



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



In the matter of:)
)
XXXXXXXXXX, XXXXX) ISCR Case No. 12-03755
)
Applicant for Security Clearance)

Appearances

For Government: Richard A. Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

06/05/2014

Decision

Tuider, Robert J., Administrative Judge:

Applicant’s statement of reasons (SOR) alleges three delinquent debts. Department Counsel withdrew a SOR debt for \$134. The largest SOR debt has been current for more than one year. On April 10, 2014, Applicant made a good-faith settlement offer to resolve the remaining debt. She made sufficient progress resolving her financial problems to mitigate financial considerations concerns. Eligibility for access to classified information is granted.

Statement of the Case

On December 13, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a security clearance application (SF 86) (GE 1). On October 30, 2013, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued an SOR to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleged security concerns under Guideline F (financial considerations). The SOR detailed reasons why DOD could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked.

On November 25, 2013, Applicant responded to the SOR allegations and requested a hearing. On January 24, 2014, Department Counsel was ready to proceed on Applicant's case. On February 24, 2014, DOHA assigned Applicant's case to me. On March 6, 2014, the Defense Office of Hearings and Appeals (DOHA) issued a hearing notice, setting the hearing for March 26, 2014. Applicant acknowledged that she received at least 15 days' notice of the date, time and location of the hearing. (Tr. 13-14) Applicant's hearing was held as scheduled. (Tr. 6) At the hearing, Department Counsel offered five exhibits, and Applicant offered 29 exhibits. (Tr. 19-20, 69; GE 1-5; AE A-CC) There were no objections, and I admitted GE 1-5 and AE A-CC. (Tr. 20, 69) On April 2, 2014, DOHA received the transcript of the hearing. I held the record open, at Applicant's request, until April 21, 2014. (Tr. 68, 70) On April 21, 2014, I received two exhibits from Applicant, which were admitted without objection. (AE DD-EE)

Procedural Issue

Department Counsel made a motion to withdraw the allegation in SOR ¶ 1.a, which is a debt for \$134. (Tr. 12-13) There were no objections, and I granted Department Counsel's motion. (Tr. 14)

Findings of Fact¹

In Applicant's response to the SOR, she admitted that at some point she owed the creditor in SOR ¶ 1.b (\$125,320) for a mortgage; however, she believed it was transferred to another bank and is included in her current mortgage. She admitted she owed a debt to the creditor in SOR ¶ 1.c (\$136,000 past due with a balance of \$487,000); however, she received a mortgage modification, which is current under their agreement. Her admissions are accepted as findings of fact.

Applicant is a 57-year-old manager of process management and integration, who has worked for the same defense contractor since 1982. (Tr. 21, 23) In 1974, she graduated from high school. (Tr. 22) In 2003, she received a bachelor's of science degree in professional administration. (Tr. 22-23) She married in 1976, and her husband passed away in 1980. (Tr. 17, 25-26; GE 1) She had two children born of that marriage, who are 35 and 36 years old. (Tr. 17, 25-26; GE 1) She remarried in 1989, and she has a child of this marriage who is 23. (Tr. 17, 25-26; GE 1)

¹Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

Applicant has not served in the armed forces. (Tr. 17, GE 1) She has held a security clearance for 27 years without a security-related incident or security violation. (Tr. 22) She disclosed that she had problems paying her mortgage on her December 13, 2011 SF 86.

Financial Considerations

In 1997, Applicant and her spouse purchased their residence for \$145,000. (Tr. 26, 30) In about 2004, the residence was repaired, remodeled, and enlarged, and the mortgage total was eventually increased to \$420,000. (Tr. 32) The new mortgage payment was \$2,800 each month. (Tr. 34) The \$420,000 debt included a first mortgage of about \$230,000, a second mortgage of about \$90,000, and interest and charges after they missed payments in 2008 and 2009. (Tr. 42) In 2006, the house was appraised at \$840,000, and the current appraisal is \$330,000. (Tr. 43) The current mortgage balance owed is \$576,000, which includes all legal fees. (Tr. 43-44; AE DD)

In 2008, Applicant earned about \$60,000, and her husband earned about \$100,000 as an independent contractor. (Tr. 28-29, 40) In 2008, her husband became unemployed due to medical problems, and the family income went from \$160,000 to \$60,000. (Tr. 29, 38-40) If they paid the \$2,800 mortgage, they would have a negative monthly net of \$1,600 each month. (Tr. 46) They chose not to pay their mortgage.

Applicant's annual pay has increased from \$60,000 in 2008 to \$100,000 in 2014. (Tr. 47-48) Beginning in September 2012, they paid the SOR ¶ 1.c creditor \$2,993 monthly for one year, and they brought their mortgage to current status. (Tr. 47-48, 54, 60; GE 2) For the last six months, they have been paying \$3,300 monthly on their mortgage debt. (Tr. 50, 53, 60) Applicant borrowed \$22,000 from her mother to assist with making their payments. (Tr. 49) The mortgage debt in SOR ¶ 1.c has been current since September 2012. (Tr. 61)

The debt in SOR ¶ 1.b for \$125,230 originated from a home equity line of credit. Until recently, Applicant believed that this debt was incorporated into her primary mortgage debt because the amount of the primary mortgage was so large; however, she recently received a letter from the creditor offering to settle the debt for \$30,000. (Tr. 56-57, 63) Applicant and her spouse were seeking a history of the mortgage and home equity line of credit from the creditors in SOR ¶¶ 1.b and 1.c to enable them to determine the status and amounts of those two debts. (Tr. 61) She acknowledged that the debt in SOR ¶ 1.c was unresolved. (Tr. 63-64) After the hearing, she provided an April 10, 2014 settlement offer made to the SOR ¶ 1.b creditor for \$28,000, and an April 15, 2014 response from the creditor indicating the settlement offer was under review. (AE DD-EE)

