



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 11-00365
)	
Applicant for Security Clearance)	

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: David P. Price, Esq.

03/27/2013

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on September 24, 2010. On November 14, 2012, the Defense of Defense (DOD) sent her a Statement of Reasons (SOR), alleging security concerns under Guideline F. DOD 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 DOD on September 1, 2006.

Applicant received the SOR on November 20, 2012; answered it on December 4, 2012; and requested a hearing before an administrative judge. Department Counsel was ready to proceed on January 18, 2013, and the case was assigned to me on January 23, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 29, 2013, scheduling it for February 27, 2013. I convened the

hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through E, which were admitted without objection. I kept the record open until March 15, 2013, to enable Applicant to submit additional evidence. She timely submitted AX A.1.a.(3), AX E.4, and AX F,¹ which were admitted without objection. DOHA received the transcript (Tr.) on March 12, 2013.

Findings of Fact

In her answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a and 1.d. She denied the allegations in SOR ¶¶ 1.b-1.c and 1.e-1.i. In her responses to DOHA interrogatories dated September 26, 2012, and at the hearing, she denied SOR ¶ 1.d. (Tr. 42; GX 2 at 94.²) Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 44-year-old administrative assistant employed by a defense contractor since September 2010. She has worked for defense contractors since May 2007. She was a co-owner and business manager for a construction company that she and her husband owned and operated from February 2000 to May 2007. She has never held a security clearance.

Applicant married in July 1989. She and her husband had two sons, born in 1990 and 1995. She testified that her husband began using drugs around 1995. He became violent, and he began associating with undesirable people. They separated in March 2005, and divorced in August 2006.³ (Tr. 69; AX C.1.)

Applicant's husband was ordered to pay child support and spousal support totaling \$2,400 per month. (Tr. 29.) Her husband did not comply with the support order and, by November 2008, he was \$20,453 in arrears. She agreed to reduce his support obligation, and he was ordered to pay \$365 per month in child support, \$900 per month in spousal support, and \$135 per month toward the arrearage; (Tr. 30; AX C.2.) As of the date of the hearing, the arrearage had increased to \$63,398, and a court hearing was scheduled in March 2013, to deal with the arrearage. (AX C.3 and AX C.4.)

When Applicant was interviewed by a security investigator in October 2010, she discovered that her ex-husband had incurred numerous business and personal debts without her knowledge, using accounts that he had established in her name during their marriage. (GX 2 at 97-100.) She contacted each of the creditors alleged in SOR ¶¶ 1.b

¹ AX A through E each consisted of multiple documents, labeled with additional numbers and letters. The labeling of AX A.1.a.(3) and AX E.4 incorporated the additional exhibits into the groups of exhibits marked as AX A and AX E. AX F was a new group of exhibits admitted after the hearing.

² The pagination of GX 2 begins with page 92.

³ Applicant's security clearance application (GX 1 at 21) reflects that she was married in July 1987 and divorced in March 2007, contrary to the information recited in her divorce decree (AX C.1).

through 1.l, determined that her ex-husband had incurred the debts without her knowledge or approval, and notified the creditors or collection agencies that the debts were disputed. (Tr. 61.) When Applicant disputed the debts alleged in SOR ¶¶ 1.c, 1.f-1.h, 1.j, and 1.l, she did not retain her dispute records, because she did not realize their security significance. Department Counsel conceded that her testimony regarding her basis for disputing these debts was credible. (Tr. 73-74.) After she retained an attorney to assist her, she began saving the dispute records. (Tr. 34, 64.) At the hearing, she submitted documentation of her disputes of the debts alleged in SOR ¶¶ 1.b, 1.d, 1.e, and 1.k. (AX A(1), A(2), A.1.a.-A.1.l.)

Applicant submitted several updated credit reports: Equifax dated January 14, 2013; TransUnion dated February 12, 2013; Equifax dated January 17, 2013; and Experian dated February 18, 2013. (AX A(3)-(6).) None of the debts alleged in SOR ¶¶ 1.c-1.l are reflected on these credit reports. The debt alleged in SOR ¶ 1.b was deleted by Equifax, reported as delinquent but disputed by TransUnion, and is not reflected on the Experian report. (AX A(3) at 1; AX A(4) at 3; AX A(6); Tr. 42-47.)

