial problems are being resolved or under control. She presented no evidence that she received financial counseling. Considering the number of delinquent debts, the date the debts were acquired, the aggregate value of the debts, and the limited documentary evidence of efforts to resolve her legal financial obligations, Applicant's information is insufficient to establish that her financial problems are unlikely to recur. The remaining mitigating conditions are not reasonably raised by the facts in this case.

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 receives credit for her work history for a Government contractor. Apparently, she was held a security clearance since 1998, with no adverse incidents or security concerns.

Considering the record as a whole, I find that security concerns remain about Applicant's current financial responsibility, reliability, and judgment. Applicant's sparse documentary evidence failed to show financial responsibility in the acquisition of the

debts, good-faith efforts to resolve her financial problems in a timely manner, or a current track record of financial responsibility. The sparse mitigating record evidence fails to convince me of Applicant's suitability for a security clearance. Applicant failed to mitigate the security concerns arising from her financial considerations.

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:	AGAINST APPLICANT
Subparagraphs 1.a - 1.n, and 1.p:	Against Applicant
Subparagraph 1.o:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant eligibility for a security clearance to Applicant. Clearance is denied.

JUAN J. RIVERA
Administrative Judge