



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



In the matter of:)
)
) ISCR Case No. 16-03124
)
Applicant for Security Clearance)

Appearances

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

12/03/2018

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) on October 13, 2015. On November 15, 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 on December 2, 2016, and requested a hearing before an administrative judge. The case was assigned to me on April 25, 2018.

The Defense Office of Hearings and Appeals issued a notice of hearing on June 12, 2018, and the hearing was convened on July 11, 2018. Government Exhibits (GE) 1

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.

through 5 were admitted in evidence. Applicant testified. The record was held open so that Applicant could submit additional evidence. She submitted Applicant Exhibit (AE) A, her Chapter 7 bankruptcy case number, and Department Counsel submitted GE 6, the bankruptcy filing. Both were admitted into evidence. DOHA received the hearing transcript (Tr.) on July 24, 2018.

Findings of Fact

Applicant is a 27-year-old custodian employed by a defense contractor since 2013. She graduated from high school in 2011. She married in 2014 and divorced in 2015. She has no children. She previously held an interim security clearance granted in 2016, but it was revoked in 2018.

The SOR alleges seven delinquent debts totaling over \$11,962. In her answer to the SOR, Applicant admitted the SOR debts except for SOR ¶ 1.f, a small collection account. Applicant testified that she worked part time from February 2013 to January 2014, and full time beginning in February 2014. She admitted owing between \$10,000 and \$20,000 in debt, and began the process of filing a Chapter 7 bankruptcy in March 2017 but owed documentation to her attorney. She completed the bankruptcy filing on August 8, 2018, and declared \$23,116 in liabilities with an annual income of \$23,712. The record is devoid of a final disposition of the bankruptcy.

SOR ¶¶ 1.a, 1.b, 1.d, and 1.e are unpaid medical debts. Applicant has not made any inquiries about these debts, nor has she instituted a payment plan. SOR ¶ 1.c is a vehicle loan debt. Applicant bought the car with her husband, and became responsible for the debt after the divorce. The car was repossessed. Applicant was paying a settlement amount to recover the car, but she stopped payments when they became too difficult. The debt remains unresolved. SOR ¶¶ 1.f and 1.g remain unresolved and no inquiries have been made to settle the debts. Applicant's debts date back to 2014 and 2015, and are documented in credit bureau reports.

In testimony, Applicant indicated that she lives paycheck-to-paycheck, with take-home pay of \$706 per month, and monthly expenses of \$1,140. She has a negative net income of -\$434. Applicant avoids buying clothes and entertainment to meet her monthly expenses. Applicant has no savings or checking account funds, and was unaware of the balance on her 401k. She has not sought independent financial counseling, although it is presumed she completed the online court mandated counseling required before filing bankruptcy.

Policies

The Director of National Intelligence (DNI) issued revised adjudicative guidelines (AG) in a Security Executive Agent Directive, on June 8, 2017. The revised guidelines 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 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, testimony, and the documentary evidence in the record are sufficient to establish the disqualifying conditions above.

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.

Applicant has a history of financial irresponsibility that dates back to at least 2014. Despite full-time employment since 2014, she has not responsibly addressed her delinquent debts in a good faith or timely manner. Her delinquent debts may have been incurred under circumstances that were beyond her control, to include underemployment and a 2015 divorce, but she has not shown sufficient evidence of attempts to resolve the debts over the past three years and any movement toward their resolution. Her bankruptcy filing may give her a clean start in the future, however it is unresolved and has come too late to consider for mitigation in this case at this time. I am not convinced that Applicant has control of her finances, can live within her means, and that further delinquencies are unlikely to recur. There is insufficient evidence of debt resolution or financial responsibility. No mitigating condition fully 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).

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 is young and a relatively new entrant in the workforce, however she incurred debts that she should have addressed over the past several years, especially given the time since they were first raised under her security clearance processing. She has not shown that she is now financially stable and able to adequately address her financial responsibilities in a timely manner. Accordingly, I conclude she has not 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:	AGAINST APPLICANT
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Subparagraphs 1.a – 1.g:	Against Applicant
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Conclusion

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

Gregg A. Cervi
Administrative Judge