Character Evidence

Applicant is a good mother, daughter, and spouse, who volunteers at her church and generously cares for others and assists them. (AE B, C, D) A retired director, who has worked with and known her for over 25 years, lauded her hard work, motivation,

positive attitude, professionalism, productivity, and contributions to the mission of her employer and the DOD. (AE E) She received letters or certificates of recognition or excellence in June 1995, December 1995, October 1997, January 2001, February 2003, November 2005, March 2009, 2011, March 2012, October 2013, March 2014 and a plaque commemorating her contributions in honor of the 20th anniversary of Desert Storm. (AE F-K, N, P-T) She received November 2002 and March 2012 written thanks for her assistance and contributions and a November 1997 recommendation for employment. (AE L, M, O) Her evaluations over the last several years indicate her performance, ethics, values, leadership, and integrity were positive attributes in the “2-meets,” “3-Exceeds,” or “4-Far Exceeds” categories with most ratings in the “3-Exceeds” and “4-Far Exceeds” classifications. (AE U-CC)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no 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 applicant’s 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 adjudicative guidelines. 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 overarching 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.

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 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 “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), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It 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. 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 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

Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

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.

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts;” and “(c) a history of not meeting financial obligations.” In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). Applicant’s history of delinquent debt is documented in her SF 86, credit reports, SOR response, and hearing statement. Her SOR lists three delinquent or charged-off accounts totaling \$612,364. Department Counsel withdrew one \$134 SOR debt. The Government established the disqualifying conditions in AG ¶¶

19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five 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;² 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.

The Appeal Board concisely explained the Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government

²The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the good-faith mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the good-faith mitigating condition].

(internal citation, punctuation, and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.” Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Applicant’s conduct in resolving her debts warrants full application of AG ¶¶ 20(a) and 20(b). Applicant’s husband’s illness caused him to be unemployed in 2008, and the family’s annual income declined from \$160,000 to \$60,000, which constitute financial problems that were affected by circumstances largely beyond her control. Despite the magnitude of the reduction in the family’s income, only two debts became delinquent. Applicant and her husband negotiated a new payment plan on their mortgage,³ and made the necessary payments from September 2012 to the present. The debt in SOR ¶ 1.b for \$125,230 is currently unresolved. The creditor offered to settle the debt for \$30,000, and Applicant counter-offered to settle the debt for \$28,000. Based on Applicant’s track record of paying her debts, I am confident that Applicant will continue to negotiate and settle the debt in SOR ¶ 1.b.⁴

AG ¶ 20(d) is partially applicable. Applicant admitted responsibility for and took reasonable actions to resolve both of her SOR debts, establishing some good faith. AG ¶¶ 20(c) and 20(e) are not applicable as she did not receive financial counseling or provide proof that she disputed her responsibility for any SOR debts.

In sum, Applicant fell behind on her debts because of her husband’s illness and unemployment, resulting in two large delinquent debts. She has established her financial responsibility by bringing the largest debt to current status and negotiating in good faith to resolve the other debt. It is unlikely that financial problems will recur. Her efforts are sufficient to mitigate financial considerations security concerns. This determination should not be construed to mean more effort to resolve her remaining delinquent debt is unnecessary. Assuming financial considerations concerns are not mitigated under AG ¶ 20, security concerns are mitigated under the whole-person concept, *infra*.

³“Even if Applicant’s financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

⁴ The Appeal Board has indicated that promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sept. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)).

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 the 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.

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. AG ¶ 2(c). I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under Guideline F, but some warrant additional comment.

Applicant is a 57-year-old manager of process management and integration, who has worked for the same defense contractor since 1982. In 2003, she received a bachelor's of science degree in professional administration. She disclosed that she had problems paying her mortgage on her December 13, 2011 SF 86. She was awarded numerous certificates lauding her diligence, dedication, professionalism, and contributions to her employer and the DOD. Character references and performance evaluations support restoration of her access to classified information as they provide reliable indications that that she is a mature, responsible, and trustworthy person. She has held a security clearance for 27 years without a security-related incident or security violation. She deserves substantial credit for her contribution in support of the national defense. There is every indication that she is loyal to the United States and her employer.

Applicant's husband's illness and his loss of employment caused her family's financial woes. Nevertheless, she acted responsibly under the circumstances by keeping all of her debts in current status except for two large debts. She paid about \$40,000 in the last 12 months to keep her mortgage in current status, and she made a good-faith offer to resolve her remaining unresolved delinquent debt. Applicant's progress over the last year shows she has acted responsibly to repair her finances. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

. . . the concept of meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off

each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has . . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his [or her] actions in evaluating the extent to which that applicant's plan for the reduction of his [or her] outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted).

Applicant understands what she needs to do to establish and maintain her financial responsibility. She has established a "meaningful track record" of debt repayment. Based on record evidence, I am confident she will pay her remaining delinquent SOR debt and avoid future delinquent debt.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole-person. I conclude financial considerations concerns are mitigated.

Formal Findings

Formal findings For or Against Applicant 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:	FOR APPLICANT
Subparagraph 1.a:	Withdrawn
Subparagraphs 1.b and 1.c:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Robert J. Tuidor
Administrative Judge