



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 11-07337
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

02/21/2013

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on March 15, 2011. On August 10, 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 August 20, 2012; answered it on September 10, 2012; and requested a hearing before an administrative judge. Department Counsel was ready to proceed on November 29, 2012, and the case was assigned to me on December 4, 2012. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 19, 2012, scheduling it for January 15, 2013. I convened

the hearing as scheduled. Government Exhibits (GX) 1 through 8 were admitted in evidence without objection. Department Counsel also submitted an exhibit list, marked as Hearing Exhibit (HX) I, and a demonstrative exhibit summarizing his evidence, marked as HX II. Applicant testified and submitted Applicant's Exhibits (AX) A through Q, which were admitted without objection. Many of the documents included in AX Q were original documents, and I permitted Applicant to substitute copies after the hearing adjourned. DOHA received the transcript (Tr.) on January 23, 2013.

Findings of Fact

In her answer to the SOR, Applicant admitted the allegation in SOR ¶ 1.d. She denied the allegations in SOR ¶¶ 1.a-1.c and 1.e-1.m. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 43-year-old systems analyst employed by a defense contractor since February 2011. She served on active duty in the U.S. Coast Guard from September 1992 to August 1996 and received an honorable discharge. (AX I.) She received bachelor's degrees in information systems and business administration in May 2003. She was unemployed from June 2003 until late 2003, and she worked part time from late 2003 until early 2004, when her job became full time. (GX 2 at 24-25.) She was laid off in April 2007 and was unemployed until September 2007. (GX 1 at 18-19.) She worked for a non-federal employer from September 2007 until March 2008. She worked for another defense contractor from March 2008 until she began her current job. She received a security clearance in November 1992, while in the Coast Guard, and she was cleared for a public trust position in another government agency in September 2010. (GX 1 at 37.)

Applicant married in February 1995 and divorced in October 1998. She married again in March 2003 and divorced in November 2005. She has a 29-year-old son from a previous relationship and a 17-year-old daughter from her first marriage. Her daughter, a high school senior, lives with her. Applicant does not receive any child support from the father of her daughter. (Tr. 48.)

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

SOR ¶ 1.a (cell phone bill, \$1,405). Applicant testified that this debt was incurred by her goddaughter, a single mother of an infant child, who had been "removed" from her residence. Applicant took her into her home in 2008, and gave her a cell phone. Applicant testified that she learned about the delinquent cell phone bill in 2010 but could not afford to pay it. She was earning about \$60,000 per year at that time. She did not take any steps to resolve the bill until May 2012, when she settled it for \$709. (AX A; Tr. 57-58.) She asked her goddaughter to leave her home in 2010. (Tr. 72.)

SOR ¶ 1.b (Medical, \$130, referred for collection in December 2005). Applicant denied owing this debt in her answer to the SOR and in a personal subject interview (PSI) in April 2011. (GX 2 at 24.) In her undated and unsworn response to DOHA interrogatories that were sent to her in March 2012, and in her testimony at the hearing, she stated that she contacted the collection agency, who told her that they had no record of this debt. She has not disputed it with the credit bureaus. (Tr. 58-59; GX 2 at 6.) This debt is unresolved.

SOR ¶ 1.c (State taxes for 2005, \$3,015). Applicant testified and presented documentary evidence that she timely filed an electronic state tax return, on which she had computed a tax debt of \$15. (Tr. 59-60; AX B; AX C.) State tax authorities audited her return and determined that she owed additional taxes. In May 2006, a tax lien for \$3,015 was filed against Applicant, representing the additional taxes due plus penalties and interest. (GX 6; GX 7). She testified that she was unaware of the additional taxes due or the lien until she was questioned about them in April 2011. (Tr. 60.) Her SCA reflects that she moved from the address listed in the court records in January 2005, before the lien was filed. (GX 1 at 10.) She began making payments on the delinquent taxes in May 2012. In November 2012, she entered into a payment plan requiring monthly payments of \$348.56 for 12 months, with the first payment due on December 15, 2012. She made payments equal to or greater than the agreed amount through January 2013. (AX D; AX E.)

