



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 15-04546
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

12/05/2016

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on December 30, 2014. On January 27, 2016, 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 February 15, 2016, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on July 11,

2016, and the case was assigned to me on July 20, 2016. On September 9, 2016, after coordinating with Applicant's attorney, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for September 28, 2016. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant testified, presented the testimony of four other witnesses, and submitted Applicant's Exhibits (AX) A through HH, which were admitted without objection.¹ DOHA received the transcript (Tr.) on October 11, 2016.

Findings of Fact²

Applicant admitted the two Chapter 13 bankruptcies alleged in the SOR. Her admissions are incorporated in my findings of fact.

Applicant is a 48-year-old business relations supervisor employed by a defense contractor since June 2003. She received a bachelor's degree in May 1991, a diploma in hotel and restaurant operations in May 2003, and several certificates of professional training. (GX 1 at 13-14; AX G-I.) She married in June 2001. She and her husband have a six-year-old son. She has held a security clearance since June 2003.

When Applicant and her husband married, they were both employed and financially secure. Her husband has only a high-school education, which limits his ability to find and retain well-paying jobs. In November 2001, they started a wedding photography business in an effort to earn additional money. They used credit cards to buy photography equipment, reached their credit limits on their credit cards, and started living paycheck to paycheck.

In July 2002, Applicant's husband was laid off, reducing the family income by about \$32,000 per year. In November 2002, they moved cross-country so that Applicant's husband could accept a new job. They were not reimbursed for moving expenses. They purchased a home in their new location in March 2003. Her husband was laid off again in December 2003, and he decided to reopen the wedding photography business as a Subchapter S corporation. To cover the start-up costs for the business, they incurred about \$90,000 in credit card debt. In 2006, they encountered several home-repair emergencies, which they could not afford.³

Applicant and her husband filed a Chapter 13 bankruptcy petition in March 2007, listing assets of \$334,840 and liabilities of \$319,688. They completed the Chapter 13 payment plan, which provided for monthly \$1,630 payments, and received a discharge in July 2012. (GX 4.)

¹ Applicant's answer included Applicant's Exhibits (AX) A through M, which were submitted again at the hearing, along with AX N through HH. (Tr. 13.)

² Applicant's personal information is extracted from her security clearance application unless otherwise indicated by a parenthetical citation to the record.

³ The circumstances leading up to two bankruptcies alleged in the SOR were set out in Applicant's answer to the SOR and adopted during her hearing testimony. (Tr. 49.)

In November 2007, Applicant and her husband were notified by their homeowners' association that they were not permitted to operate a business from their home. They signed a lease for a business location in January 2008 and were required to personally guarantee the lease payments. They incurred additional business expenses for furniture, utilities, telephone, and Internet service. Their business declined in 2008 due to the economic downturn. (GX 3 at 5.)

In the spring of 2009, Applicant's pay was reduced by five percent, about \$250 per month, when her employer was bought by another defense contractor. (GX 3 at 4.) In July 2010, the family dog fell seriously ill, resulting in a veterinary bill of \$2,500. In May 2011, Applicant gave birth to their only child. She suffered serious complications during childbirth and was unable to work until September 2011. After she returned to work, they had child-care expenses of about \$600 per month. Between 2009 and 2012, they fell behind on their federal and state taxes. They negotiated payments plans calling for payments of \$500 per month for three years to the IRS and \$150 per month for three years to the state.

In the fall of 2012, Applicant and her husband closed the wedding photography business. In December 2012, Applicant's husband found employment in the call center for a telecommunications company. However, he contracted pneumonia in January 2013 and was hospitalized twice, for ten days each time. He suffered permanent heart damage. He suffered cardiac arrest in February, was near death, and was in a coma for two weeks. He was released from the hospital in March 2013 and spent three months recovering. In March 2013, Applicant notified the IRS that they could no longer afford to make the agreed payments. Between March and October 2013, her husband was hospitalized nine times, for three to five days each time, to stabilize his heart functions and treat him for infections. They incurred uninsured expenses for his treatment and medications. Applicant tried to negotiate a second mortgage modification for their personal residence, but she was unsuccessful. The landlord for their business property obtained a warrant in debt for \$25,000 in unpaid rent.

Applicant and her husband filed a second Chapter 13 bankruptcy petition in March 2014, listing assets of \$227,230 and liabilities of \$294,627. Applicant notified her security officer of the second bankruptcy petition and explained the circumstances leading up to it. The bankruptcy petition included debts from the wedding photography business, federal and state taxes, and medical debts not covered by insurance. Their payment plan was confirmed and they have made monthly payments of \$720 since April 2014. (GX 5.) The bankruptcy payments are automatically deducted from her pay. (Tr. 58; AX U.) As of July 2016, she had paid the trustee a total of \$20,160, leaving a balance due of \$23,040. (AX T.)

In September 2014, Applicant's husband found full-time employment. (Tr. 50.) He is currently in reasonably good health, but he depends on multiple medications to

stabilize his heart condition, blood pressure, depression (as a result of his medical problems) and diabetes.⁴ (Tr. 55; AX GG and HH.)

