



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



In the matter of:)
)
) ISCR Case No. 15-03907
)
Applicant for Security Clearance)

Appearances

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

04/12/2018

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) dated October 5, 2012. On May 27, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F.¹ She answered the SOR and elected an administrative hearing. A hearing was scheduled in June 2017 with another administrative judge, but was cancelled due to the unavailability of Applicant. By email correspondence in May and June, 2017, she unequivocally requested a decision based on the administrative record. The

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.

Government's written brief with supporting documents, known as the File of Relevant Material (FORM), was submitted by Department Counsel on July 12, 2017.

A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on October 2, 2017. She did not submit a response to the FORM. The Government's exhibits included in the FORM (Items 1 to 8) are admitted into evidence. The case was assigned to me on March 6, 2018.

Findings of Fact

Applicant is a 60-year-old senior procurement officer employed by an international organization since 2009. She received a bachelor's degree in 1990, a juris doctor degree in 1995, and a master of business administration degree in 2007. Applicant is unmarried.

The SOR alleges Applicant has seven delinquent debts, including two student loans totaling approximately \$215,000; small utility and U.S. government debts totaling over \$600; a home equity line of credit totaling \$9,295; and two bank credit card debts totaling over \$24,000. Applicant answered the SOR with a comprehensive explanation of events leading to her debts, and actions taken with regard to the debts.

Applicant explained that she incurred student loans to attend law school and business school. She consolidated those loans in 2003, which totaled \$189,000. She claims to have made regular payments until 2010, reducing the debt to \$164,800. She stopped payment on her student loans and other debts, largely because of events stemming from significant water damage to rental property she owned in the northeast and an ensuing insurance dispute. At the time, she began employment overseas, but incurred significant personal expense to make the home inhabitable. By 2010, she claims her credit card and student-loan accounts were cut off, and she could not get a response from the creditors. She noted that her insurance company, mortgage lender, bank and student-loan creditors were "deeply involved in the housing market and many of the delays and problems I encountered with these entities resulted because of their involvement, [and] all companies obtains loan bailouts for [sic] the US Government."

Applicant claims the utility company and U.S. Government debts were paid. She did not provide a current status of the credit-card debts and noted that she is working on methods to resolve the student-loan debts, although she could not explain why the total reported on her credit report was more than she believed she owed. She did not provide independent documentary evidence of debt payments, payment plan agreements, or other debt resolution efforts.

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. The revised AG apply to this case.

“[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

Financial Considerations

The security concern under this guideline 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. . . .

The relevant disqualifying conditions under AG ¶ 19 include:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant’s admissions and the documentary evidence supporting the SOR allegations are sufficient to establish the disqualifying conditions.

The following mitigating conditions under AG ¶ 20 are potentially relevant:

- (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; and

(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.

Although Applicant's delinquent debts may have resulted from an inability to pay due to a catastrophic loss to rental property, a circumstance beyond her control, the SOR debts remain currently delinquent and she has not shown sufficient documentary evidence of their resolution. The SOR debts arose years ago and Applicant did not make timely efforts to address them. Finally, Applicant did not present evidence of financial counseling, or of her current financial status and ability to manage her finances in the future.

There is insufficient record evidence showing progress toward resolution of her debts or that her financial situation is under control. Based on the record evidence, I am unable to determine that her financial problems are unlikely to recur. These issues raise questions about Applicant's judgment, willingness to comply with rules and regulations, and overall financial responsibility. No mitigating condition is fully applicable.

Whole-Person Concept

Under AG ¶¶ 2(a), 2(c), and 2(d), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the 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). Although adverse information concerning a single criterion may not be sufficient for an unfavorable eligibility determination, the individual may be found ineligible if available information reflects a recent or recurring pattern of questionable judgment, irresponsibility, or unstable behavior. AG ¶ 2(e).

I considered all of the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my findings of fact and comments under Guideline F in my whole-person analysis. Applicant's delinquent debts remain an ongoing concern and there is insufficient evidence of resolution of the debts, her overall financial status, and whether her financial situation is under control as to avoid future delinquencies.

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.g:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

Gregg A. Cervi
Administrative Judge