



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



In the matter of:

ISCR Case No. 15-01682

Applicant for Security Clearance

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel

For Applicant: *Pro se*

10/14/2016

Decision

CERVI, Gregg A., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

Applicant completed a Questionnaire for National Security Positions (SF 86)¹ on September 26, 2012. On October 31, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations.²

¹ Also known as a Security Clearance Application (SCA).

² The action was taken under Executive Order 10865, Safeguarding Classified Information Within Industry (February 20, 1960), as amended; DOD Directive 5220.6, Defense Industrial Personnel Security Clearance Review Program (Directive) (January 2, 1992), as amended; and the Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (AG), implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on December 3, 2015, and elected to have the case decided on the written record in lieu of a hearing. The Government's written brief with supporting documents, known as the File of Relevant Material (FORM), was submitted by Department Counsel on February 3, 2016.

A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit documentary material to refute, extenuate, mitigate or explain the security concerns. Applicant received the FORM on February 8, 2016. She submitted a credit bureau report (CBR) (AE 1) dated April 13, 2016 in response to the FORM. She did not assert any objections to the Government's evidence. The case was assigned to me on August 28, 2016. The Government's exhibit's included in the FORM (Items 1 to 4) and Applicant's exhibit are admitted into evidence.

Findings of Fact

The SOR alleges Applicant has five delinquent debts totaling approximately \$50,000. Applicant denied the SOR allegations with explanations. The evidence supports the SOR allegations.

Applicant is 46 years old and is employed as a quality control manager for a construction company since 2006. She received an associate's degree in 2004 and a bachelor's degree in 2008. She is currently single. She was previously married in 1988 and 2002, and divorced in 1993 and 2009, respectively. She has two children. She has held a DOD security clearance since 2007.

Applicant's actions with respect to the SOR allegations and the current status are noted below:

SOR ALLEGATION	ACTION TAKEN	CURRENT STATUS
1.a Mortgage past due for \$27,751	Delinquency in 2008; negotiated and approved for loan modification and payments made. CBR shows loan modification and payments current.	Resolved
1.b Student loan charged-off for \$23,960	Delinquency in 2011; son responsible to pay, but Applicant cosigned on the account. Applicant making payments. CBR confirmed.	Resolved

1.c Medical debt for \$3,065	Delinquency in 2010. Applicant believed her medical insurance would cover debt. Believes debt is in error and not her responsibility.	Disputes debt; but no evidence of formal dispute. Not resolved.
1.d Medical debt for \$140	Applicant claims account paid; no longer appears on CBR.	Claims resolved but not documented.
1.e Homeowners association judgment for \$1,286	Applicant fell behind on payments after divorce. Used 401k money to pay debt. CBR shows judgment satisfied in 2013.	Account is current and paid up to date. Resolved

Applicant fell behind on debts as a result of her last divorce, and from admitted carelessness and irresponsibility. The student loan is primarily the responsibility of her son, but he defaulted on payments, so she is making payments as the cosignor. She has not received any financial counseling or used a debt consolidation service, but her current credit bureau report shows no new delinquencies.

Law and Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security clearance

decision.³ The Supreme Court stated that the burden of proof is less than a preponderance of the evidence.⁴

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” It is well-established law that no one has a right to a security clearance. As noted by the Supreme Court in *Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.” Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.⁵

The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. 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 of potential, rather than actual, risk of compromise of classified information.

Section 7 of Exec. Or. (EO) 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations 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.

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁴ *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. DOD*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

⁵ *Egan*, 484 U.S. at 531.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (b) a history of not meeting financial obligations.

Applicant incurred delinquent debts after a divorce in 2009. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has made significant effort to resolve her debts. She renegotiated a home mortgage and has been making payments as required. She took over her son's student loan payments when he defaulted, and is current. She is disputing a medical debt that she believes her insurance company is responsible for, and asserts that she paid the smaller medical debt. Finally, she used her 401k retirement account to pay a delinquent homeowner's association judgment and is current on all payments. Her efforts have been satisfactory to demonstrate that her financial circumstances are under control and that she is willing and able to meet her financial obligations. Her current credit bureau report shows no new delinquencies. Mitigating conditions ¶ 20 (a), (b), (c), and (d) apply.

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 relevant 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.

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. I considered all of the potentially disqualifying and mitigating conditions in light of all the evidence in favor of and against Applicant, and the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F in this whole-person analysis.

Overall, the record leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance.

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
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Subparagraphs 1.a – 1.e:	For Applicant
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Conclusion

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

Gregg A. Cervi
Administrative Judge