SOR ¶ 1.d (Failure to file state tax return for 2010). Applicant admitted that she did not timely file her state tax return for tax year 2010. She testified that she “got busy and forgot.” In her response to the SOR, she submitted documentation that she filed her return on September 8, 2012. (Attachment D to Answer; Tr. 64.)

SOR ¶ 1.e (Cell phone bill, \$791, referred for collection in December 2010); SOR ¶ 1.f (TV cable service, \$230, referred for collection in October 2008); and SOR ¶ 1.g (TV cable service, \$61, referred for collection in January 2011.) In her responses to the March 2012 DOHA interrogatories and at the hearing, she stated that she disputed these three bills on the ground that they had been paid, and the debts were removed from her credit report. (GX 2 at 5; Tr. 65-67.) She did not submit any evidence of payments. However, her testimony is corroborated by the fact that these debts do not appear on the most recent credit bureau reports (CBRs) submitted by her and Department Counsel. (AX F; GX 8.)

SOR ¶ 1.h (Medical, \$277, referred for collection in February 2005). Appellant was questioned about this debt in April 2011, and she told the investigator that she recognized the debt and agreed with it, but she did not know that it had been referred for collection. (GX 2 at 23.) In her response to the SOR, Applicant submitted documentary evidence that she paid this debt on November 16, 2011. (Attachment H to Answer; Tr. 67-68.)

SOR ¶ 1.i (Medical, \$287, referred for collection in March 2011). Applicant testified that she believes this debt duplicates SOR ¶ 1.h, based on the amount. She

testified that she had only one delinquent medical bill for this amount. She has not disputed this debt with the collection agency. (Tr. 69.) However, her belief that the debt has been resolved is corroborated by the fact that the debt is not reflected on the January 2013 CBRs submitted by Department Counsel and Applicant. (GX 8; AX F.)

SOR ¶¶ 1.j, 1.k, 1.l (Traffic tickets for \$200, \$100, and \$300.). Applicant testified that she incurred the \$200 ticket in 2007 (SOR ¶ 1.j), but the \$100 and \$300 tickets (SOR ¶¶ 1.k and 1.l) were incurred by her goddaughter while she was driving Applicant's car. (Tr. 70-73.) Applicant had received several violation notices in the mail and paid them, but she was unaware of the tickets incurred by her goddaughter. She testified that the municipal records reflected several other unpaid traffic tickets she had received, dating back to 2002. In December 2012, she paid her goddaughter's tickets, her own \$200 ticket, and \$590 for several other outstanding tickets. (AX G; AX H; Tr. 71.)

SOR ¶ 1.m (Repossession deficiency, \$9,167, referred for collection in May 2006). In her PSI, Applicant told the investigator that she bought a truck in 2000 and made timely payments until she became unemployed. In 2004, she surrendered the truck to the lender, and tried to negotiate a settlement. She told the investigator that she and the lender agreed in 2006 to settle the debt for \$3,000, but the lender never sent her the paperwork to consummate the agreement. (GX 2 at 24.) Her March 2011 CBR reflects that the original amount of the debt was \$16,099 and the balance due is \$9,167. (GX 5 at 12.) At the hearing, she testified that she believed the balance due when she surrendered the vehicle was around \$5,000 or \$6,000. (Tr. 75.) Her last contact with the lender was around 2008, when the lender insisted on payment of \$10,000. The debt is unresolved. (Tr. 77-79.)

In response to the March 2012 DOHA interrogatories, Applicant submitted a personal financial statement (PFS). In the block for monthly income, she listed her annual income instead of monthly income. She listed gross income of \$112,487, annual net income of \$94,423, and monthly expenses of \$2,720. She listed a car payment of \$374 and five other payments under "monthly debts" that appear to duplicate her listed monthly expenses. She did not compute her net remainder. (GX 2 at 9.)

Applicant recently received a pay raise of about \$2,000 per year. (Tr. 81.) She has no retirement funds. She has between \$1,500 and \$2,000 in a checking account and "maybe a couple hundred dollars" in a savings account. She drives a 2009 economy car. (Tr. 80.) She testified that her commuting costs are high because she drives almost 70 miles between her home and her work place. (Tr. 84.) She has not sought or received financial counseling. (GX 2 at 25.)