Applicant's current salary is about \$75,000 per year. (Tr. 47.) Her husband earns about \$30,000 per year. (Tr. 51.) She has about \$31,809 in her 401(k) retirement account. (AX Z.)

Applicant has obtained additional financial counseling beyond the court-mandated counseling. (Tr. 59.) She demonstrated the lessons learned from financial counseling by submitting two personal financial statements (PFSs). The first PFS reflected net family income of \$5,640 and a net monthly remainder of \$341 after paying all monthly expenses, including mortgage loan payments and bankruptcy payments. (AX E.) The second PFS, reflecting an aggressive effort to reduce expenses and monitor spending, shows a net remainder of \$1,164. (AX F.)

A co-worker, who has known Applicant for 12 years, is familiar with her husband's health problems, and who is aware of the failed wedding photography business, testified that she is a "great employee" who cares about her job and cares about the people who work with her. She has been assigned to the team that supports senior military officers and civilian officials. (AX P at 2.) When senior military and civilian officials have email problems, Applicant will "go the extra mile" to solve the problem and make sure it does not recur. The co-worker has held a security clearance for 12 years and has no reservations about her suitability for a security clearance. (Tr. 18-21; AX P at 4.)

Another co-worker, who has known Applicant for 13 years and is aware of her husband's medical problem and business failure, testified that she is honest and trustworthy. (Tr. 26-29; AX FF.) Applicant's supervisor, who has known her for 12 years and supervised her for about 6 years, rates her as "exceeding expectations," which places her in the top 20% of the persons he evaluates. He testified that Applicant works hard, tells the truth, and has high moral standards. (Tr. 33-36.)

Applicant's third-line supervisor and a fellow member of Applicant's church is a retired Navy captain who has held a clearance for more than 30 years. He testified that he is aware of Applicant's financial problems and believes that she is a valuable resource for their employer and has "all the right moral characteristics to retain her clearance." (Tr. 39-43.) Applicant's manager, who has known her for more than 15 years and supervised her for about 7 years, submitted a letter stating that she has a strong moral compass, is honest, and a strong leader. (AX P at 2.) A former supervisor, who has known her since 2003, submitted a letter stating that he has never worked with someone as honest and conscientious as Applicant. Her strong commitment to her job sometimes required him to tell her to shut down her computer and go home, knowing that she probably would go home, log back on, and continue to work. (AX P at 1.)

⁴ Department Counsel stipulated to the factual accuracy of Applicant's description of her husband's medical history. (Tr. 73-74.)

Applicant's pastor submitted a letter attesting to her strong faith, perseverance in the face of adversity, and active participation in church activities. He considers Applicant to be "utterly trustworthy." (AX P at 5.))

Applicant has consistently been rated as an employee who "exceeds expectations." (AX J and K.) She has received numerous certificates for job-related achievements and her community involvement. (AX L, M, and EE.)

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, her testimony at the hearing, and the documentary evidence submitted by both sides 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; and

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

AG ¶ 20(a) is established. Applicant's debts and the resulting bankruptcies were numerous and recent, but they were largely due to the failed wedding photography business and her husband's medical problems. They have closed the wedding photography business, Applicant's husband's health has stabilized, and they are both employed full time. Her financial problems are not likely to recur, and they do not cast doubt about her current reliability, trustworthiness, and good judgment.

AG ¶ 20(b) is established. Applicant's unwise decision to use credit cards to cover start-up costs for the photography business and to continue pouring money into a failing business were not conditions beyond her control. However, she experienced several conditions largely beyond her control: her husband's periods of unemployment; his life-threatening medical problems and the resulting uninsured medical expenses and inability to work; the downturn in the economy around 2008, which reduced the demand for discretionary services such as professional wedding photography; her childbirth complications; the illness of a beloved family dog; and her pay reduction in 2009. She acted responsibly by keeping in contact with creditors, obtaining a modification of the home mortgage loan, negotiating payment agreements for unpaid taxes, seeking legal advice, and obtaining financial counseling beyond the court-mandated counseling.

AG ¶¶ 20(c) and 20(d) are established. Applicant received financial counseling as part of the bankruptcy process as well as additional counseling that was not mandated. She has a reasonable budget, has tightened and monitored her spending, and has made the monthly payments to the bankruptcy trustee as required since April 2014. She and her husband have abandoned their plans for a wedding photography business. Her husband has overcome his medical problems and found full-time employment. There are "clear indications" that her financial situation is under control.

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 was sincere, candid, and credible at the hearing. She realizes that she and her husband made some foolish financial decisions in the past, and she has taken significant measures to improve her financial skills. She enjoys an outstanding reputation at work. She is active in her community. She has held a security clearance since 2003, apparently without incident.

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 two Chapter 13 bankruptcies. Accordingly, I conclude she has 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): FOR APPLICANT

Subparagraphs 1.a and 1.b:

For Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge