



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



In the matter of:)	
)	
[Redacted] ¹)	ISCR Case No. 11-12204
)	
Applicant for Security Clearance)	

Appearances

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

05/09/2013

Decision

FOREMAN, LeRoy F., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application on May 23, 2011. On January 3, 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 16, 2013; answered it on January 24, 2013; and requested a hearing before an administrative judge. On March 26, 2013,

¹ Applicant's last name is spelled as she spelled it in her security clearance application and correspondence pertaining to this case, and not as spelled in the SOR.

Applicant requested an expedited hearing. Department Counsel was ready to proceed on April 1, 2013, and the case was assigned to me on April 5, 2013. On the same day, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, scheduling the hearing for April 15, 2013. I convened the hearing as scheduled. Applicant affirmatively waived the 15-day notice requirement in Directive ¶ E3.1.8. (Tr. 12.) Government Exhibits (GX) 1 through 6 were admitted in evidence without objection. Department Counsel's letter to Applicant, transmitting copies of GX 1 through 6, is attached to the record as Hearing Exhibit (HX) I. Applicant testified but presented no witnesses or documentary evidence. I kept the record open until April 26, 2013, to enable her to present documentary evidence. She timely submitted Applicant's Exhibits (AX) A and B. Department Counsel's comments regarding AX A and B are attached to the record as HX II. DOHA received the transcript (Tr.) on April 19, 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 is a 55-year-old administrative assistant employed by a defense contractor since May 2011. She previously worked for another defense contractor from March 2005 to January 2010. She was laid off and unemployed for 16 months until she began her current job. She received a security clearance in March 2006, which was administratively terminated in October 2007, when she transferred to another position that did not require a clearance. (Tr. 14) She served on active duty in the U.S. Navy from September 1982 to March 1984 and received an honorable discharge. She held a security clearance while in the Navy.

Applicant attended college from October 2003 to June 2006 and earned a bachelor's degree. She attended an on-line art institute from August 2007 to March 2011, preparing for a possible career in interior design, but she did not receive a degree. (GX 1 at 14-15.) She stopped the art institute classes after she was laid off, because she did not want to incur any more student loans. (Tr. 32.) While she was unemployed, she also attended evening classes to qualify as a certified school teacher, but she was unable to find any teaching positions. (Tr. 33.) Her only source of income from January 2010 to May 2011 was unemployment compensation of about \$1,600 per month. (Tr. 34.) In her present job, she earns about \$55,000 per year. (Tr. 34-35.)

Applicant married in February 1984 and divorced in November 2008. They had four children during the marriage, all of whom are now adults. The record contains no information about the reasons for her marital breakup.

Applicant and her then husband received a Chapter 7 bankruptcy discharge in 1993. The discharged debts included medical bills, credit card accounts, and a delinquent home loan. (GX 3 at 5.) The record contains minimal information about the circumstances leading up to the bankruptcy.

Applicant's testified that her current debts arose after her divorce because she did not earn enough by herself to pay her credit card debts and her student loans. (GX 3 at 3; Tr. 42-43.) She receives no alimony or spousal support from her ex-husband. (Tr. 44.) She incurred unreimbursed moving expenses of about \$2,000 in April 2008, \$3,000 in May 2011, and \$2,500 in January 2013. The April 2008 and January 2013 moves were to take another position with the same employer, but at a different geographical location. (GX 1 at 16-21; Tr. 44-45.)

At the hearing, Applicant admitted that some of her debts were the result of bad decisions, such as spending about \$5,000 for several cosmetic treatments, as alleged in SOR ¶ 1.e. (GX 3 at 6, 17; Tr. 61-62.) She admitted incurring credit card and other debts without considering the long-term consequences. (Tr. 56.) The evidence concerning the status of the debts alleged in the SOR is summarized below.

SOR ¶ 1.a (medical bill for \$657). This debt arose because of an emergency room visit and was referred for collection in August 2008. In response to DOHA interrogatories in November 2012, Applicant stated that she intended to use a retention bonus to pay this bill in December 2012. (GX 3 at 17.) It is unpaid. (GX 4 at 1; Tr. 36.)

SOR ¶ 1.b (cable bill for \$106). This debt was referred for collection in April 2011. In response to DOHA interrogatories in November 2012, Applicant stated that she intended to pay this bill with her retention bonus in December 2012. It is unpaid. (GX 4 at 1; Tr. 36.)

SOR ¶ 1.c (collection account for rent \$1,961). This debt was incurred when Applicant was laid off and gave her landlord a 30-day notice that she was moving. The amount of the debt is the fee for terminating the lease. It was referred for collection in January 2010 and is unpaid. In response to DOHA interrogatories in November 2012, she stated that she disputed this debt, but she submitted no documentation of the basis for the dispute or its resolution. (GX 3 at 17; GX 4 at 1; Tr. 36.)

SOR ¶ 1.d (collection account for \$4,667). This debt is a delinquent credit card account. It was referred for collection in January 2008 and is unpaid. (GX 3 at 17; GX 4 at 2; Tr. 37-38.)

