



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



In the matter of:)
)
) ISCR Case No. 09-08365
)
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

November 30, 2010

Decision

RIVERA, Juan J., Administrative Judge:

Applicant owes 12 delinquent debts, totaling near \$44,000, all of which are unresolved. She established circumstances beyond her control that contributed to her financial problems. Notwithstanding, she presented no documentary evidence to show 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 no 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 on July 20, 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.

On March 22, 2010, DOHA issued Applicant a Statement of Reasons (SOR) which specified the basis for its decision - security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the adjudicative guidelines (AG).²

Applicant answered the SOR on April 20 and May 20, 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 July 1, 2010, was provided to her by transmittal letter dated July 7, 2010. Applicant received her copy of the FORM on July 15, 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 September 21, 2010, to determine whether a clearance should be granted or denied.

Procedural Issue

In the FORM, the Government moved to amend the SOR by deleting Paragraph 2, the Guideline E allegations, because it was inadvertently included in the SOR due to a clerical error. Applicant did not object, and I granted the motion as requested. (FORM, at pp. 3-5).

Findings of Fact

Applicant admitted SOR allegations 1.b through 1.i, and 1.k. She denied the total amount alleged as owed in ¶¶ 1.c, 1.d, and 1.i. She denied SOR allegations 1.a, 1.j, and 1.l. 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 56-year-old receptionist employed full-time by a placement agency (a defense contractor) since March 2009. She married her first spouse in June 1972, and divorced him in July 1988. She married her second spouse in January 1997, and they were divorced in November 2007. She has three children, ages 37, 34, and 20. From August 2001 until December 2003, she attended a technical college and received an associate's degree. She financed her education through student loans that are currently in deferment.

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.

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

According to her July 2009 security clearance application, Applicant was unemployed from August 2001 until December 2004; employed, but sometimes underemployed, from December 2004 until December 2007; unemployed from December 2007 until June 2008; employed part-time from June 2008 until August 2008; and unemployed again from August 2008 until March 2009. She started working for her current employer in March 2009. This is her first time applying for a security clearance.

In her security clearance application, Applicant disclosed that she was 90 days delinquent on some debts, that she had defaulted on a loan, and that her home was pending either a short sale or foreclosure. Applicant bought the home in August 2006 with her ex-husband. She explained that although he cosigned the loan, he never lived in the home and the home was her sole responsibility. She defaulted on her mortgage in December 2008. She stated she had been in contact with the mortgage company and initially negotiated a reduction on her mortgage payments. She then tried to modify her mortgage, and later to sell the home on a short sale, without success.

In October 2009, Applicant was questioned by a background investigator about her delinquent loans and her overall financial situation. During the interview, she explained that her financial problems were the result of her periods of unemployment and underemployment, her then husband losing his job in early 2007, and their divorce in November 2007. Apparently, she and her then husband were separated before or around August 2006, since she lived alone in the home she purchased. She did not explain how his period of unemployment adversely affected her financial situation.

Applicant received around \$1,200 per month in unemployment benefits from about December 2007 until September 2008. She claimed that before her unemployment benefits ran out, she was current on all her debts. She had to stop making payment on her debts when her unemployment benefits ended. Because she could not find employment in her state, she was forced to move to another state to look for a job.

Applicant stated that she attempted to consolidate her debts, but she was told she was not making enough money to participate in a consolidation program. She has received no financial counseling. She also stated that she had a budget, but failed to present documentary evidence to show she had established and was following a budget. The only person who knows about her financial problems is a close friend. During her October 2009 interview, Applicant indicated her intention to file for Chapter 7 bankruptcy protection in the near future. At the time, she did not have the money to pay the attorney fees. She provided no documentary evidence to show that she contacted an attorney or that she filed bankruptcy.

In January 2010, DOHA requested Applicant to answer a set of financial interrogatories asking about the status of nine delinquent debts, most of which are alleged in the SOR. In her response (Item 11), she failed to address any of the nine delinquent debts. She stated that she did not have the ability to pay her delinquent debts, and that she intended to file bankruptcy as soon as she had the money to pay for

the legal fees. She also indicated that she had no current information on any of her debts because she had to leave her home over a year ago.

In her answer to the statement of reasons, Applicant indicated she currently makes \$9.25 an hour, however, she does not work 40 hours a week consistently, and sometimes she only works 32 hours a week. She also stated that she provides financial support for her 20-year-old son. Applicant presented no additional information concerning her current monthly income, living expenses, or the debts she pays on a monthly basis. She failed to present any 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.

The SOR alleges 12 delinquent debts, totaling near \$44,000, all of which are her delinquent debts as established by her admissions and her credit reports. Applicant denied SOR ¶¶1.a, 1.j, and 1.l, and stated these were not her accounts. However, she failed to present any evidence of efforts to ascertain the validity of the debts or to dispute them. Based on the credit reports, I find the 12 alleged SOR delinquent debts are Applicant's unresolved delinquent accounts. Additionally, Applicant's prior state of residence obtained a \$4,135 civil judgment against her in October 2009, to recover for unauthorized unemployment compensation benefits.

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 the evidence established that Applicant owes 12 delinquent debts, totaling near \$44,000, all of which are unresolved. 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 her evidence fails to show they occurred under such circumstances that they are unlikely to recur and do not cast doubt on Applicant's current reliability, trustworthiness, or good judgment. 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 periods of unemployment and underemployment, her then spouse's period of unemployment, her divorce, and her inability to find a job. Notwithstanding, Applicant's documentary evidence is not sufficient to corroborate many of her claims and show that she acted responsibly in the acquisition of her debts, that she made good-faith efforts to resolve her debts, or 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 no clear indications that her financial problem is being resolved or is under control. There is insufficient evidence about her current income, living expenses, and existing debts to make an informed judgment about her financial situation. She has not participated in financial counseling, and there is no documentary evidence she follows a budget. Considering the number of

delinquent debts, the date the debts were acquired, the aggregate value of the debts, and the limited 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 for a government contractor. She is a good mother and provides financial support for her son. She moved to another state seeking better employment opportunities and found a job. These factors show some responsibility.

Notwithstanding, security concerns remain about Applicant's current financial responsibility. Applicant's 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. Her failure to address any of the SOR debts indicates she is probably financially overextended. The sparse mitigating record evidence fails to convince me of Applicant's suitability for a security clearance. For all these reasons, I conclude 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.l:	Against Applicant
Paragraph 2, Guideline E:	Withdrawn per Government motion.
Subparagraph 2.a:	Withdrawn

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