



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 15-03729
)	
Applicant for Security Clearance)	

Appearances

For Government: Pamela C. Benson, Esq., Department Counsel
For Applicant: *Pro se*

06/01/2017

Decision

MARINE, Gina L., 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 (SCA) on June 28, 2013. On November 6, 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 (EO) 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.

Applicant answered the SOR on February 26, 2016, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on April 29, 2016. On May 3, 2016, a complete copy of the file of relevant material (FORM) was sent to Applicant (including documents identified as Items 1 through 6), who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. She received the FORM on July 6, 2016, and

did not respond. Item 1 contains the pleadings in the case. Items 2 through 6 are admitted into evidence. The case was assigned to me on May 18, 2017.

Findings of Fact¹

Applicant is 46 years old and has never been married. She has two children who are 23-year-old twins. Applicant has cohabited with their father since 1994. She has taken college courses on and off for the last twenty years.²

Applicant has been employed full time by her current employer since 2004. She was unemployed for five months in 2004 after she was laid off from her employer of almost four years, during which time she received unemployment compensation. She took a medical leave of absence for almost three months in 2013 to recover from surgery, during which time she received short-term and long-term disability insurance benefits.

Applicant failed to file her 2011 federal income tax return (SOR ¶ 1.a), and failed to pay federal taxes of approximately \$7,000 that she owed for tax years 2011 and 2012 (SOR ¶¶ 1.b and 1.c). Applicant claims that she timely filed her 2011 return online, but was advised in 2013 that the Internal Revenue Service (IRS) never received it. She incurred the tax debt due to a change in how she and her cohabitant claimed their children as dependents. Applicant has since made the necessary adjustments to her withholdings to avoid a similar issue in the future. In July 2013, Applicant was in the process of refiling her 2011 return.³ In her SOR answer, Applicant claimed that she had refiled her 2011 return and established a payment plan for her 2011 and 2012 unpaid taxes. However, she did not provide any corroborating documents. Moreover, she did not provide evidence of any payments made pursuant to a payment plan.⁴

Applicant filed a Chapter 7 bankruptcy in 2012 that discharged debts totaling approximately \$10,034 (SOR ¶ 1.d). The tax debt owed to the IRS, totaling \$5,659 for tax years 2010 and 2011, was not discharged. There are no details in the record concerning the status of her 2010 taxes or why she incurred them, nor were they alleged in the SOR.⁵

¹ I extracted these facts from Applicant's answer to the SOR (Item 1) and the SCA (Item 2), unless otherwise indicated by citation to another item in the record.

² See *also* Item 6. Because Applicant did not respond to the FORM and affirmatively waive any objection to Item 6, I will consider only those facts in Item 6 that are not adverse to the Applicant unless they are contained in other evidence or based upon Applicant's admissions in her answer.

³ Item 6.

⁴ See *also* Item 6.

⁵ Item 5. Since the Government did not allege this debt in the SOR, I will consider it only for the purpose of evaluating mitigation.

Applicant opened a credit-card account in 2012 with a credit limit of \$300. The account became delinquent in 2015. As of October 2015, Applicant was 120 days or more past due in the amount of \$200 with a remaining balance of \$437 (SOR ¶ 1.e).⁶ In her SOR answer, Applicant denied this debt without providing a reason.

In 2008, Applicant lost her home to foreclosure. Applicant accrued several post-bankruptcy debts that were not alleged in the SOR, including: federal student loan accounts, totaling \$110,455, that were 90 days or more past due; a \$182 satellite-television bill in collection status; and a \$60 medical bill in collection status. As of October 2015, the student loans were in deferment status. In May 2015, Applicant borrowed \$750, with a balance of \$188 as of October 2015. She pays this loan as agreed.⁷

Applicant's health problems that began in 2010 resulted in ongoing medical expenses, which caused her trouble keeping up with her other monthly financial obligations. As of July 2013, Applicant averred that her earnings were enough not only to meet her monthly financial obligations, but also to pay outstanding debt.⁸

The record contains no evidence that Applicant has either sought or received any credit counseling, except as can be presumed to have been required during her bankruptcy proceedings. In the FORM, Department Counsel advised Applicant that she failed to provide any documentation to support the assertions outlined in her answer to the SOR. Applicant did not respond to the FORM.

Policies

"[N]o one has a 'right' to a security clearance."⁹ 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."¹⁰ 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."¹¹

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

⁶ Items 4 and 5.

⁷ Item 3 and 4. Since the Government did not allege this debt in the SOR, I will consider it only for the purpose of evaluating mitigation.

⁸ Item 6.

⁹ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹⁰ *Egan* at 527.

¹¹ EO 10865 § 2.

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."¹² 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.¹³ "Substantial evidence" is "more than a scintilla but less than a preponderance."¹⁴ The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability.¹⁵ Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.¹⁶ An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.¹⁷

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance."¹⁸ "[S]ecurity clearance determinations should err, if they must, on the side of denials."¹⁹

¹² EO 10865 § 7.

¹³ See *Egan*, 484 U.S. at 531.

¹⁴ See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

¹⁵ See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

¹⁶ Directive ¶ E3.1.15.

¹⁷ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

¹⁸ ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

¹⁹ *Egan*, 484 U.S. at 531; See also 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, corroborated by her credit bureau reports, establish three disqualifying conditions under this guideline: AG ¶ 19(a) ("inability or unwillingness to satisfy debts"), AG ¶ 19(c) ("a history of not meeting financial obligations"), and AG ¶ 19(g) ("failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same").

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

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.

AG ¶ 20(a) is not established. Applicant's delinquent tax debts remain unresolved and I cannot conclude that she has filed her 2011 tax return based on the evidence.

AG ¶ 20(b) is not established. Applicant's 2004 layoff and ongoing medical expenses were circumstances beyond her control. However, the record is insufficient for me to determine the extent to which those circumstances contributed to the unresolved financial concerns alleged in the SOR, especially in light of her bankruptcy discharge. Moreover, Applicant has failed to meet her burden to show that she acted responsibly to address those concerns.

AG ¶ 20(c) is not established. Applicant presumably received financial counseling during her bankruptcy proceedings. However, I cannot conclude that there are clear indications that the problems underlying her failure to timely file tax returns or pay delinquent tax debts are under control.

AG ¶ 20(d) is not established. Applicant is credited with tackling her delinquent debts through bankruptcy. However, that action alone does not suffice to mitigate the current concerns. Because her claims were unsubstantiated by corroborating documentary evidence, I cannot conclude that Applicant filed her 2011 tax return, established a payment plan for her unpaid taxes for tax year 2011 and 2012, or made any payments pursuant to that plan.

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 I have considered the factors 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 failure to timely file her federal tax return and pay her delinquent

federal income taxes. Accordingly, 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.c: Against Applicant

Subparagraph 1.d: For Applicant

Subparagraph 1.e: Against 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.

Gina L. Marine
Administrative Judge