The debt alleged in SOR ¶ 1.a is reflected in Applicant's January 2013 Equifax credit report as charged off and referred for collection. Applicant admitted this debt, which was for a cell phone account on which she cosigned for her sister. She was unaware that her sister had allowed the account to become delinquent. At the hearing, Applicant submitted an affidavit from her sister in which her sister promised to resolve the delinquency. (AX A.1.a (2).) At the hearing, Applicant testified that she would pay the debt if her sister did not resolve it. (Tr.40.) On March 19, 2013, Applicant paid the debt. (AX A.1.a.(3).)

Applicant did not dispute the delinquent telephone bill for \$116 alleged in SOR ¶ 1.i. At the hearing, she submitted evidence that the account was current. (AX A.1.i(2); Tr. 45.)

In addition to the debts alleged in the SOR, Applicant resolved a judgment entered for \$6,948 in October 2006, a judgment for \$3,085 in January 2007, a lien for \$191 in May 2010, a judgment for \$990 in March 2011, and an attorney's lien from her divorce in August 2006. (AX B.1-B.5.)

At the hearing, Applicant submitted a personal financial statement (PFS) reflecting net monthly income of \$5,073, expenses of \$2,835, debt payments of \$3,363, and a remainder of \$1,710. (AX A.(7).) She testified that she included alimony and child support of \$1,400 in her net monthly income, even though her ex-husband had not been paying it. Her net monthly income includes rental income of \$1,600 derived from renting out rooms in her house. (Tr. 37-38.) Even without the \$1,400 in alimony and child support, she has a net monthly remainder of about \$310. She has about \$4,095 in her retirement account and a sufficient balance in her checking account to meet all her financial obligations. (AX F.)

Applicant's performance appraisals and testimonials from a supervisor, a co-worker, and a friend establish that she has a reputation for being a dependable, dedicated, and hard-working employee, a team player, a devoted mother, and a person of high integrity and honesty. (AX D and E.) Her program manager, who interacts with her daily, describes her as dedicated, honest, reliable, and trustworthy. He is familiar with her financial issues and has been impressed with her swift responses to resolve them. In his opinion, she is "one tuff (sic) individual." (AX E.4.)

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 and 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 that 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 12 delinquent debts. 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The following disqualifying conditions under this guideline are potentially applicable: AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations"). I conclude that AG ¶ 19(a) and (c) are established by Applicant's admissions in response to the SOR and at the hearing.

The following mitigating conditions are potentially relevant:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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.

AG ¶ 20(a) is established. Although Applicant was confronted with numerous delinquent debts, some of which were resolved only recently, her financial problems arose under circumstances making them unlikely to recur. She is divorced from her irresponsible husband and appears to have learned her lesson after helping her irresponsible sister. Her response to her financial problems has demonstrated her current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) is established. Her marital breakup, the fraudulent and irresponsible conduct of her ex-husband, and the irresponsible conduct of her sister were conditions beyond her control, and she has dealt with the consequences of their conduct promptly and responsibly.

AG ¶ 20(d) is established by Applicant's prompt resolution of the debts alleged in SOR ¶¶ 1.a and 1.i. AG ¶ 20(e) is established by her successful disputes of the debts alleged in SOR ¶¶ 1.b-1.h and 1.j-1.l.

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 candid and sincere at the hearing. She took prompt steps to resolve all the debts in the SOR as soon as she learned about them during questioning by a security investigator in October 2010. She has a reputation as a dependable, dedicated, hard-working employee and a devoted mother. She is meeting all her current financial obligations.

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 mitigated the security concerns based on financial considerations. Accordingly, I conclude she has 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): FOR APPLICANT

Subparagraphs 1.a-1.i:

For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

LeRoy F. Foreman
Administrative Judge