SOR ¶ 1.e (collection account for \$5,920). This debt for cosmetic treatments was referred for collection in February 2008. It is unpaid. (GX 3 at 6, 17; GX 4 at 2; Tr. 38.)

SOR ¶ 1.f (student loan charged off for \$2,084). Applicant testified that she is paying about \$300 per month on her student loans, and she initially thought this student loan was included in her payments. She testified that she contacted the creditor and confirmed that this loan is not included in her student loan payments. She has not taken any steps to include it in her other payments. (GX 5 at 2; Tr. 39-41.)

SOR ¶ 1.g (credit card for \$1,924). This debt was charged off in July 2008. It is unpaid. (GX 3 at 17; GX 4 at 2; Tr. 41.)

SOR ¶ 1.h (medical bill for \$3,496). This debt was referred for collection in April 2011. It is unpaid. (GX 3 at 17; GX 6 at 20; Tr. 42.)

After receiving but before responding to DOHA financial interrogatories, Applicant contacted the creditors alleged in SOR ¶¶ 1.d through 1.h in October 2012, but she was not able to settle the debts. She attributed her lack of success to insufficient income. (GX 3 at 17.) She has not contacted any creditors alleged in the SOR since October 2012. (Tr. 37.)

Applicant currently has seven student loans with a total balance of about \$29,108. (AX A; AX B.) About \$15,000 of this balance is attributable to her children's education, and the remainder is attributable to her. (Tr. 60.) In March 2009, she resolved a delinquent car loan by voluntarily surrendering the car. In May 2011, she paid off several student loans by withdrawing money from her retirement account. She owes federal taxes and penalties of about \$20,000 for the early withdrawals from her retirement account. (GX 3 at 8, 13; Tr. 45.) She has been negotiating a resolution of her tax debt and expects to be required to pay between \$400 and \$500 per month. (Tr. 48-49.) These debts are not alleged in the SOR.

Applicant submitted a personal financial statement to DOHA in November 2012. She listed net monthly income of \$2,530, expenses of \$1,920, debt payments (three student loans and fees paid to a tax relief agency) of \$794, and a monthly shortfall of \$184. (GX 3 at 19.) As of the date of the hearing, she had paid off the debt to the tax relief agency, but her rent had increased. She testified that she lives frugally and has a monthly remainder of "a few hundred dollars." (Tr. 55.) She has not yet begun payments on her tax debt.

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 eight delinquent debts, including two medical bills and one student loan, totaling about \$20,815 (SOR ¶¶ 1.a-1.h). It also alleges a Chapter 7 bankruptcy discharge in 1993 (SOR ¶ 1.i). 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 admissions, corroborated by her credit reports, establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and AG ¶ 19(b) ("a history of not meeting financial obligations").

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, unresolved, and not the result of circumstances making them unlikely to recur.

AG ¶ 20(b) is not established. Applicant provided virtually no information about the circumstances leading up to her bankruptcy in 1993. After the bankruptcy, she encountered conditions beyond her control, such as her marital break-up, a significant period of unemployment, and the medical emergency underlying the debt alleged in SOR ¶ 1.a. However, the debts alleged in SOR ¶¶ 1.a, 1.d, 1.e, and 1.g were delinquent and referred for collection before her divorce and her period of unemployment. Furthermore, she has not acted responsibly regarding the debts alleged in the SOR. She contacted the creditors alleged in SOR ¶¶ 1.d-1.h once in October 2012, after she received the DOHA interrogatories, but she made no further contacts or efforts to resolve the debts, even though she has been employed continuously since May 2011.

AG ¶ 20(c) is not fully established. Applicant probably was required by the bankruptcy court to obtain counseling in 1993, and she has obtained professional assistance in resolving her current tax debt, but she has not shown “clear indications” that her financial problems are being resolved.

AG ¶ 20(d) is not established. The “good faith” required to establish this mitigating condition 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). Applicant has demonstrated a good-faith effort to resolve her student loans, but she has no plan to resolve the debts alleged in the SOR, and she has taken no significant steps to resolve them.

AG ¶ 20(e) is not established. In her response to DOHA interrogatories, Applicant asserted that she disputed the debt alleged in SOR ¶ 1.c, but she provided no evidence showing the basis for her dispute or any resolution. She has not disputed the remaining debts alleged in the SOR.

Applicant provided minimal information regarding the circumstances leading to her 1993 bankruptcy discharge. She has not shown that any of the mitigating conditions under this guideline apply to her bankruptcy.

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. She has worked for defense contractors and held a security clearance for many years. She was candid, sincere, and credible at the hearing. She has shown good faith in repaying her student loans and appears to be committed to resolving her tax debt. However, she has a pattern of incurring debt without considering the consequences, and she has reacted passively to her current financial situation. She has not demonstrated the sense of obligation expected of persons entrusted with a security clearance.

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 her financial situation. 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.i:

Against Applicant

Conclusion

I conclude that 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