



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



In the matter of:)
)
) ISCR Case No. 11-01062
)
Applicant for Security Clearance)

Appearances

For Government: Stephanie C. Hess, Esquire, Department Counsel
For Applicant: *Pro se*

January 3, 2012

Decision

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate security concerns arising under Guidelines F (Financial Considerations). Clearance is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on June 25, 2010. On May 6, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F. DOHA acted under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue Applicant's security clearance. On June 24, 2011, Applicant answered the

SOR and requested a hearing. The case was assigned to me on October 20, 2011. DOHA issued the Notice of Hearing on November 17, 2011. The hearing was held as scheduled on December 6, 2011. Department Counsel offered exhibits (GE) 1 through 4 that were admitted into evidence without objection. Applicant testified and offered exhibits (AE) A through L that were admitted into evidence without objection. The record was left open until December 13, 2011, to provide Applicant an opportunity to submit additional matters. In Hearing Exhibit (HE) 1, she requested a one-week extension of the deadline that was granted. She timely submitted AE M through P that were admitted into evidence without objection. Department Counsel's email reflecting that she had no objections was marked as HE 2. DOHA received the transcript (Tr.) of the hearing on December 20, 2011.

Findings of Fact

Applicant is a 43-year-old employee of a federal contractor. She has worked at her current job since February 2005. She graduated from high school in 1986 and obtained an associate's degree in Business Administration in 1999. She has been divorced twice and has a 27-month-old son. She has held a security clearance since 2005 without any security violations.¹

The SOR alleged that Applicant had 21 delinquent debts totaling \$22,651. In her Answer to the SOR, Applicant admitted 13 allegations (SOR ¶¶ 1.a, 1.d, 1.e, 1.f, 1.g, 1.j, 1.l, 1.m, 1.p, 1.r, 1.s, 1.t, and 1.u). She did not respond to the allegation in SOR ¶ 1.o in her Answer, but admitted that debt at the hearing. She denied the remaining seven allegations (SOR ¶¶ 1.b, 1.c, 1.h, 1.i, 1.k, 1.n, and 1.q). Her admissions are incorporated herein as findings of fact. Substantial evidence of the alleged debts is contained in credit reports dated July 28, 2010; April 15, 2011; and November 22, 2011.²

Applicant's debts fall into two categories. First, two of her debts (SOR ¶¶ 1.a and 1.p) are the first and second mortgages on her home. Second, the remaining debts are medical debts. She attributed her financial problems to her most recent divorce and medical complications arising from the birth of her child. She married her second husband in October 2005. They separated in 2007 and divorced in August 2008. Her son was born in September 2009 through a Caesarian section delivery. This was a high risk pregnancy requiring emergency room visits.³

At least eight of the alleged medical debts (SOR ¶¶ 1.l, 1.m, 1.n, 1.o, 1.q, 1.r, 1.s, and 1.u) are not associated with the birth of Applicant's son because they were placed

¹ Tr. 6-7, 37-38, 43, 58; GE 1. Applicant's e-QIP reflected that she has worked for two employers at the same address since February 2005.

² Tr. 12-13; GE 1-4; Applicant's Answer to the SOR.

³ Tr. 15-17, 32-36, 50-58; GE 1-4; AE H, I.

for collection between May 2005 and May 2008. At the hearing, she claimed that she paid seven of the alleged medical debts (SOR ¶¶ 1.b, 1.c, 1.h, 1.i, 1.k, 1.n, and 1.q), which are also the debts that she denied in her Answer. In her post-hearing submission, she provided proof that she paid four of them (SOR ¶¶ 1.b, 1.c, 1.k, and 1.n) totaling \$572. SOR ¶¶ 1.b and 1.c were paid in April 2011, while 1.k and 1.n were paid in December 2011 after the hearing. Her post-hearing submission also noted that she could not determine if three of the denied debts (SOR ¶¶ 1.h, 1.i, and 1.q) were paid. Consequently, SOR ¶¶ 1.h, 1.i, and 1.q remain unresolved. Her fifteen unresolved medical debts total \$4,359. At the hearing, she indicated that she was not currently negotiating with any of the medical creditors. She plans to use her next tax refund to pay the remaining delinquent medical debts.⁴

Applicant and her then husband purchased a home together in September 2005. The primary mortgage on the home (SOR ¶ 1.a) was for \$184,000 and the second mortgage (SOR ¶ 1.p) was for \$23,000. The combined monthly mortgage payments were about \$1,500. The primary mortgage was an interest-only loan so she has no equity in the house. She moved out of the house when they separated in 2007. She was awarded the house in the divorce decree and returned to the home when her ex-husband moved out in May 2009. When she moved back, she had planned to take in renters to assist her with the mortgage payments. At that time, however, she was pregnant. After her son was born, she did not arrange for renters because she was concerned about having renters with a newborn child.⁵

Applicant depleted her savings in making mortgage payments. She stopped paying the mortgages in February 2010. The following month, she applied for a loan modification program, but was unable to obtain such assistance because her ex-husband declined assistance. His cooperation was needed because the home was in both of their names. In May 2010, Applicant informed her employer that she was experiencing financial difficulties. In July 2010, she and her ex-husband listed the home for sale at a price less than the mortgage. At some point, she also sought to dispose of the home through a deed in lieu of foreclosure. Her efforts to dispose of the home were unsuccessful. She noted that a factor hindering those efforts was that her ex-husband was at times either not cooperating or could not be found. She vacated the home in August 2011, and surrendered it to the mortgage company in November 2011. She indicated that she moved out to accelerate the foreclosure process. The home is currently in foreclosure, but has not yet been sold. Once the home is sold, she will learn the amount of the deficiency that she owes. She indicated that she might file

⁴ Tr. 45-47, 50-53; GE 2-4; AE J, M-P. In AE H, Applicant indicated that she was in the process of working with a debt consolidation company on the medical debts. At the hearing, she provided no evidence that she executed a debt consolidation plan. The medical debts that predate the birth of her son were placed for collection as follows: SOR ¶ 1.u in May 2005, ¶ 1.m in February 2006, ¶ 1.o in February 2006, ¶ 1.r in April 2006, ¶ 1.n in May 2006, ¶ 1.l in June 2006, ¶ 1.q in December 2007, and ¶ 1.s in May 2008. See GE 4. Her most recent medical debt, SOR ¶ 1.e, was placed for collection in August 2010.

