



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



In the matter of:)	
)	
-----)	ISCR Case No. 10-01372
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

December 15, 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 a security clearance application on August 13, 2009. On June 17, 2010, 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 June 22, 2010; answered it on July 6, 2010; and requested a hearing before an administrative judge. DOHA received the request on July

9, 2010. Department Counsel was ready to proceed on August 20, 2010, and the case was assigned to me on August 25, 2010. DOHA issued a notice of hearing on September 2, 2010, scheduling it for September 22, 2010. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified but presented no witnesses or documentary evidence. I kept the record open until October 8, 2010, to enable her to submit documentary evidence. She timely submitted Applicant's Exhibits (AX) A through D, which were admitted without objection. Department Counsel's comments regarding AX A through D are attached to the record as Hearing Exhibit I. DOHA received the transcript (Tr.) on September 30, 2010.

Findings of Fact

In her answer to the SOR, Applicant admitted all the allegations except SOR ¶ 1.h. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 27-year-old employee of a defense contractor. She graduated from college in May 2005 with a bachelor's degree in economics. She is single and has a four-year-old daughter, born in November 2005. She did not look for work after graduating from college, because she was pregnant and decided to live with her mother and give her mother emotional support after her brother's death. (Tr. 25-27.)

Applicant worked as a tax preparer from January to April 2006, and then she was unemployed until April 2007, when she began an apprenticeship with her current employer. Her apprenticeship evaluation for the period ending on August 31, 2010, rated her as "excellent," but commented that "she needs to understand that her unattended times should remain focused on [her employer's] functions." (AX B.) She has never held a security clearance.

Applicant admitted 10 of the 11 delinquent debts alleged, totaling about \$63,336 and including \$53,568 in student loans (SOR ¶¶ 1.d-1.g). Her other delinquent debts are a delinquent telephone bill for \$463 (SOR ¶ 1.a), a delinquent credit card account for \$7,324 (SOR ¶ 1.c), an unsatisfied \$710 judgment for unpaid rent (SOR ¶ 1.h), and four medical bills for \$335, \$431, \$320, and \$185 (SOR ¶¶ 1.b, 1.i, 1.j, and 1.k). Her admissions are corroborated by her credit reports dated April 3, 2010, and October 3, 2009. (GX 4 and 5.)

Applicant denied the judgment for unpaid rent. She testified at the hearing that she paid it, but she did not produce any documentation to support her testimony. (Tr. 22.)

Applicant contacted the credit card debtor alleged in SOR ¶ 1.c and was offered a settlement for less than half of the balance due, but she rejected it, thinking it was a scam. She has not contacted any of her other creditors (Tr. 32-33.) She has not sought financial counseling. (Tr. 40.)

In December 2009, Applicant told a security investigator that she became overwhelmed with her debts and stopped paying them until she could decide what to do. She told the investigator she intended to contact her creditors within 60 days to set up repayment plans. (GX 3 at 5.) She had no payment plans in place as of the date of the hearing.

Applicant submitted a personal financial statement in March 2010, reflecting gross annual income of about \$44,000, and net monthly income of about \$2,380, including \$180 in child support. Her monthly living expenses are about \$2,810, and she pays \$420 per month on her car loan, leaving her a monthly shortfall of about \$850. (GX 2 at 3.)

At the hearing, Applicant testified that the father of her daughter had stopped paying child support, thereby increasing her monthly shortfall to about \$1,030. (Tr. 24, 43.) After the hearing, she produced a copy of a show-cause order directed to the child's father. (AX C.)

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, 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 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 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 admissions, corroborated by her credit reports, establish all the allegations except SOR ¶ 1.h. She denied the judgment for unpaid rent alleged in SOR ¶ 1.h, but she submitted no documentary evidence to refute the credit reports. Her financial history establishes two disqualifying conditions under this guideline: AG ¶ 19(a) “inability or unwillingness to satisfy debts”) and AG ¶ 19(c) (“a history of not meeting financial obligations”). Thus, the burden shifted 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 debts are ongoing, numerous, 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. Applicant encountered some circumstances beyond her control. The father of her child stopped paying child support and she was unable to find employment. On the other hand, she voluntarily chose to live with her mother after graduating from college instead of seeking employment. Furthermore, she has not acted responsibly, because she has done virtually nothing to resolve her debts even though she has been employed since April 2007.

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 has not sought 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). The concept of good faith “requires a showing that a person acts 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). This mitigating condition is not established because Applicant has made virtually no effort to resolve her delinquent debts. She claimed that she paid the debt alleged in SOR ¶ 1.h, but she presented no documentation to support her claim.

Security concerns under this guideline also can be mitigating 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, except for the debt alleged in SOR ¶ 1.h, and she has presented no documentation to support her dispute.

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 guideline, but some warrant additional comment.

Applicant is a well-educated, intelligent young woman. She was candid and sincere at the hearing. In spite of a college degree in economics, she appears to have no concept of financial management. Her reaction to her financial problems has been passive. She has no plan for achieving financial stability.

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.k: **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