



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 15-04110
)	
Applicant for Security Clearance)	

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

03/14/2017

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 August 24, 2014. On December 12, 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 (Exec. 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. The 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 February 4, 2016, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on March 30, 2016. On March 31, 2016, a complete copy of the file of relevant

material (FORM) was sent to Applicant, 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 April 28, 2016, and did not respond.¹ The case was assigned to me on February 24, 2017.

Findings of Fact

In her answer to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a and 1.e-1.g. She denied the allegations in SOR ¶¶ 1.b-1.d and 1.h. Her admissions are incorporated in my findings of fact.

Applicant is a 43-year-old test technician employed by a defense contractor since November 2013. She has been employed as a test technician by several employers since March 2006. She was unemployed from January to March 2006, September 2009 to August 2010, and July to October 2013. She has never held a security clearance. (GX 1 at 33.)

Applicant was a full-time student at a technical institute from August 1998 to June 2001. She received an associate's degree in electronic engineering in June 2000 and a bachelor's degree in telecommunications in June 2001. (Item 6 at 3.)

Applicant married in January 2001 and divorced in August 2001. She lived with a cohabitant from 2009 to 2012. (Item 6 at 4.) She has three children, an 18-year-old and two 15-year-olds.

Applicant's credit bureau reports (CBRs) from September 2014 and February 2015 reflect the eight debts alleged in the SOR. The evidence concerning these debts is summarized below.

SOR ¶ 1.a: student loan (\$33,176). In Applicant's answer to the SOR, she stated that she was making bi-weekly payments on this debt by payroll deduction. She submitted a copy of a contract with a student-loan management company that she signed in January 2016, but the contract does not list any specific loans, the payment method, or payment amounts. She provided no documentation of any payments on the debt.

¹ The FORM included Item 6, a summary of a personal subject interview (PSI) conducted on November 18, 2014. The PSI was not authenticated as required by Directive ¶ E3.1.20. Department Counsel informed Applicant that she was entitled to comment on the accuracy of the PSI summary; make any corrections, additions, deletions or updates; or object to consideration of the PSI on the ground that it was not authenticated. Applicant's failure to respond to the FORM waived any objections to the PSI summary. Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive. ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016).

SOR ¶ 1.b: telecommunications bill (\$1,444). In Applicant's answer to the SOR, she stated that she would provide a receipt showing that she had returned telecommunications equipment that was the basis for this debt. She did not provide it.

SOR ¶¶ 1.c and 1.d: collection account for \$350 and \$318. Applicant denied this debt, stating that she was unable to find any information about the accounts. The same collection agency is listed for both debts. Even though the September 2014 CBR listed an address and a telephone number for the collection agency, she provided no documentary evidence of payments, disputes filed regarding these debts, or attempts to contact the collection agency.

SOR ¶¶ 1.e and 1.g: medical bills referred for collection of \$306 and \$1,914. In Applicant's answer to the SOR, she stated that she had contacted the medical providers, but she provided no documentary evidence of payments, payment plans, or contacts with the creditors.

SOR ¶ 1.f: private school tuition debt referred for collection of \$5,371. In Applicant's answer to the SOR, Applicant stated that she was negotiating a payment plan for this debt. She submitted no evidence of any payments or a payment plan for this debt.

SOR ¶ 1.h: payday loan referred for collection of \$280. In the November 2014 personal subject interview, Applicant told the investigator that the debt was a payday loan. (Item 6 at 7.) However, in her answer to the SOR, she stated that she was "not familiar with this issue." The debt is not resolved.

The FORM included Department Counsel's analysis of the evidence in this case, and specifically pointed out the lack of documentation to support Applicant's claims. Nevertheless, Applicant failed to respond to the FORM, thereby failing to avail herself of the opportunity to provide documentation.

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).

Applicant's admissions and her CBRs 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 mitigating conditions are established. Applicant's debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur. Her divorce and periods of employment were conditions beyond her control, but she has not acted responsibly. Even though she has been employed continuously for more than three years, she presented no documentary evidence of payment plans, payments, or contacts with creditors. She presented no evidence of financial

counseling. She denied several debts, but she presented no documentary evidence of disputes or the basis for the disputes. Even though Department Counsel specifically pointed out the absence of documentary evidence, Applicant failed to take advantage of the opportunity to provide documentation.

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 and considered the factors in AG ¶ 2(a). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate her credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). 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.h:

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.

LeRoy F. Foreman
Administrative Judge