



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



In the matter of:)
)
) ISCR Case No. 14-02586
)
Applicant for Security Clearance)

Appearances

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

08/18/2016

Decision

TUIDER, Robert J., Administrative Judge:

Applicant mitigated security concerns regarding Guideline F (financial considerations). Clearance is granted.

Statement of the Case

On January 23, 2013, Applicant submitted a Questionnaire for National Security Positions (SF-86). On February 5, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, under 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), which became effective on September 1, 2006.

The SOR alleged security concerns under Guideline F. The SOR detailed reasons why DOD CAF was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and referred her case to

an administrative judge for a determination whether her clearance should be granted or denied.

On March 26, 2015, 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 November 4, 2015, was provided to her by letter dated November 6, 2015. Applicant received the FORM on December 2, 2015. She was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant timely submitted additional information within the 30-day period, which was received without objection.¹ On May 2, 2016, the case was assigned to me.

Findings of Fact

In her answer, Applicant denied SOR ¶¶ 1.a, 1.b, and 1.d, and admitted SOR ¶ 1.c. After a thorough review of the evidence, I make the following findings of fact.

Background Information²

Applicant is a 45-year-old manpower liaison employed by a defense contractor since March 2010. She seeks to retain her secret security clearance as a requirement of her current employment. (SOR answer; Items 3, 8)

Applicant graduated from high school in June 1989. (GE 8) She served in the U.S. Air Force from August 1989 to September 2009, and retired after completing 20 years of honorable service. (Items 3, 8) During Applicant's service in the Air Force, she successfully held security clearances during her 20-year career to include having held a top secret security clearance for 13 of those years. (SOR answer; FORM response) She attended college for a time uncertain while she was in the Air Force, and incurred student loans, discussed below.³ (Items 3, 8; SOR answer; FORM response)

Applicant was married from July 1997 to August 2004, and that marriage ended by divorce. She remarried in September 2007. She has two adult children. (Item 3) Applicant had a child during her current marriage; however, that child is deceased.⁴

¹ Applicant's additional information will be referred to as FORM response.

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

³ Applicant did not earn a college degree and the FORM does not contain the number of credit hours she earned.

⁴ Applicant stated she, "lost my first and only child with my husband in Oct 2010." (FORM response) Further details regarding this tragic event are not contained in the FORM.

Financial Considerations

Applicant's SOR alleges two delinquent student loans totaling \$17,957, one collection account in the amount of \$8,132 for an automobile loan she co-signed for her brother, and an allegation of failing to file her 2011 federal and state income tax returns. (SOR ¶¶ 1.a – 1.d) Department Counsel noted in his FORM that Applicant had failed to provide documentation to support claims made in her SOR answer that her debts were being resolved and that her tax situation was being addressed. Applicant, in large part, corrected those shortcomings in her FORM response.

Applicant's financial problems began towards the end of her Air Force career when she was faced with a severe illness in the summer of 2009 that prevented her from working. She was unemployed from September 2009 to March 2010. During her illness, Applicant's husband lost his job and the family's income stream was severely affected. To compound Applicant's situation, she lost her baby in October 2010 followed by the passing of her father in February 2011. Grief-stricken, she had the added financial burden of funeral expenses for her child and father. Following her father's passing, Applicant became the primary caregiver for her mother. (SOR answer; FORM response)

The following describes Applicant's SOR allegations and their current status:

SOR ¶¶ 1.a and 1.b – Student loans in the respective amounts of \$13,132 and \$4,825. Applicant consolidated these loans, successfully completed a rehabilitation program, and is in an established repayment plan making monthly payments of \$166. Documentation submitted reflects that Applicant's consolidated student loan account is in good standing. **Debt(s) being resolved.** (SOR answer; FORM response)

SOR ¶ 1.c – Collection account in the amount of \$8,132 for a car loan. Applicant co-signed this loan with her brother to assist him in purchasing a car. Her brother did not make the payments as agreed and the lender turned to Applicant for repayment. The car ended up in her father's possession and the car was towed to a garage before he died. Applicant recognizes that she bears responsibility for this debt. Negotiations with her brother and the lender are ongoing. (SOR answer; FORM response)

SOR ¶ 1.d – Allegation that Applicant failed to file her 2011 federal and state income tax returns. Applicant submitted sufficient documentation supporting her assertion that she filed her 2011 federal and state income tax returns in 2014. **Allegation resolved.** (SOR answer; FORM response)

There is no record evidence that Applicant sought financial counseling.

