



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 10-09700
)
 Applicant for Security Clearance)

Appearances

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

12/19/2011

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 June 6, 2010. On July 5, 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 July 12, 2011; answered it on July 22, 2011; and requested a hearing before an administrative judge. Department Counsel was ready to proceed on August 23, 2011, and the case was assigned to me on August 26, 2011.

DOHA issued a notice of hearing on September 27, 2011, scheduling it for October 20, 2011. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified but called no witnesses and presented no documentary evidence. I kept the record open until November 5, 2011, to enable her to submit documentary evidence. DOHA received the transcript (Tr.) on October 28, 2011.

At Applicant's request, I extended the deadline for submitting documentary evidence until December 9, 2011. She timely submitted AX A, consisting of 13 pages of medical records, which were admitted without objection. Department Counsel's comments regarding AX A are attached to the record as Hearing Exhibit I.

Findings of Fact

The SOR alleges 23 debts totaling about \$23,067. Two are duplicates, reducing the total to \$22,880. In her answer to the SOR, Applicant wrote "I agree" after every alleged debt listed in the SOR. However, during an interview with a security investigator in July 2010, she disputed all the medical debts listed on her credit reports, asserting that they were covered by Medicaid. (GX 2 at 6.) For the purposes of this decision, I have treated all the medical debts as disputed and all the non-medical debts as admitted.

Applicant is a 38-year-old electrical designer employed by a defense contractor. She has worked for her current employer since January 2009. She was a temporary federal employee from January to May 2000 and then worked at various non-governmental jobs from May 2001 to June 2003. She was a stay-at-home mother and a student from July 2003 until she began her current employment. (Tr. 29-30.) She has never held a security clearance.

Applicant attended a technical school from May 2004 to February 2007, receiving an associate's degree in computer networking, and from February 2007 to October 2008, receiving a second associate's degree in architectural drafting and design technology. Her June 2011 credit report reflects \$43,918 in student loans, which are deferred and not alleged in the SOR. (GX 3 at 2-3.)

Applicant was seriously injured in December 1992, when she was a pedestrian and hit by a car. She suffered a fractured skull and severe head trauma. Her medical records reflect that her cognitive ability was reduced as a result of her injuries. A neuropsychologist found "demonstrated compromise in encoding and retrieving information." She suffered "mild compromise of auditory attention and more moderate to marked compromise of immediate recall of spoken information." The neuropsychologist strongly recommended that she be transferred to a rehabilitation program "for intensive evaluation to more precisely define the extent of her current learning and memory difficulties and better determine the extent of any disorder of executive functioning." (AX A at 12-13.) Applicant testified that she was hospitalized for ten days and in rehabilitation for two weeks.

Applicant testified that her memory is improving but she still has difficulties. She copes by writing things down, both at home and at work. (Tr. 28, 57.) She also testified that she was tested for reading comprehension in 1998 and found to have the reading comprehension of a seventh grade student. She did not provide any documentary evidence of this testing. (Tr. 61.)

Applicant married in May 1998 and separated in May 2005. She has four children, ages 15, 13, 8, and 3. She receives child support of \$228 per month for her oldest child, \$50 per month for her youngest, and is the sole support of the other two. (GX 2 at 10; Tr. 31-32.) She testified that her injuries caused her to make bad decisions. She married “an unreliable man,” and then became involved with “another man of negative character.” (Tr. 24.)

Applicant and her four children moved from another state at her own expense when she was hired by her current employer, not realizing that the cost of living at her new job location was considerably higher than at her former residence. Her delinquent debts arose because of her increased living expenses and her lack of expertise in budgeting. She has since cut her living costs, but she still has no extra money to repay her delinquent debts. She is looking for other sources of income to supplement her salary. (Tr. 25-26.) (Tr. 25.)

Applicant testified that before moving to her current job location, she received public assistance, and her medical expenses and those of her children were covered by Medicaid. (GX 2 at 6-7.) She now has medical insurance through her current employer. (Tr. 36; GX 2 at 11.)

