



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 15-01818
)	
Applicant for Security Clearance)	

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *Pro se*

01/23/2017

Decision

HESS, Stephanie C., Administrative Judge:

Despite several events and circumstances largely beyond her control that contributed to her financial issues, Applicant failed to mitigate the 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 (e-QIP) on July 23, 2014. On October 27, 2015, 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; Department of Defense 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 answered the SOR on December 9, 2015, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written

case on February 9, 2016. A complete copy of the file of relevant material (FORM), which included Government Exhibits (GX) 1 through 6, was sent to Applicant on February 10, 2016. She was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. She received the FORM on February 19, 2016, and did not respond.¹ The case was assigned to me on September 13, 2016.

Findings of Fact

The SOR alleges 15 delinquent debts totaling approximately \$68,498. In her Answer, Applicant admitted each of the debts, but provided proof of payment of SOR ¶ 1.n and stated she was in repayment of SOR ¶ 1.o. Applicant's admissions in her Answer are incorporated in my findings of fact.

Applicant is a 51-year-old training developer employed by a defense contractor since June 2014. She was employed by a federal contractor from May 2012 until May 2014, when the contract she worked on expired. This is her first application for a security clearance. She received a bachelor's degree in May 1989. She and her husband married in 1991 and have two children ages 21 and 17. (GX 3.)

The delinquent debts are reflected in Applicant's credit bureau reports (CBRs) from September 2015 and August 2014. (GX 4; GX 5.) She listed several of her delinquent accounts on her e-QIP, and discussed many of the accounts during her personal subject interview (PSI) on September 10, 2014. (GX 3; GX 6.)

The debt alleged in SOR ¶ 1.a is for a judgment entered against Applicant in 2012, and the debts alleged in SOR ¶¶ 1.b and 1.c are for judgments entered in 2013. The judgments are for delinquent credit-card accounts totaling \$19,596. The debts alleged in SOR ¶¶ 1.d through 1.h, totaling \$40,010 are consumer-loan and credit-card debts that have been placed for collection. SOR debts 1.d through 1.g became delinquent in 2010 and SOR 1.h became delinquent in 2012. The debts alleged in SOR ¶¶ 1.i and 1.j, totaling \$2,869, are credit-card debts that went delinquent in 2010 and have been charged off. The medical debts alleged in SOR ¶¶ 1.k, 1.l, and 1.m total \$736 and were incurred between 2013 and 2014. (GX 3; GX 4; GX 5; GX 6.) These debts are unresolved.

With her Answer, Applicant provided a receipt for payment and release of the \$1,040 tax lien alleged in SOR ¶ 1.n. This debt is resolved. She also stated in her Answer that she is currently paying a past-due mortgage loan. However, she did not provide any supporting documentation.

¹ The Defense Office of Hearings and Appeals (DOHA) transmittal letter is dated April 8, 2016, and Applicant's receipt is dated February 19, 2016. The DOHA transmittal letter informed Applicant that she had 30 days after receiving it to submit information. The DOHA transmittal letter and receipt are appended to the record as Administrative Exhibit 1.

In her Answer, e-QIP, and PSI, Applicant explains that in 2008, her husband's commission-based income began to decline, which resulted in their stopping payments on revolving debt in order to pay household necessities. Her husband was unemployed from May 2013 to December 2013, when he accepted a lower-paying job. He was again unemployed from May 2014 until July 2014, and his current position does not pay as well as his pre-2008 job. At some point in 2013, Applicant and her husband withdrew a large portion of her husband's retirement to help with living expenses. However, this withdrawal resulted in significant tax liability in 2013. Applicant was unemployed for about three weeks in June 2014, and received unemployment compensation.

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 admissions, corroborated by the record evidence, 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; and

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Some of Applicant's financial difficulties may have been the result of circumstances largely beyond her control, such as her husband's periods of unemployment and underemployment and her period of unemployment. However, there is no indication that she acted responsibly under the circumstances. Applicant's financial difficulties arose in 2008 when her husband's income began to decline and are ongoing. Applicant stated that she and her husband stopped paying their revolving debt in order to pay their necessary living expenses. However, this explanation does not support a finding that Applicant acted responsibly under the circumstances. There is no evidence that she changed her spending behavior, received financial counseling, or took any steps to take control of her financial circumstances and prevent further delinquencies. While three of the delinquent debts totaling \$736 are for unpaid medical bills, there is no evidence that they originated from a medical emergency. Of the over \$68,000 in delinquent debt, of which over \$42,000 is consumer debt, Applicant has only paid the \$1,040 tax lien, which she paid in 2014. While she claims to be paying on her past-due mortgage debt of \$4,247, she did not provide any supporting evidence. However, even if she is paying this debt, she has not established a sufficient track record of debt resolution to constitute a good-faith effort to repay her creditors. None of the mitigating conditions 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 and have considered the factors in AG ¶ 2(a). 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

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): AGAINST APPLICANT

Subparagraphs 1.a – 1.m:	Against Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	Against Applicant

Conclusion

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

Stephanie C. Hess
Administrative Judge