



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)

ISCR Case No. 15-05691

Appearances

For Government: Charles C. Hale, Esq., Department Counsel

For Applicant: *Pro se*

09/13/2017

Decision

CERVI, Gregg A., 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 January 8, 2015. On April 20, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F.¹ Applicant responded to the SOR, submitted documentary evidence, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 13, 2016, and the hearing was convened on January 31, 2017. Government Exhibits (GE) 1 through 8 were admitted in evidence without objection. The Department Counsel moved to amend the SOR to include allegation ¶ 1.w, failure to file and pay 2015 Federal income taxes when due. The SOR was amended without objection. The record was held open to permit Applicant time to submit documentary

¹ 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.

evidence in mitigation. She requested an enlargement of time to April 10, 2017, which was granted. No post-hearing information has been submitted. DOHA received the hearing transcript (Tr.) on February 8, 2017.

Findings of Fact

Applicant is a 48-year-old employee of a defense contractor, employed since 2013. She received a bachelor's degree in 2010 and honorably served in the U.S. Army from 1987 to 2010, when she retired as a master sergeant. She was married in 1993 and divorced in 2003. She remarried in 2010 and is now a widow. Applicant has two adult children.

The SOR alleged Applicant twice filed Chapter 13 bankruptcy. The first case was filed with her first husband in 1999, and dismissed in 2000 while she was on active duty. She was unable to clearly articulate why the case was dismissed, but she relied on her husband to manage the family's finances.

She reported that her second husband was a retired military veteran who suffered from post-traumatic stress disorder. She stated that he was abusive, a substance abuser, and financially irresponsible. They began to experience financial difficulty in 2010, and Applicant's financial problems have continued to the present. She received financial counseling in 2010 through the Army. The second bankruptcy was filed in 2012, and dismissed in 2013. The last case was filed to prevent Applicant from losing her home to foreclosure, but she was unsuccessful. Her spouse died in 2014.

The SOR also alleged 19 delinquent accounts² that have been placed for collections or have been charged off. In her answer to the SOR, Applicant admitted SOR ¶¶ 1.a-1.c, 1.e-1.i, 1.p-1.r, and 1.u-1.v. She was unsure about SOR ¶¶ 1.d, 1.c, 1.k-1.m, and 1.t. She denied SOR ¶¶ 1.j, and 1.m-1.n. Applicant stated in her Answer that she arranged to pay or make installment payments on debts listed in SOR ¶¶ 1.c-1.i, and 1.p-1.r. She provided some documentary evidence of payment arrangements, but no evidence of payments or compliance with payment plans. The debt listed in SOR ¶ 1.s (husband's repossessed vehicle), has been satisfied. Applicant claimed in her answer and testimony to have disputed a mortgage deficiency, medical debts, and consumer debts listed in SOR ¶¶ 1.d, 1.j-1.n, 1.t and 1.v. She did not provide evidence of her disputes, efforts to resolve the debts, or a recent credit report showing resolution of the accounts. Other debts to which she testified are paid or being paid through payment plans, were not supported with documentary evidence sufficient to show their current status. A document Applicant provided in her answer from a bank credit card showing the current status of an account, is not the same account as alleged in SOR ¶ 1.u, which alleges a charged-off balance of \$1,978. The debt remains unresolved.

SOR allegation ¶ 1.w, failure to file and pay 2015 Federal income taxes when due, was added at the hearing to conform the SOR to the evidence. Applicant admitted the allegation, and confirmed that she did not file her 2015 tax return or pay taxes owed. She expressed concern that her tax preparer's draft return showed that she owed more than she

² The SOR lettering skipped ¶ 1.o.

expected. She contacted the IRS, and discussed filing her 2015 return with her 2016 return, and to request a payment plan at that time to repay overdue taxes.

Applicant expressed her dedication to the soldiers she serves in her job and to a non-profit group aiding veterans in abusive relationships. She was forthcoming in her testimony and fully discussed her debts and what she has done to address them. She has no savings or investments. She earns about \$46,000 per year through her job, military retirement, and VA disability compensation. She did not provide a current financial statement or budget.

Law and Policies

The Director of National Intelligence (DNI) issued revised adjudicative guidelines (AG) in a Security Executive Agent Directive, effective on June 8, 2017. My ultimate decision would be the same under either set of adjudicative guidelines.

“[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.

National security eligibility 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 a person’s stability, trustworthiness, reliability, discretion, character, honesty, and judgment. AG ¶ 1(b).

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 ¶ 1(d).

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant has a history of financial problems, including two failed Chapter 13 bankruptcies. She has unfiled and unpaid Federal taxes, and other unresolved delinquent debts. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

(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;

(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

No mitigating conditions fully apply. Applicant's financial condition may have resulted from a condition beyond her control, such as an abusive relationship, her husband's financial irresponsibility and eventual death. However, Applicant has not shown that since her husband passed away in 2014, she has successfully regained control of her finances, or has acted responsibly with regard to her debts. By her testimony, she may have resolved some of the debts as she asserted, but she failed to provide any documentary evidence after the hearing, despite an opportunity to do so, of debt resolution, payments, or documented disputes. Without evidence showing her debts are being resolved and her current financial condition is sound, I am unable to find sufficient mitigation to convince me to grant or continue her national security eligibility. Applicant's failure to file and pay her Federal income tax when due compounds her financial condition and reflects an unacceptable level of financial irresponsibility. The negative financial information contained

herein, especially with regard to delinquent tax obligations, significantly impacts Applicant's judgment and willingness to comply with rules and regulations.

There is insufficient evidence for a determination that Applicant's financial issues are being or will be resolved within a reasonable period. I am unable to find that she acted responsibly under the circumstances, given her continued employment since 2013 and other sources of income. Her financial issues are recent and ongoing. She sought some financial counseling, but it is unclear what aid was provided through counseling. Her current financial status casts doubt on her reliability, trustworthiness, and good judgment when it comes to financial decision-making. I find that financial considerations concerns remain despite the presence of some mitigating information.

Whole-Person Concept

Under the whole-person concept, the 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. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. I also considered Applicant's marital history, military service, and service to veterans. However, for the reasons stated above, I am unable to find that she has appropriate control of her finances.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a-1.n, 1.p-1.r, 1.t-1.w:	Against Applicant
Subparagraph 1.s:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, 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.

Gregg A. Cervi
Administrative Judge