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 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 three disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts;” “(c) a history of not meeting financial obligations;” and “(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.”

The evidence establishes the validity of the allegations and the disqualifying conditions in AG ¶¶ 19(a), 19(c), and 19(g) 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; 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.

Applicant's conduct does not warrant full application of AG ¶ 20(a) because there is more than one delinquent debt and her financial problems are not isolated. Her debt is a "continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). Nevertheless, she receives partial credit under AG ¶ 20(a) because the debts occurred under circumstances that are unlikely to recur and her behavior does not cast doubt on her current reliability, trustworthiness, or good judgement.

Full application of AG ¶ 20(b) is warranted. Applicant's debilitating illness before and after her Air Force retirement followed by seven months of unemployment and her husband losing his job could not have been foreseen. This was followed by the tragic passing of her child and father and unplanned funeral expenses. After her father passed away, Applicant assumed responsibility as caregiver for her mother.

AG ¶¶ 20(c) and 20(d) are applicable. Although Applicant did not receive formal financial counseling, her debts are being resolved and there are clear indications that her financial problems are under control. Applicant has made a concerted effort to address her student loans by consolidating them and setting up a repayment plan. Her consolidated student loan account is in good standing. She has made a good-faith effort to resolve the automobile loan she co-signed for her brother; however, further action is required.⁵ Applicant has since filed her 2011 tax returns. AG ¶ 20(e) is not relevant.

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

⁵"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 she maintained contact with his creditors and attempted to negotiate partial payments to keep her debts current.

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). The discussion in the Analysis section under Guideline F is incorporated in this whole-person section. However, further comments are warranted.

Both the mitigating conditions under Guideline F and the whole-person analysis support a favorable decision. Applicant's 20 years of Air Force service while successfully holding a security clearance and her employment with a defense contractor weigh heavily in her favor. She is a productive member of society. She is current on her day-to-day expenses, lives within her means, and her SOR debts are resolved or are being resolved. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

In evaluating F cases, the Board has previously noted that 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 has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has ". . . established a plan to resolve his 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 actions in evaluating the extent to which that applicant's plan for the reduction of his 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 omitted).

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. Her efforts at debt resolution have established a "meaningful

track record” of debt re-payment. I am confident she will resolve the remaining debt on her SOR and maintain her financial responsibility.⁶

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines.

Formal Findings

The formal findings on the SOR are as follows:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a – 1.d: For Applicant

Conclusion

In light of all of the record as a whole, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance is granted.

ROBERT J. TUIDER
Administrative Judge

⁶Of course, the Government can re-validate Applicant’s financial status at any time through credit reports, investigation, and additional interrogatories. Approval of a clearance now does not bar the Government from subsequently revoking it, if warranted. “The Government has the right to reconsider the security significance of past conduct or circumstances in light of more recent conduct having negative security significance.” ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012). An administrative judge does not have “authority to grant an interim, conditional, or probationary clearance.” ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012) (citing ISCR Case No. 10-03646 at 2 (App. Bd. Dec. 28, 2011)). See *also* ISCR Case No. 04-03907 at 2 (App. Bd. Sep. 18, 2006) (stating, “The Board has no authority to grant [a]pplicant a conditional or probationary security clearance to allow her the opportunity to have a security clearance while she works on her financial problems.”). This footnote does not imply that this Applicant’s security clearance is conditional.