



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



In the matter of:)
)
) ISCR Case No. 12-02851
)
Applicant for Security Clearance)

Appearances

For Government: Mary Margaret Foreman, Esq., Department Counsel
For Applicant: *Pro se*

10/10/2017

Decision

TUIDER, Robert, Administrative Judge:

Applicant failed to mitigate security concerns regarding Guideline F (financial considerations). Clearance is denied.

Statement of the Case

On December 19, 2011, Applicant submitted a Questionnaire for National Security Positions (SF-86). On September 27, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, under Executive Order (Exec. Or.) 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), which became effective on September 1, 2006.

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge

to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under the financial considerations guideline.

On November 14, 2016, Applicant answered the SOR and elected to have her case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM), dated January 6, 2017, was provided to her by letter dated January 10, 2017. Applicant received the FORM on January 26, 2017. She was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not submit any additional information within the 30-day period. On October 1, 2017, the case was assigned to me.

While this case was pending a decision, the Director of National Intelligence issued Security Executive Agent Directive 4, establishing *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the Sept. 1, 2006 AGs and are effective “for all covered individuals” on or after June 8, 2017. Accordingly, I have evaluated Applicant’s security clearance eligibility under the new AGs, as required.¹

Findings of Fact

Applicant admitted SOR ¶¶ 1.c through 1.e, and denied SOR ¶¶ 1.a and 1.b. Her admissions are accepted as findings of fact. Additional findings of fact follow.

Background Information²

Applicant is a 41-year-old personal computer technician employed by a defense contractor since August 2000. She seeks to retain her security clearance for her current employment.

Applicant attended a university taking on-line courses from March to September 2006. She married in March 1998 and has two children, and is currently separated. Applicant served in the U.S. Air Force from October 1995 to June 2000, and received an honorable discharge.

Financial Considerations

Applicant’s SOR lists five allegations under this concern – a Chapter 13 bankruptcy filed in June 2015 and dismissed in August 2015; a \$29,158 past-due mortgage loan; a \$2,078 student loan placed in collections; a \$95 delinquent medical

¹ The new AGs are available at http://ogc.osd.mil/doha/SEAD4_20170608.pdf.

² The limited background information regarding Applicant was derived from the FORM and was the most current information available.

bill; and a \$7,436 past-due consolidated student loan that includes the \$2,078 student loan. (SOR ¶¶ 1.a – 1.e; Item 1) These allegations are established through the Government's exhibits contained in the FORM. (Items 1 – 8)

Applicant implied a loss of employment in her response to SOR ¶ 1.c as a source of her financial problems, but did not enhance or develop her employment background in sufficient detail or other factors to explain whether they may have led to her current situation.

Although Applicant denied SOR ¶ 1.a, the evidence establishes that she and her husband filed jointly under Chapter 13 in June 2015, and that the bankruptcy was dismissed in August 2015 for failure to attend the creditor's meeting and make payments pursuant to the plan. (Item 5) Applicant did not provide an explanation for this, except to say she is attempting to have the entry removed from her credit report. (Item 1) Applicant also denied SOR ¶ 1.b, which is a \$29,158 past-due mortgage loan. She stated that she is separated from her husband and resides with him in the same house, but was unaware that he was not making the house payments. (Item 1)

Applicant admitted SOR ¶ 1.c, a \$2,078 student loan placed in collections, and stated this debt is consolidated with the debt in SOR ¶ 1.e, a \$7,436 past-due consolidated student loan. She stated both of these loans were in a deferment status. She did not submit documentation that supports, or documentation that she will be able to repay these loans once they come out of deferment. Applicant stated that she was unaware of the debt in SOR ¶ 1.d, a \$95 delinquent medical bill, but will pay it in full by the end of 2016. (Item 1)

Although Applicant claimed in her November 14, 2016 SOR response that she had a plan to resolve her debts, she did not submit any corroborating documentation. At a minimum, Applicant was made aware that her financial situation was a security concern when she received her DOD CAF Interrogatories that she submitted on February 5, 2014. (Item 7) There is no evidence that Applicant sought financial counseling.

In short, the file lacks sufficient evidence that Applicant paid, arranged to pay, settled, compromised, disputed, or otherwise resolved a significant portion of the delinquent SOR accounts. She did not describe financial counseling or present a budget. The record lacks corroborating or substantiating documentation and detailed explanations of the causes for her financial problems and other mitigating information. The FORM noted that Applicant had 30 days from the receipt of the FORM "in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate. If you do not file any objections or submit any additional information . . . your case will be assigned to an Administrative Judge for a determination based solely" on the evidence set forth in this FORM. As noted, Applicant did not submit a response to the FORM.

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 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

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides three disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability to satisfy debts;” “(b) unwillingness to satisfy debts regardless of the ability to do so;” and “(c) a history of not meeting financial obligations.” Based on the information in the SOR, the record established the disqualifying conditions in AG ¶¶ 19(a), 19(b), and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions.

AG ¶ 20 lists five potential mitigating conditions:

(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

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

In summary, no mitigating conditions fully apply. In addition to evaluating the facts and applying the appropriate adjudicative factors under Guideline F, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(d). Applicant has been gainfully employed for the majority of her adult life, and she is presumed to be a mature, responsible citizen. Nonetheless, without other information suggesting her long-standing financial problems are being addressed, doubts remain about her suitability for access to classified information. Protection of the national interest is the principal focus of these adjudications. Accordingly, those doubts must be resolved against the Applicant.

Applicant chose to rely on the written record. In so doing, however, she failed to submit sufficient evidence to supplement the record with relevant and material facts regarding her circumstances, articulate her position, and mitigate the financial security concerns. She failed to offer evidence of financial counseling or provide documentation regarding her past efforts to address her delinquent debt. By failing to provide such information, and in relying on an explanation lacking sufficient detail to fully establish mitigation, financial considerations security concerns remain.

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:	AGAINST APPLICANT
Subparagraphs 1.a – 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d – 1.e:	Against Applicant

Conclusion

In light of all of the record as a whole, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance is denied.

ROBERT TUIDER
Administrative Judge