



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 15-01335
)	
Applicant for Security Clearance)	

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

10/02/2017

Decision

HESS, Stephanie C., Administrative Judge:

Applicant experienced financial difficulties due to circumstances largely beyond her control, but mitigated the concern by acting responsibly. Her omission on her security clearance application was unintentional. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on May 27, 2014. On March 4, 2016, the Department of Defense (DOD) sent her a Statement of Reasons (SOR), alleging security concerns under Guideline F. The DOD acted under Executive Order (Ex. Or.) 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.

Applicant submitted her Answer to the SOR through her counsel on May 16, 2016, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on December 2, 2016, and the case was assigned to me on March 20, 2017.

On April 13, 2017, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for May 2, 2017, via video teleconference. Department Counsel, Applicant's counsel, and I were in Arlington, Virginia, and Applicant was at a remote location. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted into evidence without objection. Applicant testified and Applicant's Exhibits (AX) A through M were admitted without objection. I left the record open until May 16, 2017, to allow applicant to submit additional documentary evidence. She submitted AX N through Q, which were admitted without objection DOHA received the transcript (Tr.) on May 15, 2017.

This case was adjudicated under the AG implemented on September 1, 2006. The DOD implemented the amended AG on June 8, 2017, while this decision was pending. This decision will be decided based on the amended AG effective June 8, 2017. The outcome of this case would have been the same if decided based on the former AG.

Findings of Fact

Applicant is a 38-year-old financial analyst currently employed by a defense contractor since November 2015. She completed three years of college and is currently taking one class. She and her husband married in August 1998. Applicant has a 20-year-old daughter, and Applicant and her husband have two sons ages 17 and 9. Applicant was employed as a federal employee from 2001 through 2005, and has been working as a government contractor since 2006. (GX 1; AX G.)

Under Guideline F, the SOR alleges three past-due accounts totaling \$1,986 and a charged-off account totaling \$28,136. Applicant admits the three past-due accounts, but denies the charged-off account. The SOR also alleges under Guideline E that Applicant intentionally falsified her security clearance application by failing to disclose the charged-off account. Applicant denies this allegation. Her admissions are incorporated in my findings of fact. The delinquent debts are reflected in Applicant's credit bureau reports (CBR) from January 2015 and June 2014. (GX 2; GX 3.)

In 2005, Applicant's husband moved abroad to work for a defense contractor. Several months later, Applicant and her children joined him. Both Applicant and her husband worked and lived abroad for nearly 9 years. In June 2013, Applicant's husband was offered a new job, and he and the children returned to the United States, while Applicant remained abroad. However, Applicant's husband's new job fell through and he was unemployed from June 2013 until May 2014. Applicant and her husband were supporting two households and trying to maintain their other financial obligations solely on Applicant's salary. While working abroad, Applicant's husband's salary had been significantly higher than Applicant's. The loss of Applicant's husband's income created an enormous financial strain on them. By August 2013, Applicant was depleting her savings and acquiring debt. She applied for and received two credit cards which she used for living expenses. (Tr. 27-28.)

Applicant returned to the United States in March 2014, after her contract ended. She took a part-time consulting job with the same contractor, which resulted in a decrease in salary from about \$80,000 to about \$35,000. In May 2014, Applicant began working full time for another defense contractor. In August or September 2014, Applicant's consulting job ended. Applicant was living in a rent-to-own home, which required substantial renovations and repairs. Applicant completed the one-year lease, cut her financial losses, and moved to a smaller home that is more financially manageable.

The \$364 past-due account alleged in SOR ¶ 1.a was for a student loan. Due to her financial struggles, Applicant contacted the creditor and her student loan was placed in forbearance from November 2015 until November 2016. (AX A; Tr. 55.) In August 2015, due to the late payments, the interest rates on Applicant's credit cards (SOR ¶¶ 1.b and 1.c) dramatically increased and she was unable to maintain the payments. In October 2015, Applicant's employer lost its contract, and Applicant was unemployed for approximately one month, until she went to work for her current employer.

In approximately March 2016, Applicant entered settlement agreements and repayment plans with the creditor of SOR ¶¶ 1.b and 1.c, with monthly payments totaling about \$350. In April 2016, she completed a financial counseling course and started credit monitoring through her bank. Aware that she needed to get her financial situation under control, Applicant began to pay her smaller debts. However she "realized that [she] needed to get a better grasp" on her finances and contacted a bankruptcy attorney who recommended Chapter 13 bankruptcy. (AX K.) Applicant completed a second credit counseling course in November 2016, then filed for Chapter 13 bankruptcy. She and her husband have each been making biweekly payments of \$528, withdrawn directly from their paychecks, since December 2016. SOR ¶¶ 1.a, 1.b, and 1.c are included in the bankruptcy. (AX N; AX O.)

