



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 14-03680
)	
Applicant for Security Clearance)	

Appearances

For Government: Pamela C. Benson, Esq., Department Counsel
For Applicant: *Pro se*

02/22/2017

Decision

HESS, Stephanie C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Due to circumstances largely beyond her control, Applicant experienced financial difficulties, but mitigated the concern by acting responsibly under the circumstances. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on February 26, 2014. On September 2, 2014, the Department of Defense (DOD) sent her a Statement of Reasons (SOR), alleging security concerns under Guideline F. The DOD acted under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 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.

The SOR was sent to Applicant on September 2, 2014. She answered the SOR September 25, 2014, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on March 31, 2015. On

April 22, 2015, a complete copy of the file of relevant material (FORM,) which included Government Exhibits (GX) 1 through 5, was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. She received the FORM on April 28, 2015 and filed a timely response. The case was assigned to me on December 27, 2016.

Findings of Fact

The SOR alleges nine delinquent debts totaling approximately \$11,339. In her Answer, Applicant admits SOR allegations 1.a through 1.c, denies SOR allegations 1.d through 1.i, and qualifies each of her responses. The delinquent debts are reflected in Applicant's credit bureau reports (CBRs) dated March 2014 and March 2015. (GX 4; GX 5.) Her admissions in her Answer are incorporated in my findings of fact.

Applicant is a 47-year-old training developer employed in the defense industry since at least 2001, and by her current employer since May 2005. She served honorably in the U.S. Navy Reserve from June 2000 until August 2007. She took college courses from October 2005 until at least February 2014. She married in 1988, separated in 2011, and has since divorced. She has three adult children. She has held a clearance since at least 2003. (GX 2; GX 3.)

The record evidence shows that in 2003, Applicant was granted a conditional security clearance due to financial concerns. She and her husband experienced financial difficulties due to a number of factors, including over-spending on credit cards, but primarily due to a loss of income from a cost of living adjustment when they were reassigned, then a second loss of income after her husband left the military. However, there is no record evidence that Applicant's financial difficulties continued between 2003 and 2011, and she continues to hold a security clearance. (GX 3; GX 1.)

When Applicant and her husband of 22 years separated in January 2011, she again experienced financial issues. Her husband verbally agreed to pay half the mortgage loan payments until they had a finalized separation agreement in place. Subsequently, he did not make the payments and refused to enter into a written separation agreement. At the time that she went from a dual-income household to a single-income household, Applicant had two children in college and one in high school, which necessarily contributed to her overall expenses. Ultimately, Applicant fell behind on her mortgage-loan payments (SOR ¶ 1.a) and two credit-card accounts (SOR ¶¶ 1.b and 1.c).

Applicant has resolved the \$8,938 delinquent mortgage-loan debt alleged in SOR ¶1.a. She successfully received a mortgage loan modification in June 2014, has maintained her payments since that time, and the account is current with a \$0 past-due balance. (GX 5.)

The two credit-card accounts with past-due amounts of \$578 (SOR ¶ 1.b), and \$183 (SOR ¶ 1.c), were charged off for \$8,596 and \$6,838 in 2014. These charge-offs

are not alleged in the SOR. In her Answer and response to the FORM, Applicant explained that in 2015, she contacted the creditor and entered repayment plans to return each account to a current status, and she has maintained the repayment schedules.

The parking violation debts of \$400 (SOR ¶ 1.d), \$400 (SOR ¶ 1.e), \$300 (SOR ¶ 1.f), and \$250 (SOR ¶ 1.g) are not Applicant's debts. In her Answer, she explained that she was unaware of the debts until her background investigation and that the violations were incurred by her mother. She provided a document dated September 24, 2014, which shows the debts were paid in full. (Answer.) The debts do not appear on the March 2015 CBR. (GX 5.)

Applicant disputed the \$214 medical debt alleged in SOR ¶ 1.h. She explained that the debt does not belong to her, and provided a file number for her dispute claim. However, she stated that she would pay this debt in full if it was shown to be hers. (Answer.)

Applicant disputed the \$76 debt alleged in SOR ¶ 1.i. She explained that the debt does not belong to her, and provided a file number for her dispute claim. The debt does not appear on the March 2015 CBR. (Answer; GX 5.)

Applicant has not incurred any recent delinquent debt, and she lives within her means. (GX 5; Answer.)

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's 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 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).

The record evidence establishes two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations"). The following mitigating conditions under this guideline are potentially applicable:

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(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.

Applicant's past financial problems were attributable to matters largely beyond her control, primarily her separation and subsequent divorce. Specifically, Applicant's husband reneged on his verbal agreement to pay half the mortgage-loan payments until a separation agreement was finalized. The shift from two household incomes to one had a significant impact on Applicant's ability to maintain her finances. However, she acted responsibly by proactively addressing each of her debts. She successfully entered and has maintained a mortgage-loan modification since June 2014. She credibly explained in detail that she has maintained repayment plans since 2015 with the creditor of the two other past-due debts alleged in the SOR, and has brought these accounts to current statuses. Upon learning of the parking violation debts, totaling \$1,350, she recognized they were her mother's debts and facilitated their resolution. She disputed, as not hers, the two remaining SOR debts, one of which no longer appears on her CBR.

Applicant has acted in good faith by resolving or otherwise addressing all of her debt. "Good faith" 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). A security clearance adjudication is an evaluation of an individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010.) A person is not required to establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Although Applicant's finances are not perfect, she has established and implemented a plan to resolve her delinquent debts. AG ¶¶ 20(a) through 20(e) apply.

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 I have also considered the following:

Applicant has held the same job for nearly 12 years. She served honorably in the military, and has held a security clearance since at least 2003. She has not incurred any recent delinquent debt and lives within her means. Such actions are indicative of an individual who is reliable and trustworthy and who exercises good judgment. I am confident that Applicant will continue her efforts to maintain financial stability.

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 mitigated the security concerns raised by her delinquent debts. Accordingly, I conclude

she has 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

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a – 1.i:

For Applicant.

Conclusion

I conclude that it is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Stephanie C. Hess
Administrative Judge