The evidence concerning the delinquent debts alleged in the SOR is summarized below.

SOR ¶ 1.a (judgment--\$2,324). Applicant’s employer provided her with housing for one month after she was hired. She then rented a house for \$1,195 per month. The house had oil heat, costing \$400-500 per month. In the fall of 2009, Applicant traveled to her previous place of residence for her brother’s wedding, and during her return trip she hit a deer, seriously damaging her car and stranding her for three days. These unexpected expenses made her unable to pay her rent. To avoid being evicted, she put her property in storage, and she and her children moved into an extended-stay hotel. In January 2010, her former landlord obtained a \$2,324 judgment against her for early termination of the lease. The judgment is unsatisfied. (GX 3 at 1; Tr. 40-42.)

SOR ¶ 1.b (modeling classes--\$545). Applicant enrolled her daughter in modeling classes during the summer of 2009, with some financial assistance from her mother-in-law. She withdrew her daughter from the classes in June 2009 because they were too expensive, but she still owed a balance on the contract, which she could not afford to pay. The debt is unresolved. (GX 3 at 1; Tr.43.)

SOR ¶¶ 1.c-1.d (medical bills--\$173 and \$304). During a security interview in July 2010, Applicant disputed all the delinquent medical bills listed on her credit report, on the ground that she and her children were covered by Medicaid at her previous residence. However, these two medical bills were incurred after she moved and started her current job, and they are unresolved. (GX 2 at 6; GX 3 at 1; Tr. 43-44.)

SOR ¶ 1.e (medical bill--\$72). This medical bill was incurred in December 2007, while Applicant lived at her previous residence, where she testified that she was covered by Medicaid. She has not disputed it with the credit reporting agencies. It is unresolved. (GX 2 at 6; GX 3 at 1; Tr. 43-44.)

SOR ¶ 1.f (catalog purchase--\$115). Applicant made catalog purchases that she could not afford. The debt was charged off in May 2005, and it is unresolved. (GX 3 at 1; Tr. 45.)

SOR ¶¶ 1.g and 1.h (bad checks--\$260 and 525). Applicant wrote these checks to a department store in December 2007 to buy Christmas gifts for her children, but she had insufficient funds in her account to cover them. She offered to resolve the debts with monthly \$20 payments, but her offer was refused. The debts are unresolved. (GX 2 at 6; GX 3 at 2; Tr. 45-47.)

SOR ¶ 1.i (credit card--\$1,186). This debt is a delinquent credit card account that was referred for collection in June 2007. It is unresolved. (GX 3 at 2; Tr. 28.)

SOR ¶ 1.j (student loan--\$1,093). Applicant attended classes funded by a grant, but it was converted into a loan because of her low grades. It is unresolved. (GX 3 at 2; Tr. 49.)

SOR ¶ 1.k (bank overdraft--\$736). Applicant testified that this overdraft was the result of a bank error, but it was never resolved. (GX 4 at 4; Tr. 50.)

SOR ¶¶ 1.l, 1.m, 1.p (medical bills--\$350, \$304, and \$173). Applicant's credit reports reflect that these three medical bills were incurred after she moved to her current residence. They are unresolved. (GX 2 at 6; GX 4 at 8-9.)

SOR ¶ 1.n (medical bill--\$72). This bill is a duplicate of the debt alleged in SOR ¶ 1.e. (Tr. 16.)

SOR ¶¶ 1.o, 1.q, and 1.r (medical bills--\$11,560, \$333, and \$275). These medical bills were incurred while Applicant lived at her previous residence, where she claimed that she was covered by Medicaid. She has not disputed them with the credit reporting agencies. They are unresolved. (GX 2 at 6; GX 4 at 9-11.)

SOR ¶ 1.s (catalog purchase--\$115). This debt is a duplicate of the debt alleged in SOR ¶ 1.f. (Tr. 52.)

SOR ¶ 1.t (charge account--\$259). This debt arose from a bad check uttered to a department store. It was referred for collection in December 2007, and it is unresolved. (GX 4 at 8; Tr. 52.)

