



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 11-11316
)	
Applicant for Security Clearance)	

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

07/17/2013

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 May 12, 2011. On January 23, 2013, the Department 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 January 30, 2013, and answered it on February 11, 2013. On February 25, 2013, she requested a hearing before an administrative judge. (Hearing Exhibit (HX) I.) Department Counsel was ready to proceed on March 18, 2013, and the case was assigned to an administrative judge on March 28, 2013. Scheduling of the hearing was delayed by budgetary constraints and the unavailability

of video teleconference facilities in the area where Applicant lives and works. The case was reassigned to me on May 8, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 14, 2013, scheduling the hearing for June 3, 2013. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 7 were admitted in evidence without objection. Applicant testified, presented the testimony of one witness, and submitted Applicant's Exhibits (AX) A through E, which were admitted without objection. I kept the record open until July 3, 2013, to enable Applicant to submit additional documentary evidence. She timely submitted AX F through AX I, which were admitted without objection. Department Counsel's comments regarding AX F through I are attached to the record as HX II. DOHA received the transcript (Tr.) on June 20, 2013.

Findings of Fact

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

Applicant has worked as a 35-year-old program manager for a defense contractor since February 2008. She attended college after graduating from high school, and she earned a bachelor's degree in criminal justice. She enlisted in the Navy after graduating from college, served on active duty in the U.S. Navy from February 2001 to February 2007, and was honorably discharged as a cryptologic technician second class (pay grade E-6). (AX A.) She held a top secret clearance and eligibility for access to sensitive compartmented information while on active duty. (AX B.) She was unemployed for about a year after her release from active duty.

Applicant married in December 2001. She and her husband were both on active duty in the Navy when they married. In February 2004, she and her husband purchased a home for about \$310,000, in a high-cost area outside the continental United States. Their home was located in a low-income housing development, for which they qualified based on their military pay. They borrowed about \$308,000 to purchase the home. (Tr. 46.) They also obtained two home equity loans, one for about \$28,380 for home improvements and one for about \$88,780 to purchase a time share. (Tr. 40, 47.) They were unaware that the deed precluded home equity loans secured by the home and limited the amount for which the home could be sold. The bank that provided the home equity loans apparently was unaware of the restrictions in the deed. Applicant testified that her husband was very domineering, and that she was bullied into the purchases of the home and the time share. (Tr. 39-40.)

In February 2007, Applicant decided to leave active duty, and her husband received reassignment orders to a Navy base on the mainland United States. When they decided to sell the home and listed it for \$420,000, they discovered the restrictions on the sale price, which made it impossible to pay off the primary mortgage and two home equity loans. They decided to allow foreclosure on the property instead of selling it for the amount permitted by the deed, which would not have been sufficient to pay off the primary mortgage and the two home equity loans. (Tr. 50-51.) Applicant stopped

making payments on home equity loans in March 2007, and she stopped making payments on the primary mortgage loan in August 2007. (Tr. 55-56.)

The primary lender started foreclosure proceedings in October 2007, after Applicant and her husband had returned to the continental United States. The primary lender sued Applicant, her husband, the lender for the home equity loans, and various governmental officials. After protracted litigation, the primary lender was allowed to sell the home for \$393,673 in June 2011, which was enough to cover the balance due on the mortgage loan. (GX 2 at 35; GX 6; GX 7.)

Applicant and her husband gave the lender for the home equity loans a deed in lieu of foreclosure for the time share. (Tr. 47-48.) The lender cancelled the debts due on both home equity loans in December 2012, and Applicant reported the cancellation on her federal income tax return for 2012. (AX F; AX H; AX I.)

After Applicant and her husband moved to his new duty station, they purchased another home for \$245,000. Applicant's husband was discharged in October 2009. Applicant testified that he was diagnosed with bipolar disorder, post-traumatic stress disorder, and narcissism, but that she was unable to obtain documentation of his condition because of the privacy rules implementing the Health Insurance Portability and Accountability Act. (GX 2 at 35; Tr. 39.) Her husband is unemployed, but he receives disability payments based on his Navy service. (Tr. 67, 78.)

Applicant and her husband separated in July 2010 and divorced in May 2013. They have joint custody of their seven-year-old daughter, whose primary residence is with Applicant. (AX C; AX D.) Applicant's ex-husband is required to pay child support of \$352 per month, and he has complied with his child-support obligation. (AX D; Tr. 80-81.)

Applicant fell behind on the payments on the former marital home in October 2011, and it was foreclosed. In the property settlement for their divorce, Applicant's husband assumed full responsibility for the indebtedness related to this home. (GX 2 at 6; AX D at 13.)

