



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



In the matter of:)
)
) ISCR Case No. 15-05798
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

01/25/2018

Decision

CERVI, Gregg A., Administrative Judge

This case involves security concerns raised under Guideline F (Financial Considerations) and Guideline H (Drug Involvement and Substance Misuse). Eligibility for access to classified information is granted.

Statement of the Case

Applicant completed a Questionnaire for National Security Positions (SF 86)¹ on January 6, 2015. On April 19, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F and H.²

¹ Also known as a Security Clearance Application (SCA).

² The action was taken 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* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on June 13, 2016, provided documentary evidence in mitigation, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals issued a notice of hearing on June 19, 2017, and the hearing was convened on July 11, 2017. Government's Exhibits (GE) 1 through 6, and Applicant's Exhibit (AE) A, were admitted in evidence without objection. The record was held open until August 11, 2017, to permit Applicant time to submit additional documentary evidence. She submitted AE B through F, which were admitted into evidence without objection.

Findings of Fact

Applicant is a 40-year-old data management clerk for a defense contractor, employed since 2015. She graduated from high school in 1995 and attended technical college for one year. She is currently unmarried, but was previously married in 2007, separated in March 2014, and divorced in 2015. She has one adult child. She has not previously held a security clearance.

The SOR alleges under Guideline F, that Applicant has delinquent debts totaling approximately \$36,000, including student loans, a charged-off credit card debt, and a charged-off vehicle loan after repossession. It also alleges she failed to file her 2010 Federal income tax return and incurred a state tax lien in 2013 for \$405. Finally, the SOR alleges under Guideline H, that Applicant used cocaine in 2014.

Applicant's marriage began to deteriorate when her spouse lost his job in 2009 and began abusing alcohol. Her spouse paid the household bills, and filed tax returns online. His alcohol abuse resulted in him lying to Applicant, and she described her relationship with him as controlling and abusive, to the point where she was afraid to confront him. During Applicant's pending divorce, she and a friend that was a DJ at a bar, were offered cocaine by a bartender. She accepted and used it one time. She stated that this was a reaction to being free from her controlling husband, and it has not recurred. She and the friend have not used drugs again, and do not associate with people who use drugs, including the person that gave them the cocaine. The bar has since closed, and her friend no longer works at bars. Applicant was drug tested before and after this incident, and has never tested positive for use of illegal drugs. She reported the drug use incident in her SCA. Applicant provided a sworn statement of intent to refrain from further illegal drug use and expressed regret for her one-time lapse in judgment.

The loss of her husband's income resulted in the repossession of a vehicle, an unpaid credit card that Applicant's spouse opened without her permission, medical debts, and unpaid student loans. Applicant believed her husband requested an extension to file the 2010 joint income tax return because they did not have the funds to pay the taxes owed. In her answer to the SOR, Applicant provided an IRS statement showing a 2013 tax debt for \$311 under her husband's Social Security number. Applicant personally inquired with the IRS and was told that she has no unpaid Federal tax debts in her name. She believes her husband eventually filed the 2010 tax return and has paid all outstanding

balances. She stated that the state tax debt was paid-off in June 2016, and provided evidence showing a zero balance as of July 2017.

After her divorce, Applicant began working with a credit repair company, and that company successfully disputed and removed the medical, credit card, and vehicle loan debts from her credit report. She paid-off the consolidated student loans in 2017 through garnishment of her pay. Applicant also made installment payments on a phone service debt not alleged in the SOR and paid it off.

Applicant sought credit counseling from her employer's financial counselor, completed a budget, and refined her spending so she could accumulate an emergency fund. She is currently financially stable, does not spend excessively, and is able to pay her expenses when due. She saves \$391 per month after setting aside \$100 per month in an emergency fund. She has not incurred any new debts, and uses a pre-paid credit card to manage her finances.

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. These AGs are applicable to this decision.

"[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 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 relevant disqualifying conditions include:

- (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's admissions and the documentary evidence supporting the SOR allegations are sufficient to establish the disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following mitigating conditions 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;
- (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.

Applicant incurred delinquent debts during a period when her spouse lost a job and began abusing alcohol. Applicant took action to inquire about state and Federal tax delinquencies and has satisfactorily addressed them. She also pursued her other debts

through use of a credit repair company who successfully removed disputed and dated debts from her credit report. She pursued credit counseling to prepare a budget, begin a savings program and accumulated an emergency fund. She is now financially stable, can meet all of her expenses, and has not incurred additional debts since the dissolution of her marriage. The evidence suggests that Applicant has maintained satisfactory control of her finances and that additional delinquencies are unlikely to recur. AG ¶¶ 20(a), (b), (c), (d), (e), and (g) apply.

Guideline H: Drug Involvement and Substance Misuse

The security concern for drug involvement and substance misuse is set out in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. Controlled substance means any "controlled substance" as defined in 21 U.S.C. 802. Substance misuse is the generic term adopted in this guideline to describe any of the behaviors listed above.

The guideline notes conditions that could raise security concerns under AG ¶ 25. The disqualifying condition applicable in this case is:

(a) any substance misuse (see above definition).

Applicant reported a one-time use of an illegal drug in 2014, which invokes the disqualifying condition noted above.

AG ¶ 26 provides conditions that could mitigate security concerns. The following are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:

(1) disassociation from drug-using associates and contacts;

(2) changing or avoiding the environment where drugs were used; and

(3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

Applicant is a mature adult who reported in her SCA, a one-time use of cocaine in 2014 as a reaction to being free from an abusive marriage. She and her friend have since refrained from any further drug use, and has been successfully drug-tested since this incident. She no longer associates with the person that supplied the drug, and she expressed her regret for her lapse in judgment. She also provided a sworn statement of intent to refrain from future use of illegal drugs. Applicant's one-time use of an illegal drug in 2014 during a period of personal difficulty was a temporary lapse in judgment that has not recurred. I am convinced Applicant does not desire to use drugs again, and that her promise to refrain from future use is sincere. Her one-time past use does not reflect on her current reliability, trustworthiness, and good judgment. AG ¶¶ 26(a) and (b) applies.

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 Guidelines F and H in my whole-person analysis.

Applicant successfully resolved her tax issues and financial delinquencies resulting from an abusive marriage and divorce. She dedicated herself to a budget after receiving financial counseling, and her current financial status is stable while accumulating savings and an emergency fund. Her current financial condition leaves me without doubts about her ability to meet her financial responsibilities in the future. Her past delinquencies no longer cast doubt on her current reliability, trustworthiness, and good judgment. I find that her one-time use of an illegal drug was out of character and that she sincerely resolved to refrain from any such occurrence in the future.

Applicant has taken sufficient action to resolve her debts and convinced me that she will no longer use an illegal drug. Accordingly, I conclude she has carried her burden of showing that it is clearly consistent with the national security interests of the United States to grant her eligibility for access to classified information.

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:	For Applicant
Subparagraphs 1.a – 1.m:	For Applicant
Paragraph 2, Guideline H:	For Applicant
Subparagraph 2.a:	For Applicant

Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is granted.

Gregg A. Cervi
Administrative Judge