⁵ Tr. 15-17, 32-36, 38-41, 53-58; GE 1, 2.

bankruptcy or apply for a debt relief program, if such a program is available, to resolve this indebtedness.⁶

Applicant has received financial counseling that included advice on loan modifications and foreclosures. She is currently renting an apartment and meeting her present financial obligations. She has no credit cards. She testified that each month she has approximately \$200 in discretionary funds. Her budget reflected that her monthly income was \$2,417 and her monthly expenses were \$2,279, but did not include any payments on her delinquent debts. Until recently, she has not received child support. She indicated that her son's father will be paying her son's medical insurance payments and her electrical bill.⁷

Applicant submitted a number of reference letters attesting to her character. They describe her as dependable, honest, hardworking, and a person of integrity. Her former supervisor indicated that Applicant is a trustworthy employee and recommended her for a security clearance. In her most recent work performance evaluation, Applicant received "outstanding" in each performance criteria. Over the past four years, she has consistently received "outstanding" or "above average" grades in her evaluations. She has also received a number of certificates of appreciation for her work contributions.⁸

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

⁶ Tr. 32-36, 43-45, 50-58; GE 1, 2; AE D-H; Applicant's Answer to the SOR.

⁷ Tr. 32-33, 41-43, 47-48, 58-59; AE K, L.

⁸ AE A-C.

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

The security concern for Financial Considerations is set out in AG ¶ 18 as follows:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated 21 delinquent debts totaling over \$21,000 that she was unable or unwilling to satisfy for a number of years. This evidence is sufficient to raise the above disqualifying conditions.

Five financial considerations mitigating conditions under AG ¶¶ 20 are potentially applicable:

- (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; and
- (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.

Applicant is delinquent over \$17,000 on two mortgages. Her home is in foreclosure. She will not know the total amount she owes on the home until the foreclosure process is completed. She also owes about \$4,000 on 15 unresolved medical debts. A number of those medical debts were placed for collection five or six years ago. She has received financial counseling, but provided no definitive plan for resolving her financial problems. She indicated that she might file for bankruptcy or she

might apply for a debt relief program, if such a program is available. She also plans to use her next tax refund to pay the delinquent medical debts; however, it is unknown whether she will receive a refund and, if she does, its amount. Based on the evidence presented, I cannot find that her financial problems are under control, that they arose under circumstances that are unlikely to recur, or that they do not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶¶ 20(a) and 20(c) do not apply.

Applicant attributed her financial problems to her divorce from her second husband and unexpected medical expenses arising from the birth of her son. These were conditions beyond her control. However, some of her medical debts predate both of those conditions. To obtain full credit under AG ¶ 20(b), both prongs of that mitigating condition, *i.e.*, conditions beyond the individual's control and responsible conduct, must be established. In this case, she has not established that she has acted responsibly under the circumstances. She has been continually employed during her financial problems. She obtained the home in her latest divorce even though she was not able by herself to maintain it financially. She initially planned to obtain renters to assist her financially, but decided against doing so after the birth of her child. She depleted her savings on the mortgage payments. She stopped paying the mortgages in February 2010. She and her ex-husband listed the home for sale in July 2010. Her efforts to sell or otherwise dispose of the home were unsuccessful. Those efforts were stymied because her ex-husband either was not cooperating or could not be found. After stopping her mortgage payments, she continued to reside in the home for a year and a half before vacating it. From May 2005 to August 2010, she accumulated 19 medical debts. She paid two of them in April 2011 and paid two after the hearing. The four paid medical debts total \$572. She is not presently negotiating with any of the medical debt creditors, but plans to pay the remaining medical debts in the future. Based on the evidence presented, she has failed to establish a meaningful track record of payments on the delinquent medical debts. AG ¶ 20(d) and 20(e) apply to the four medical debts that she has paid. AG ¶ 20(b) partially applies, but does not mitigate the security concerns 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 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.

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 considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. 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 has served in her current job for over six years. Her coworkers think highly of her. She is described as dependable, honest, hardworking, and a person of integrity. Nevertheless, her financial problems are ongoing and significant. She has not developed a definitive plan for resolving her mortgage indebtedness. She indicated that she might file bankruptcy or apply for a debt relief program. She also has 15 unresolved delinquent medical debts, some dating back five or six years. She only recently paid four of them. She has not established a track record of payments on the delinquent medical debts. After weighing all the evidence in the context of the whole-person concept, I find that Applicant's financial problems remain a security concern.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. Therefore, I conclude Applicant has mitigated the security concerns arising under the guideline for Financial Considerations.

Formal Findings

Formal findings 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
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b – 1.c:	For Applicant
Subparagraphs 1.d – 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraphs 1.l – 1.m:	Against Applicant
Subparagraph 1.n:	For Applicant

Subparagraphs 1.o – 1.u:

Against Applicant

Decision

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

James F. Duffy
Administrative Judge