SOR ¶ 1.u (telephone bill-\$672). This is an unpaid telephone bill from Applicant's previous residence. It does not appear on her credit reports, but she disclosed it on her security clearance application and admitted it in her response to the SOR and at the hearing. (GX 1 at 51; Tr. 53.)

SOR ¶¶ 1.v and 1.w (catalog purchases--\$936 and \$685). These catalog purchases do not appear on Applicant's credit reports, but she disclosed them on her security clearance application and admitted them in her answer to the SOR and at the hearing. (GX 1 at 52; Tr. 52-53.)

Applicant submitted a personal financial statement on March 2011 at DOHA's request. She reported net monthly income of about \$2,065 (including \$228 in child support), expenses of \$2,532, and a monthly shortfall of about \$468. (GX 2 at 10.) As of the date of the hearing, she was receiving an additional \$50 per month in child support, and her day care expenses had been reduced from \$560 to about \$360, but her expenses still exceed her income. (Tr. 31-32, 38.) She has never sought or received financial counseling. (Tr. 58.)

Applicant contributes to a retirement account in her current job. She estimated that she has about \$10,000 in her retirement account. (Tr. 40.) She has taken two \$1,000 loans from her retirement account, which she is repaying at the rate of about \$64 per month. (Tr. 55.)

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 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 history is established by her credit reports, her admissions in her security clearance application, her responses to the SOR, and her testimony at the hearing. The evidence establishes three disqualifying conditions under this guideline: 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").

The record reflects that the delinquent debt alleged in SOR ¶ 1.n is the same debt as alleged in SOR ¶ 1.e; and the delinquent debt alleged in SOR ¶ 1.s is the same debt as alleged in SOR ¶ 1.f. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). Thus, I have resolved SOR ¶¶ 1.n and 1.s in Applicant's favor.

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 did not occur under 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." AG ¶ 20(b). Both prongs, *i.e.*, conditions beyond the person's control and responsible conduct, must be established. If Applicant suffered a loss of cognitive and executive functioning as a result of her injury in December 1992, it would be a condition beyond her control. However, the evidence does not establish that she currently suffers from a loss of cognitive or executive functioning that would account for her financial disarray. Applicant's unemployment appears to have been a voluntary choice, motivated by desire to raise her children and obtain an education. Her marital breakups and her car accident involving a deer were circumstances beyond her control. However, she has not acted responsibly. She has not investigated the validity of many debts alleged in the SOR, and she has taken no meaningful steps to dispute or resolve any of the debts alleged in the SOR. In spite of her limited income, she purchased Christmas gifts she could not afford, contracted for modeling lessons for her daughter, and incurred substantial debts through catalog purchases. I conclude that this mitigating condition is 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 has not sought or received financial counseling. She is financially unsophisticated and would benefit from financial counseling. She is facing the likelihood of an additional \$43,918 in additional delinquent debt when the deferment of her student loans terminates. Her financial situation is not under control. I conclude that AG ¶ 20(c) 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). Applicant does not have a good grasp of her financial situation and no concrete plan for financial stability. Thus, 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). Applicant disputed some the medical debts in her July 2010 security interview and at the hearing, but she presented no documentary proof that the debts were covered by Medicaid. She has not contacted the creditors, Medicaid authorities, or the credit reporting agencies to determine the validity of the debts. I conclude that this mitigating condition is not established.

Whole-Person Concept

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. In applying 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.

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 was very candid and sincere at the hearing, but she was not well prepared for the hearing and was vague and uncertain about many of her debts. The record raises the possibility that she suffered some loss of cognitive and executive functioning as a result of her injuries in 1992, but there is no medical evidence of treatment or evaluation after her release from the hospital in January 1993. She is functioning well enough to have obtained two associate's degrees in February 2007 and October 2008, but she has not yet put her financial house in order.

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.m:	Against Applicant
Subparagraph 1.n:	For Applicant
Subparagraphs 1.op-1.r:	Against Applicant
Subparagraph 1.s:	For Applicant
Subparagraphs 1.t-1.w:	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