



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



In the matter of:)
)
) ISCR Case No. 11-13814
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

10/31/2013

Decision

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate security concerns arising under Guideline F, Financial Considerations. Clearance is denied.

Statement of the Case

On March 6, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. This action was taken 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 DOD could not find that it was clearly consistent with the national interest to grant or continue Applicant's security clearance. On June 19, 2013, Applicant answered the SOR and elected to have her case decided on the written record in lieu of a hearing. On August 13, 2013, Department Counsel compiled

the Government's File of Relevant Material (FORM) that contained documents identified as Items 1 through 8.

On August 13, 2013, the Defense Office of Hearings and Appeals (DOHA) sent Applicant a copy of the FORM with instructions to submit any additional information or file any objections within 30 days of its receipt. Applicant received the FORM on August 28, 2013, and did not submit a response within the allotted period. The case was assigned to me on October 17, 2013.

Procedural Matter

In the FORM, Department Counsel withdrew the allegations in SOR ¶¶ 1.c, 1.s, and 1.u.¹

Findings of Fact

Applicant is a 29-year-old acquisition associate employed by a defense contractor. She has worked for her current employer since August 2011. She graduated from high school in 2002, earned a bachelor's degree in 2008, and recently obtained a master's degree. Since obtaining her bachelor's degree, she has been employed fulltime. Her Electronic Questionnaire for Investigations Processing (e-QIP) indicated she has never been married and listed no children. In her answer to the SOR, she stated that she has childcare expenses, but the number of her children is unknown. This is the first time that she has sought a security clearance.²

Excluding the withdrawn allegations, the SOR alleged that Applicant had 20 delinquent debts, totaling \$143,721. In her answer to the SOR, Applicant admitted each of those allegations with comments. Her admissions are incorporated as findings of fact.³

In her e-QIP dated August 9, 2011, Applicant disclosed that she had multiple delinquent debts. In her answer to the SOR, she stated that she acquired the majority of her debts during college and "was unaware of financial responsibilities at the time." She noted that, after obtaining her bachelor's degree, she had a job with an annual salary of \$35,000, which barely left her enough money to cover living expenses and her monthly student loan payments of \$1,200. She further indicated that she now earns \$47,500 annually, is burdened with childcare expenses, and is "only able to afford to pay a portion at a time." She stated that, despite her financial situation, she has made adjustments in her life that have allowed her to save money for the first time.⁴

¹ FORM at 3.

² Items 3, 4, and 5.

³ Items 1 and 3. Applicant denied the debt in SOR ¶ 1.u, but that allegation was withdrawn.

⁴ Items 3 and 4.

SOR ¶ 1.a – collection account for \$330. In her answer to the SOR, Applicant indicated that she had a payment arrangement with the creditor to resolve this debt and the account was being paid. She indicated that she agreed to pay \$50 monthly until this debt was satisfied. She provided no proof of that arrangement or of any payments made under it.⁵

SOR ¶¶ 1.b, 1.d, 1.f, 1.g, 1.t, and 1.w – collection accounts totaling \$2,840. For each of these accounts, Applicant's answer to the SOR stated the following:

I admit. This statement is correct. This amount has not been paid due to prioritizing student loans, living expenses, child care expenses, medical bills, and 2013 taxes owed. I plan to negotiate a settlement amount with [the named creditor] in order to settle this debt by December 31st of 2013.⁶

SOR ¶ 1.e – collection account for \$36. In her answer to the SOR, Applicant indicated that this account would be paid in full on her next payday, June 28, 2013. She provided no proof of that payment.⁷

SOR ¶ 1.h – charged-off account for \$1,032. In her answer to the SOR, Applicant indicated that this account would be paid once all the other debts were settled because this account was closed and currently charged off. She noted that a settlement date could not be determined at that time.⁸

SOR ¶¶ 1.i – 1.r – charged-off student loans totaling \$138,074. In her answer to the SOR, Applicant indicated that these loans had been consolidated and are currently being satisfied under a payment arrangement. She noted that \$100 is deducted from her bank account under this arrangement. She, however, provided no proof of those payments. Her most recent credit report reflected that her student loans were charged off and contained no indication that she was making payments to a collection agency.⁹

SOR ¶ 1.v – collection account for \$1,409. In her answer to the SOR, Applicant indicated that this account had been paid. Her most recent credit report confirmed that this account has been paid.¹⁰

⁵ Item 3.

⁶ Item 3.

⁷ Item 3.

⁸ Item 3.

⁹ Items 3 and 9.

¹⁰ Items 3 and 9.

During her Office of Personnel Management (OPM) interview on September 19, 2011, Applicant reportedly stated that she had not made any efforts to repay her delinquent debts, but did plan to do so in the future. She also indicated that she had not received any financial counseling or participated in any debt consolidation programs.¹¹

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 AGs. These guidelines 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 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

¹¹ Item 5.

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 numerous debts that she was unable or unwilling to pay over an extended period. The evidence is sufficient to raise the above disqualifying conditions.

Four 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; and

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

Applicant's financial problems are ongoing, long-standing, and cast doubt on her current reliability, trustworthiness, and good judgment. Based on the evidence presented, I cannot find that her financial problems are unlikely to recur in the future. AG ¶ 20(a) does not apply.

In her answer to the SOR, Applicant indicated that she acquired the majority of her debts during college while she was unaware of her financial responsibilities. In 2008, she obtained her bachelor's degree. Since then, she has been employed, but stated she has not been making enough money to meet her financial commitments. She also stated that she has made adjustments in her life that has allowed her to save money for the first time. The nature of those adjustments and her spending habits are unknown. In her OPM interview, she stated that she had not made any effort to repay the debts. At a later point, she paid the debt in SOR ¶ 1.v. She said that she entered into payment arrangements for her consolidated student loans and the debt in SOR ¶ 1.a. However, she provided no proof of those payment arrangements or of any payments made under them. Whether she attempted to obtain a deferment of her student loans or a modification of them is unknown. From the evidence provided, I cannot find that she has acted responsibly under the circumstances in trying to resolve these debts. She has not established a meaningful track record of payments toward her delinquent debts. In short, Applicant has failed to show that her financial problems are being resolved or are under control. AG ¶ 20(d) partially applies. AG ¶¶ 20(b) and 20(c) do not apply.

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 and considered all the information contained in the FORM. Based on that review, the record evidence leaves me with questions and doubts about Applicant's suitability for a security clearance. Therefore, I conclude Applicant has not mitigated the security concerns arising under Guideline F.

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
Subparagraphs 1.a – 1.b:	Against Applicant
Subparagraph 1.c:	Withdrawn
Subparagraphs 1.d – 1.r:	Against Applicant
Subparagraph 1.s:	Withdrawn
Subparagraph 1.t:	Against Applicant
Subparagraph 1.u:	Withdrawn
Subparagraph 1.v:	For Applicant
Subparagraph 1.w:	Against Applicant

Decision

In light of all the circumstances presented by the record, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

James F. Duffy
Administrative Judge