The \$28,136 debt alleged in SOR ¶ 1.d is the original amount Applicant cosigned for to enable her husband to purchase a vehicle in approximately March 2004. When Applicant left to work abroad, she and her father-in-law agreed that he would assume the payments and use of the vehicle. However, when Applicant returned home for a visit in 2006, she discovered that the vehicle had been repossessed in 2005. In an effort to maintain her financial good standing, Applicant contacted the creditor and made monthly payments for approximately six to eight months, until the original creditor sold the loan. At some point, Applicant learned that the vehicle had been sold and that the deficiency was approximately \$8000. The loan was sold a second time while Applicant was still living abroad, and she ultimately "lost track of the debt." (Tr. 42-46; Tr. 60.) The account was closed and the debt charged off in September 2012. (GX 3.)

Applicant sent a registered letter to the current creditor seeking information about the charged-off vehicle loan. She also made several telephone calls to the creditor and was informed that it could not locate an account number or the balance and that the account was closed. Applicant could not include this debt in her bankruptcy due to lack of information. (Tr. 46-47.) Applicant did not list this debt on her 2014 e-QIP because it did not appear on her credit bureau report and because it was greater than seven years

old. She denies this debt because it does not account for the payments she made. She is willing to repay this debt. (Tr. 26; GX 4.)

Between 2005 in 2015, Applicant and her husband provided their parents with financial assistance for medical care and living expenses, as well as performed caregiver tasks during the various illnesses from which their parents suffered. They no longer have these financial responsibilities. (AX K; Tr. 33.) Additionally, Applicant's daughter is in the U.S. Army and financially independent. (Tr. 35.)

Applicant's supervisor highly recommends her and considers her to be "loyal, honest, respectful, considerate and reliable friend and employee." (AX I.) She now earns approximately \$62,000 annually and her husband earns approximately \$74,000. (Tr. 28-29.) Applicant has not incurred any significant recent delinquent debt, she maintains a budget, and lives within her means. (AX N; Tr. 56.) She does not have any open credit-card accounts, and pays her monthly bills with money orders. (Tr. 56; Tr. 62.) She was candid, sincere, and credible while testifying.

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).

Applicant's testimony, corroborated by the record evidence, establishes two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations").

However, a person can mitigate concerns about his or her ability to handle and safeguard classified information raised by his or her financial circumstances by establishing one or more of the mitigating conditions listed under the guideline. The relevant mitigating conditions in this case are:

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

AG ¶ 20(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;

AG ¶ 20(d): individual initiated and is adhering to 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 financial difficulties arose due to circumstances largely beyond her control. Specifically, both Applicant and her husband had periods of unemployment, Applicant was underemployed for a sustained period of time, and she provided financial support for her parents and in-laws. She acted responsibly under the circumstances by placing her student loan on forbearance, and contacting the creditor of two of the SOR debts and entering repayment plans. She continued to make payments on the vehicle loan after the vehicle was repossessed, but was ultimately unable to maintain those payments. She made multiple attempts to contact the creditor of the loan, but was unable to obtain sufficient information, including an accurate balance, in order to repay the debt. Applicant completed two financial management courses. She filed chapter 13 bankruptcy on the recommendation of a bankruptcy attorney and has been consistently making automatic payments since December 2016. She lives within her means, maintains a budget, has no open credit-card accounts, pays her bills with money orders, and has not incurred any significant recent delinquent 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 a

person'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 a person 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).

Applicant's financial difficulties did not arise under circumstances that suggest reckless or irresponsible behavior. Overall, she has addressed her debts in a responsible manner, and will continue to do so. Although her financial record is not perfect, she has implemented a reasonable plan to resolve her financial issues within her means. AG ¶¶ 20(b) through 20(e) apply.

Guideline E, Personal Conduct

The concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

Conditions that could raise a security concern and may be disqualifying include:

AG ¶ 16(a):deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

Applicant explained that she did not list the charged-off vehicle-loan debt on her 2014 e-QIP because the debt did not appear on her credit bureau report and because she thought the debt was greater than 10 years old. I found her explanation to be credible and consistent with the record evidence, and her demeanor to be honest, forthcoming, and candid. Therefore, I conclude that she did not intentionally falsify her e-QIP.

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(d):

(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 Guidelines E and F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but I have also considered the following:

Applicant has worked for and in support of the Government since 2001. She recognized that her efforts to manage her finances were insufficient and sought professional advice. She has implemented a plan to resolve her delinquent debts.

After weighing the disqualifying and mitigating conditions under Guidelines E and 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 his burden of showing that it is clearly consistent with the national interest to grant him 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.d: For Applicant

Paragraph 2, Guideline E (Personal Conduct): FOR APPLICANT

Subparagraph 2.a: For Applicant

Conclusion

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

Stephanie C. Hess
Administrative Judge