In her answer to the SOR and at the hearing, Applicant submitted numerous letters from present and former supervisors and colleagues. They uniformly describe her as a very talented, hard-working, dedicated, and trustworthy employee. She has a reputation for good judgment, effective communication, and strong leadership. She has

received numerous awards, certificates, and commendations for her work. (Attachment 5 to Answer, AX J through Q.)

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 (SOR ¶¶ 1.a-1.c, 1.e-1.m) and failure to timely file a state income tax return (SOR ¶ 1.d). 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).

Applicant’s admission of SOR ¶ 1.d, her testimony at the hearing, and the documentary evidence presented by Department Counsel establish the following 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(g): failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

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(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;

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 not established. Applicant's delinquent debts are numerous, recent, and several are not resolved. With the exception of the delinquent cell phone bill and two traffic tickets incurred by Applicant's goddaughter (SOR ¶¶ 1.a, 1.k, and 1.l), they did not arise under circumstances making them unlikely to recur.

The first prong of AG ¶ 20(b) is established, because Applicant encountered several conditions beyond her control. She was unemployed for several months after graduating from college in 2003, and after being laid off from April 2007 until September 2007. She went through marital breakups in October 1998 and November 2005, and has raised two children with no financial support from their fathers. The cell phone bill alleged in SOR ¶ 1.a and the traffic tickets alleged in SOR ¶¶ 1.k and 1.l were the result of her goddaughter's irresponsible conduct. However, the second prong of AG ¶ 20(b) (responsible conduct) is not established. She learned about the cell phone bill in 2010 but did not resolve it until May 2012, after she was questioned about it during her PSI in April 2011 and in DOHA interrogatories in March 2012. She learned about the unpaid state taxes in April 2011, but she did not begin to pay them until May 2012. She failed to timely file her state income tax return for 2010 because she forgot about it. She did not file her overdue income tax return until September 2012, after she received the SOR. She did not resolve a medical debt referred for collection in February 2005 until November 2011. She did not resolve her own traffic tickets dating back to 2002 until December 2012, a month before the hearing. She has done nothing to resolve the repossession deficiency since 2008.

AG ¶ 20(c) is not established. Applicant has not sought or received financial counseling, and several delinquent debts are not resolved.

AG ¶ 20(d) is not established. 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). Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance. Applicant has resolved the debts alleged in SOR ¶¶ 1.a, 1.h, 1.j, 1.k, and 1.l, and she is making regular payments on the delinquent taxes in SOR ¶ 1.c. However, she took no action to resolve these debts until she was questioned about them in April 2011. She did not begin paying her delinquent taxes for 2002 until May 2012. She did not file her overdue 2010 state income tax return until she received the SOR. She did not resolve the traffic tickets until the month before the hearing. The evidence indicates that she resolved these debts to protect her security clearance and her job, and not because of a sense of duty or obligation to the creditors.

AG ¶ 20(e) is established for the debts that Applicant successfully disputed (SOR ¶¶ 1.e, 1.f, and 1.g). She has not disputed the medical debt in SOR ¶ 1.i, but her belief that it duplicates SOR ¶ 1.h is reasonable and plausible. 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 treated SOR ¶ 1.i as disputed and resolved it in Applicant's favor.

A security clearance adjudication is aimed at evaluating an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) A person is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, nor do they require 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 had no plan and took no significant actions to resolve her debts until the PSI, DOHA interrogatories, and SOR made it clear that her security clearance was at risk.

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 is a well-educated, talented, dedicated, hard-working employee with a reputation for good judgment, trustworthiness, and strong leadership. She served honorably in the U.S. Coast Guard and has held a clearance for more than 20 years. She is raising a teenage daughter alone and without financial assistance. She is deeply involved in a demanding job. Unfortunately, she has not paid attention to her financial affairs. Her explanation for not filing her state income tax return is telling—she simply was busy and forgot about it. She took virtually no actions to resolve the debts in the SOR until it was clear that her security clearance was at risk.

After weighing the disqualifying and mitigating conditions under Guideline F, evaluating all the evidence in the context of the whole person, and mindful of my obligation to decide close cases in favor of national security, 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 continue 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.d:	Against Applicant
Subparagraphs 1.e-1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	Against Applicant
Subparagraphs 1.k-1.l:	For Applicant
Subparagraph 1.m:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman
Administrative Judge