In 2008, Applicant and her husband engaged a debt consolidation service to deal with their credit card debts. They made payments to the service for about a year and a half, when her husband told her to stop making them. The credit card debts were resolved. (Tr. 75-77; GX 5.) They also consulted with a bankruptcy attorney, but Applicant abandoned the plan to file for bankruptcy when her husband announced that he would liquidate or conceal all his assets so that Applicant would be solely responsible for any Chapter 13 payment plan.

Applicant's credit bureau report (CBR), dated January 14, 2013, reflected a \$98 collection account cable service. (GX 5.) In her answer to the SOR, she stated that she was unaware of this debt until she received the SOR. She paid it on June 1, 2013. (AX G; Tr. 45.)

Applicant submitted a personal financial statement in October 2012, reflecting net monthly income of about \$3,078, expenses of about \$2,484, one debt payment of \$188 for a student loan, and a net remainder of about \$106. (GX 2 at 9.) In February 2013, she received a pay raise that increased her monthly income by about \$107. (AX E.) Her payments on her student loans are current. She recently paid off her car loan, and all her credit card accounts are current. (Tr. 83; GX 4.)

A coworker, who has known Applicant for five years and now regards her as a trusted friend, testified that she is completely trustworthy and honest. He testified that she has a strong work ethic, is willing to accept new and challenging tasks, and is an excellent team player. She is deeply devoted to her daughter and is well liked by her coworkers. The witness testified that he intends to retire within three years and hopes that Applicant will take over his current responsibilities regarding classified intellectual property. (Tr. 85-90.)

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 a delinquent \$98 cable service bill (SOR ¶ 1.a); a delinquent loan charged off in the amount of about \$88,780 (SOR ¶ 1.b); a home mortgage in foreclosure with a balance of \$310,000 (SOR ¶ 1.c); and a delinquent loan charged off in the amount of about \$28,838 (SOR ¶ 1.d). The security 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 credit reports, admissions in her answer to the SOR, and testimony at the hearing establish 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"). The following mitigating conditions are potentially applicable:

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; and

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

AG ¶ 20(a) is established. Applicant's delinquent debts were numerous and recent. However, Applicant was unaware of the \$98 cable bill alleged in SOR ¶ 1.a until she received the SOR, and she promptly paid it. The delinquent debts alleged in SOR ¶¶ 1.b, 1.c, and 1.d occurred primarily because Applicant and the lender of the two home equity loans were unaware of the provision in the deed that prohibited home equity loans and limited the selling price of the home. The unusual restrictions in the deed were a unique circumstance making recurrence unlikely. Applicant was a first-time home buyer. She has held a security clearance for many years, and is highly respected in her current job. Her naïve mistake in her first home purchase does not cast doubt on her current reliability, trustworthiness, or good judgment.

AG ¶ 20(b) is not fully established. Although Applicant testified that she was bullied into the purchase of the home and the time share, she was a mature, well-educated adult who could have refused to enter into these transactions. However, the home equity lender, who should have refused to make the loans, also was unaware of the deed restrictions. The lender's negligence was a circumstance beyond her control. However, she did not contact the lenders after learning about the limitations and finding herself in financial distress. Instead, she simply stopped making payments and waited for the foreclosure process to run its course.

AG ¶ 20(c) is marginally relevant. Applicant's financial counseling pertained only to credit card debts that have been satisfied and are not alleged in the SOR.

AG ¶ 20(d) requires a "good-faith effort." 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). This mitigating condition is established for the debt alleged in SOR ¶ 1.a, and Applicant receives some credit for attempting to resolve the debt alleged in SOR ¶ 1.b by a deed in lieu of foreclosure. However, for the most part, she passively let the foreclosure process run its course. Involuntary collection of a debt does not constitute a "good-faith effort" within the meaning of this mitigating condition. See ISCR Case No. 09-5700 (App. Bd. Feb. 24, 2011) (involuntary garnishment is not a good-faith effort). Thus, I conclude that AG ¶ 20(d) is not established for the debts alleged in SOR ¶¶ 1.b, 1.c, and 1.d.

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 served honorably in the U.S. Navy for six years and has worked for a defense contractor for more than five years, holding high-level clearances for most of her career. When she acquiesced in the home purchase and time share purchase, she was financially inexperienced, naïve, and unaware of an unusual provision in the deed for her home. All her financial delinquencies have been resolved, and she is financially stable. She has learned from her experience.

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 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):	FOR APPLICANT
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Subparagraphs 1.a-1.d:	For Applicant
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Conclusion

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

LeRoy F. Foreman
Administrative Judge