



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 15-01686
)	
Applicant for Security Clearance)	

Appearances

For Government: Rhett E. Petcher, Esq., Department Counsel
For Applicant: *Pro se*

09/21/2016

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 May 12, 2014. On September 23, 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 replace the guidelines in Enclosure 2 to the Directive.

Applicant answered the SOR on March 10, 2016, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on April 25, 2016,

and the case was assigned to me on May 2, 2016. On May 12, 2016, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for June 9, 2016. 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 other witnesses or submit any documentary evidence. I kept the record open until July 11, 2016, to enable her to submit documentary evidence. She did not submit any additional evidence. DOHA received the transcript (Tr.) on June 17, 2016.

Findings of Fact¹

In her answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a-1.d, 1.f-1.h, and 1.k. She denied SOR ¶¶ 1.e, 1.i, and 1.j. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 41-year-old employee of a defense contractor. She has worked for her current employer since June 2013. She has been employed by defense contractors since August 2003.

Applicant served on active duty in the U.S. Navy from May 1994 to July 2001 and was honorably discharged. She served in the active U.S. Navy Reserve from November 2001 to November 2002 and was honorably discharged. She held a security clearance while in the Navy and as a contractor employee, and she is seeking to continue it. (Tr. 26.)

Applicant married in August 2003, separated in 2007, and divorced in June 2013. She has two children, ages 17 and 11, who live with her. Her ex-husband is not obligated to pay child support. (Tr. 23-24.)

Applicant attended a university from September 2003 to September 2006 and received a bachelor's degree. Some of her educational expenses were financed through the GI Bill, and about \$40,000 was financed through student loans. Her husband managed the family finances while they were living together, and she testified that she thought that he was making the payments on her student loans until her pay was garnished for about \$8,719 in April 2013. The garnishment triggered an incident report and an inquiry into her continued eligibility for access to classified information. (GX 4; Tr. 19, 29-33.)

Applicant testified that when she learned that her student loans were delinquent, she directed that her federal tax refunds be used to pay the student loans, and she thought that the tax refunds had paid off the delinquent loan until she was interviewed by a security investigator. (Tr. 20, 40-41.) She did not submit any documentation showing that she used her tax refunds to pay the loans.

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

The SOR alleges multiple delinquent student loans (SOR ¶¶ 1.a-1.d, 1.f-1.h, and 1.k), two delinquent medical debts (SOR ¶¶ 1.e and 1.i), and a charged-off consumer debt (SOR ¶ 1.j). Applicant testified that the student loans alleged in SOR ¶¶ 1.a-1.d, 1.g, and 1.h were resolved. (Tr. 40-41.) She did not provide any documentation to corroborate her testimony. She admitted that she owes the student loans alleged in SOR ¶¶ 1.b, 1.f, and 1.k and has no payment plans for them. (Tr. 41-43.)

Applicant testified that she did not recognize the medical debts for \$564 and \$1,340 alleged in SOR ¶¶ 1.e and 1.i. She has not investigated, resolved, or disputed them. (Tr. 44-45.)

Applicant testified that her ex-husband agreed to pay the consumer debt alleged in SOR ¶ 1.j. She submitted no documentation of an agreement. The creditor bureau report from July 2014 reflected that it is her individual debt. (GX 2 at 11.) As of the date of the hearing, she had not initiated any contact with the creditor. However, she received a letter from the creditor about two weeks before the hearing, but she had not responded to it. (Tr. 46-47.)

Applicant recently withdrew about \$18,500 from her retirement account to replace her 17-year-old car. She paid \$13,500 for the 2013-model car and is holding \$5,000 in reserve to pay the taxes on the early withdrawal from her retirement account. (Tr. 56-57.)

Applicant earns about \$95,000 per year. Her monthly take-home pay is about \$4,950. (Tr. 38-39.) At the hearing, she estimated that her monthly expenses are about \$2,300. (Tr. 53-57.) If her estimate is accurate, she would have a net monthly remainder of about \$2,650.

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 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.” 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).

Applicant's admissions in her answer to the SOR, her testimony at the hearing, and the documentary evidence submitted at the hearing establish 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.

None of the above mitigated conditions are established. Applicant's delinquent debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur. Her marital breakup was a circumstance beyond her control, but she has not acted responsibly. Her husband's failure to make the payments on her student loans was not beyond her control, because she voluntarily chose to trust him with all the family finances. While it is not uncommon or unreasonable for one marital partner to manage the family finances, Applicant had a duty to ensure that her student loans were

being paid, especially after she and her husband separated in 2007. She testified that she used her federal tax refunds to pay some of the student loans, but she failed to document her actions, even though she was given a month after the hearing to provide documentation. She has taken no action to investigate, resolve, or pay any of the debts alleged in the SOR. The payment of a student loan not alleged in the SOR by involuntary garnishment does not demonstrate the good faith required to establish AG ¶ 20(d). ISCR Case No. 09-5700 (App. Bd. Feb. 24, 2011).

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 served honorably in the U.S. Navy and has worked for defense contractors since August 2003. She held a security clearance in the Navy and has retained it throughout her career as a contractor employee. She came to the hearing unprepared to respond to the SOR. She claimed that she had documentation showing resolution of several student loans, but she failed to provide it.

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.) The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, pay the debts alleged in the SOR first, or 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. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

The garnishment of Applicant's pay and the resulting security incident report was a warning that her security clearance was in jeopardy, but she has not responded to the warning. Her testimony, if supported by documentary evidence, would show a plan and significant actions to resolve her delinquent student loans. Inexplicably, she has failed to provide documentary evidence even after being given ample time to provide it. She also was given ample time to investigate, resolve, or dispute the debts in SOR ¶¶ 1.e, 1.i, and 1.j, but she did not take advantage of the opportunity.

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 continue 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.k:

Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman
Administrative Judge