



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 15-06797
)	
Applicant for Security Clearance)	

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: *Pro se*

05/08/2017

Decision

FOREMAN, LeRoy F., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application on April 5, 2015. On April 27, 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 (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 replaced the guidelines in Enclosure 2 to the Directive.

Applicant answered the SOR on May 6, 2016, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on June 2, 2016. On the same day, 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 June 21, 2016, and submitted Applicant's Exhibits (AX) A through R, which were admitted without objection.¹ The case was assigned to me on March 30, 2017.

Findings of Fact²

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

Applicant is a 50-year-old information technology project management specialist employed by multiple defense contractors at the same location since July 2009. She worked in the private sector from October 1988 to January 2009. She has never held a security clearance.

Applicant married in April 1994. She and her husband have an 18-year-old daughter. Applicant received an associate's degree in May 1990, a bachelor's degree in February 2004, and a master's degree in October 2007.

In January 2009, Applicant's private-sector employer was undergoing a restructuring. She decided to take an offer of severance pay and look for a new job. She was unemployed from January to July 2009, when she found employment with a defense contractor in another state, made a cross-country move with her husband, rented a home at her new place of employment, and converted the previous family home to a rental property.

Applicant and her husband found that they could not afford to pay rent at the new location and continue making payments on the mortgage loan for the previous home. They stopped making payments on the mortgage loan in February 2012, after their tenants stopped paying their rent and moved out. Previous tenants had failed to pay rent for several months and seriously damaged the property. They sold the home in a short sale in January 2013, and there was a deficiency of \$79,787. The deficiency is alleged in SOR ¶ 1.b. The lender charged off the deficiency and made no effort to collect it. In June 2016, Applicant's attorney advised her that the law in her previous

¹ The FORM included a summary of a personal subject interview (PSI) conducted on June 3, 2015. 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 response to the FORM was detailed and comprehensive, but she did not comment on the accuracy or completeness of the PSI summary, nor did she object to it. I conclude that she 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). See also ISCR Case No. 15-01807 (App. Bd. Apr. 19, 2017.).

² Applicant's personal information is extracted from her security clearance application (GX 1) unless otherwise indicated by a parenthetical citation to the record.

state of residence precluded the lender from attempting to collect the deficiency after two years. (AX G.)

The debt alleged in SOR ¶ 1.c is a personal loan, and the debts in SOR ¶¶ 1.d and 1.e are credit-card accounts. In September 2014, Applicant and her husband hired a debt-resolution company to negotiate settlement of these debts. Settlement of the delinquent mortgage loan on their former residence was not included in the contract with the debt-resolution company. At the time, they had more than \$55,000 in unsecured debt. They made monthly \$850 payments to the company. (AX C.) In the June 2015 PSI, Applicant told the investigator that they hired the debt-resolution company because the interest payments on their debts were so high that the debts would never be paid in full. (Item 3 at 4.)

SOR ¶ 1.a alleges an account that is past due for \$2,755, with a balance of \$23,617. An April 2015 credit bureau report (CBR) reflected that the debt was more than 120 days past due as of March 2014 (Item 5.) A June 2016 CBR reflected that the last payment on this debt was in September 2014, and it became delinquent in November 2014. (Item 4 at 2.) In the June 2015 PSI, Applicant stated that the debt was incurred for “house related items” and for travel to deal with the former residence in another state. (Item 3 at 5.) The debt has been charged off and referred for collection. Applicant’s debt-resolution company has been negotiating with the collection agency but had not resolved it as of the date of Applicant’s response to the FORM.

The debts alleged in SOR ¶¶ 1.c-1.e were resolved for less than the full amounts. Applicant received an IRS Form 1099-C for each of these debts and reported the forgiven debts in her income tax returns. The Form 1009-C for each debt reflects that \$4,919 was discharged for the debt in SOR ¶ 1.c; \$1,156 was discharged for the debt in SOR ¶ 1.d; and \$1,259 was discharged for the debt in SOR ¶ 1.e.

In the June 2015 PSI, Applicant stated that both she and her husband are employed. They now have only one credit card with a \$500 limit and use cash for their purchases. She will have sufficient income to cover all expenses after the credit-card debt in SOR ¶ 1.a is resolved. She did not provide specific information about their income and expenses. (Item 3 at 6).

Applicant’s current supervisor, who has held a security clearance for 14 years, submitted a letter strongly supporting her application for a clearance. She regards Applicant as extremely honest, meticulous, and trustworthy. She is careful in handling unclassified but critical information. She has good “situational judgment” and is in the habit of “doing the right thing when no one is looking.” (AX J.) Her annual appraisals for 2010 through 2014 are consistent with her supervisor’s comments. (AX L through AX P.)

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 the documentary evidence in the record 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 fact that the debts alleged in SOR ¶¶ 1.b-1.e have been resolved does not end the inquiry. 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.). Even if the debts alleged in the SOR have been paid, it is appropriate to consider the circumstances underlying the debts for what they might reveal about Applicant’s eligibility for a clearance. ISCR Case No. 15-00216 (App. Bd. Oct. 24, 2016).

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 not established. Applicant's delinquent debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not fully established. It is not clear whether Applicant's unemployment for six months was due to conditions beyond her control. She accepted a severance package, but it is not clear whether she was facing a layoff or reduction in pay if she did not accept the severance package. The downturn in the housing market, which made it more difficult to keep renters in her previous residence or sell it when it became unaffordable, was a condition beyond her control. The extent to which the depressed job market and housing market contributed to her credit-card delinquencies and delinquent personal loan are unclear from the record. At the time Applicant and her husband hired the debt-resolution company in September 2014, they had more than \$55,000 in unsecured delinquent debts, which suggests excessive borrowing rather than a condition beyond her control. To her credit, Applicant has acted responsibly by maintaining contact with creditors, hiring the debt-resolution company, making regular payments to the debt-resolution company, and resolving the delinquent mortgage loan through a short sale.

AG ¶ 20(c) is not established. The debt-resolution company negotiates settlement of debts, but there is no evidence that it also provides financial counseling within the meaning of this mitigating condition. The debt of \$23,617 alleged in SOR ¶ 1.a is still unresolved.

AG ¶ 20(d) is established. The debts alleged in SOR ¶¶ 1.b-1.e are resolved. Applicant has been paying her debt-resolution company \$850 per month to resolve her debts, and the company is negotiating with the creditor alleged in SOR ¶ 1.a. The adjudicative guidelines do not require that Applicant resolve every debt alleged in the SOR. She need only establish a plan to resolve her financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). She has a credible plan for regaining her financial stability, and she has demonstrated good faith by taking significant steps to implement her 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 in 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 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

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a-1.e:

For Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge