



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 15-01675
)
 Applicant for Security Clearance)

Appearances

For Government: Nichole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

05/18/2017

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application on October 31, 2012. On October 25, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF acted under Executive Order (Exec. 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 the DOD on September 1, 2006. The adjudicative guidelines are codified in 32 C.F.R. § 154, Appendix H (2006), and they replaced the guidelines in Enclosure 2 to the Directive.

Applicant answered the SOR on November 15, 2015, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on February 27, 2017, and the case was assigned to me on March 2, 2017. On March 3, 2017, the

Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for March 22, 2017. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or submit any documentary evidence. I kept the record open until April 21, 2017, to enable her to submit documentary evidence. At Applicant's request, I extended the deadline for submitting documentary evidence to April 28, 2017. She timely submitted Applicant's Exhibits (AX) A and B, which were admitted without objection. DOHA received the transcript (Tr.) on March 31, 2017.

Findings of Fact¹

In her answer to the SOR, Applicant admitted the delinquent debts alleged in SOR ¶¶ 1.a-1.f and 1.h. She stated that she was unaware of the delinquent student loan for \$7,748 alleged in SOR ¶ 1.g and did not know the identity of the alleged creditor. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 25-year-old welder employed by a defense contractor. She graduated from high school in June 2010, attended a community college for one month in 2010, attended a vocational school from October 2011 to June 2012, and received a certification as a welder. She was employed in the private sector from September 2011 to April 2012, and she was unemployed from April 2012 until she was hired for her current job in August 2012. She never married and has no children. She has never held a security clearance.

The debts alleged in SOR ¶¶ 1.a-1.g, but not 1.h, are reflected in credit bureau reports (CBRs) from February 2015 and October 2015. (GX 3; GX 4.) The evidence concerning these debts is summarized below.

SOR ¶ 1.a: Judgment for \$9,058 entered in June 2013, for the deficiency after repossession of an automobile. This debt was incurred when Applicant co-signed her sister's automobile loan in August 2011. Her sister failed to make the payments and the automobile was repossessed. (Tr. 30-32.)

SOR ¶¶ 1.b and 1.c: Medical debts for \$343 and \$350. In Applicant's answer to the SOR, she stated that these two debts arose from the same hospitalization. However, the October 2015 CBR reflects that the \$343 debt became delinquent in March 2015 and the \$350 debt became delinquent in January 2011. (GX 3 at 1-2.)

SOR ¶ 1.d: Delinquent student loan for \$2,857. This debt was incurred for tuition at the vocational school she attended in 2011-2012, and it became delinquent in November 2013. (GX 3 at 3.)

¹ Applicant's personal information is extracted from his security clearance application (GX 1) unless otherwise indicated by a parenthetical citation to the record.

SOR ¶ 1.e: Deficiency after repossession of an automobile, charged off for \$4,622. The last payment on this debt was in October 2014. (GX 3 at 4.)

SOR ¶ 1.f: Credit-card account charged off for \$1,222. The last payment on this account was in June 2012. (GX 3 at 4.)

SOR ¶ 1.g: Delinquent student loan for \$7,748, charged off in December 2012. In her answer to the SOR and at the hearing, Applicant stated that she was unable to identify the creditor for this debt. (Tr. 37.) After the hearing she submitted evidence of three payments to this creditor, using a prepaid credit card. She paid \$356 on July 14, 2016; \$100 on August 9, 2016; and \$120 on August 23, 2016. (AX A.)

SOR ¶ 1.h: Collection account for \$3,334. This debt is not reflected in the two CBRs submitted by Department Counsel. Applicant was questioned about it in a personal subject interview (PSI) in January 2013, and she told the investigator the debt was incurred to enable another person to obtain schooling, but she did not know that status of the debt. The summary of the PSI indicates that the investigator was questioning her about an older CBR not submitted by Department Counsel in this case. (GX 2 at 2.) In her answer to the SOR, she stated that she co-signed for a family friend and assumed that the debt had been paid. At the hearing, she testified that she did not sign any documents regarding the debt and did not know that she was responsible for paying the debt. (Tr. 38.)

For about three years, Applicant has lived in hotels because her bad credit prevents her from being able to lease an apartment. She spends about \$350 per week for hotels. She does not own an automobile and depends on public transportation.

After receiving the SOR, Applicant contacted a bankruptcy attorney. She filed a Chapter 7 bankruptcy petition January 2017 and received a discharge in March 2017. (Tr. 40-42; AX A.) She testified that all the debts alleged in the SOR were included in her bankruptcy. Absent fraud, in a no-asset bankruptcy, all unsecured, nonpriority debts are discharged when the bankruptcy court grants a discharge, even when they are not listed on a bankruptcy schedule. See *Judd v. Wolfe*, 78 F.3d 110, 114 (3d Cir. 1996); *Francis v. Nat'l Revenue Service, Inc.*, 426 B.R. 398 (Bankr. S.D. FL 2010). However, debts for government-funded or guaranteed education loans are not necessarily discharged. See 11 U.S.C. § 523(a). Applicant provided no information about the status of her delinquent student loans.

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 § 2.

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, 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.” 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 a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person 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 debt alleged in SOR ¶ 1.h is not established by substantial evidence. However, Applicant's admissions and the evidence presented at the hearing establish the debts alleged in SOR ¶¶ 1.a-1.g and are sufficient to raise 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(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;

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.

AG ¶ 20(a) is not established. Applicant's delinquent debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not established. Applicant's unemployment for about four months before she was hired for her current job and the failure of her sister to pay the debt alleged in SOR ¶ 1.a were conditions beyond her control, but she has not acted responsibly. She submitted no evidence of contacts with her creditors, payments, payment agreements, or other efforts to resolve her debts, except for the three payments on the debt alleged in SOR ¶ 1.g after she received the SOR.

AG ¶ 20(c) is not established. Applicant would have been required to obtain counseling as part of her bankruptcy, but it is not clear whether all her financial problems, especially her delinquent student loans, are resolved.

AG ¶ 20(d) is not established. Applicant made three payments on the debt alleged in SOR ¶ 1.g, but the debt had been delinquent since December 2012, and she made no effort to resolve it until she received the SOR. Evidence of past irresponsibility is not mitigated by payment of debts only under pressure of qualifying for a security clearance. She made no payments on the other debts alleged in the SOR, even though she has been employed since August 2012. While bankruptcy is a legally permissible and sometimes prudent action, it does not constitute a good-faith effort within the meaning of this mitigating condition. See ISCR Case No. 03-20327 (App. Bd. Oct. 26, 2006).

AG ¶ 20(e) is not established. Applicant has not disputed any of the debts alleged in the SOR. Although she stated in her response to the SOR that she did not recognize the debt alleged in SOR ¶ 1.g, she made three payments on it in July and August 2016.

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 some warrant additional comment.

Applicant was candid and sincere at the hearing. She is living frugally. She is financially unsophisticated and has paid the price for financial generosity without consideration of the consequences. She presented no evidence of her income and expenses, except for her testimony about the hotel bills, and no evidence of financial planning or budgeting. Given her track record, it is too soon to determine whether she will exercise better judgment in managing her financial affairs.

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 not mitigated the security concerns raised by her delinquent debts. Accordingly, I conclude she has not 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

I make the following formal findings on the allegations in the SOR:

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

Subparagraphs 1.a-1.f:	Against Applicant
------------------------	-------------------

Subparagraph 1.g:	For Applicant
-------------------	---------------

Conclusion

I conclude that it is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman
Administrative Judge