



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 15-04481
)	
Applicant for Security Clearance)	

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

03/27/2017

Decision

HESS, Stephanie C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Due to circumstances largely beyond her control, primarily her husband's long period of unemployment and underemployment, and Applicant's medical issues, Applicant experienced financial difficulties, but mitigated the concern by acting responsibly under the circumstances. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on June 24, 2014. On February 6, 2016, the Department of Defense (DOD) sent her a Statement of Reasons (SOR), alleging security concerns under Guideline F. The DOD acted under Executive Order (E.O.) 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 DOD on September 1, 2006.

The SOR was sent to Applicant on February 6, 2016. She answered the SOR on March 3, 2016, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on March 28, 2016. On May 20, 2016, a complete copy of the file of relevant material (FORM,) which included Government Exhibits (GX) 1 through 6, 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 1, 2016 and did not file a response.¹ The case was assigned to me on December 27, 2016.

On February 22, 2017, I reopened the record until March 10, 2017, to permit Applicant to submit additional information. I received a statement from Applicant via electronic mail dated March 9, 2017, and three attached documents. Department Counsel had no objections, and I admitted the statement and the documents into the record as Applicant's Exhibits (AX) A through D.

Findings of Fact

The SOR alleges four delinquent debts totaling \$28,144. In her Answer, Applicant admits each of the SOR allegations, and provides background information about the circumstances that led to her delinquent debts. The debts are reflected in Applicant's credit bureau reports (CBRs) from December 2015, March 2015, and July 2014. (GX 6; GX 5; GX 4.) Her admissions in her Answer are incorporated in my findings of fact.

Applicant is a 62-year-old defense industry employee since at least 1991, working for her current employer since October 2012. She and her husband married in 1980, and have four adult children. This is her first application for a security clearance. (GX 2.)

Applicant began experiencing financial difficulties in about 2005. Her husband was laid off for three years. When he ultimately found employment, his salary was half of what it had been for the prior 15 years. Applicant also had medical problems that required multiple surgeries, and resulted in significant medical bills. Additionally, three of Applicant's children were in college, at one point, simultaneously. Also during this time, Applicant's employer instituted a company-wide ten-percent pay reduction, with no wage increases, for a period of four years. As a result of the combination of these financial strains, Applicant began using her credit cards for daily living expenses. Ultimately, she fell behind on many of her financial obligations, and several accounts became delinquent. The late payments on her credit-card accounts also caused the interest rates to increase, and the payments Applicant was able to make did little to reduce her overall debt. (GX 2; Answer.)

At an unspecified point prior to submitting her e-QIP, Applicant engaged the services of a credit-consolidating company. The company bundled Applicant's debt, and

¹ The Defense Office of Hearings and Appeals (DOHA) transmittal letter is dated May 20, 2016, and Applicant's receipt is dated April 1, 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 marked as Administrative Exhibit 1.

established an agreed plan under which Applicant would repay a reduced amount of total debt, in monthly installments, over a seven-year period. However, Applicant submitted a payment late, and the credit-consolidating company terminated their agreement. Applicant then attempted to secure a loan to pay her debts based on the equity in her second home, but was unable to do so because the house was not paid off. In an effort to settle one of the debts, she sent a settlement payment of \$1,300 to the collection-agency creditor. The creditor returned the check, indicating that the account was closed. (GX 2.)

Since their marriage in 1980, Applicant's husband was responsible for managing the household finances. Applicant "thought that he had been working at gradually paying off the credit cards" and was unaware of the amount of delinquent debt they still owed. Applicant showed her husband the SOR that listed three charged-off accounts. He told her he thought "charged off" meant the account was closed and resolved, and explained that was why he had not disclosed these accounts to her. Applicant now understands that she remains liable for the charged-off accounts, and recognizes that she is also responsible for monitoring the household finances. (Answer.) Additionally, Applicant's husband was diagnosed with early dementia several years ago, and Applicant has since assumed the majority of their household responsibilities, including managing their finances and resolving their delinquent debts. (AX A.)

The \$2,739 delinquent credit-card account alleged in SOR ¶ 1.a was charged off in 2008. This is a joint account held by Applicant and her husband. This debt remains unresolved.

The credit-card accounts alleged in SOR ¶¶ 1.b and 1.c are owed to the same creditor. Applicant settled the \$6,715 debt alleged in SOR ¶ 1.b for \$2,686. Applicant settled the \$10,993 alleged in SOR ¶ 1.c for \$4,398. She made an initial payment of \$1,000 on each account, and is making automatic monthly payments of \$211 on SOR debt 1.b and \$425 on SOR debt 1.c. Both accounts will be settled in full in November 2017. (AX B.) Applicant settled the \$7,697 credit-card account alleged in SOR ¶ 1.d for \$4,801, and paid the settlement in full. (AX C.)

Applicant recently paid off the mortgage on her primary residence. (AX D.) She will use the approximately \$1,000 a month that was previously obligated to pay the mortgage to pay off her remaining delinquent debt. She has not incurred any delinquent debt since 2008, and lives within her means. (GX 6; AX A.) She is committed to resolving her remaining delinquent account. (AX A; Answer.) She has been employed at the same location as a government contractor for over 27 years. (Answer; GX 1.)

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).

The record evidence establishes 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; and

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

Applicant’s past financial problems arose in 2005 and were attributable to matters largely beyond her control. Specifically, her husband’s sustained period of unemployment and underemployment, Applicant’s medical bills, and her long-term reduced income had a significant impact on her ability to maintain her finances. Additionally, Applicant’s

husband was responsible for managing their finances and did not always inform her of the status of their debts. Upon learning of the charged-off status of several debts, she became more participatory in managing the household finances, and since her husband's onset of dementia, is primarily responsible for this task. Applicant acted responsibly to resolve her debts by first entering an agreement with a credit-consolidating company to reduce and repay her debts. When she made a single late payment, the credit-consolidating company terminated their agreement. She then sought a loan to resolve her debts, and, when that effort was unsuccessful, attempted to settle one of the accounts by remitting a lump sum. She has successfully settled three of the four SOR debts, which represent more than 90% of the total alleged debt. She paid one of the settled debts, and will complete repayment of the other two in November 2017. Now that she has paid off her mortgage loan, she will apply the surplus \$1,000 a month to resolve her remaining delinquent debt of \$2,739. She has not incurred any delinquent debt since 2008, and lives within her means.

Applicant acted in good faith by resolving the vast majority of her debt. "Good faith" means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). 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.) A person is not required to 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. The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

The circumstances under which Applicant incurred delinquent debt occurred between 2005 and 2008, are unlikely to recur, and do not cast doubt on her current security worthiness. Although Applicant's finances are not perfect, she has established and implemented a plan to resolve her delinquent debts. AG ¶¶ 20(a) through 20(d) 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. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but I have also considered the following:

Applicant has been employed in the defense industry at the same location for nearly 28 years. She has not incurred any delinquent debt since 2008 and lives within her means. After experiencing financial and personal adversity, she responded by taking control of her finances. Such actions are indicative of an individual who is reliable and trustworthy and who exercises good judgment. I am confident that Applicant will continue her efforts to maintain financial stability.

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 mitigated the security concerns raised by her delinquent debts. Accordingly, I conclude she has 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): FOR APPLICANT

Subparagraphs 1.a – 1.d:

For Applicant.

Conclusion

I conclude that it is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Stephanie C. Hess
Administrative Judge