



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 16-03568
)	
Applicant for Security Clearance)	

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

10/23/2017

Decision

MARINE, Gina L., 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 (SCA) on September 1, 2015. On December 12, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F and Guideline E (Personal Conduct). The DOD CAF acted under Executive Order (EO) 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 (2006 AG).

Applicant answered the SOR on January 6, 2017, and requested a decision on the record without a hearing. On March 17, 2017, Department Counsel submitted the Government's written case and sent a complete copy of the file of relevant material (FORM) to Applicant, including documents identified as Items 1 through 6. She was given an opportunity to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation to the Government's evidence. She received the FORM on March 22, 2017, and timely submitted her response, to which

the Government did not object. Items 1 and 2 contain the pleadings in the case. Items 3 through 6 are admitted into evidence. I admitted the attachments to Applicant's SOR answer into evidence, collectively, as Applicant Exhibit (AX) A, and Applicant's FORM response as AX B. The case was assigned to me on October 2, 2017.

On October 16, 2017, I emailed the parties to reopen the record in order to afford Applicant the opportunity to provide an updated FORM response. That email has been marked as Appellate Exhibit (APX) I. Applicant timely submitted a response that I admitted into evidence, without objection, as AX C.

On June 8, 2017, the DOD implemented new AG (2017 AG).¹ Accordingly, I have applied the 2017 AG.² However, I have also considered the 2006 AG, because they were in effect on the date the FORM was completed. I conclude that my decision would have been the same under either version.

SOR Amendment

The Government amended the original SOR to withdraw the Guideline E allegation in its entirety.

Findings of Fact³

Applicant, age 48, was divorced three times before marrying her current spouse on a date not specified in the record. She has an adult son and a 16-year-old son. She received her bachelor's degree in 2008 and master's degree in 2010. Applicant's employment with a defense contractor has been pending final adjudication of her first application for a security clearance since August 2015.

The SOR alleged 12 delinquent debts totaling approximately \$53,469, consisting primarily of student-loan debt. She resolved two debts: SOR 1.g (charged-off

¹ On December 10, 2016, the Security Executive Agent issued Directive 4 (SEAD-4), establishing a "single, common adjudicative criteria for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position." (SEAD-4 ¶ B, *Purpose*). The SEAD-4 became effective on June 8, 2017 (SEAD-4 ¶ F, *Effective Date*). The National Security Adjudicative Guidelines (AG), which are found at Appendix A to SEAD-4, apply to determine eligibility for initial or continued access to classified national security information. (SEAD-4 ¶ C, *Applicability*).

² ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DOD policy and standards).

³ Unless otherwise indicated by citation to another part of the record, I extracted these facts from Applicant's SOR answer (Item 2), her SCA (Item 3), and the summary of her 2015 and 2016 subject interviews (Item 6). I considered that Item 6 was not authenticated as required by Directive ¶ E3.1.20. However, Applicant was informed by Department Counsel that she was entitled to make corrections, additions, deletions, and updates to Item 6. Applicant was also informed that she was entitled to object to consideration of Item 6 on the ground that it was not authenticated. Applicant did neither in her response to the FORM. Therefore, I conclude that she has waived any objection to Item 6.

account/\$114) and 1.k. (charged-off account/\$214).⁴ Two debts were duplicates of other SOR debt: SOR ¶ 1.i (duplicate of SOR ¶ 1.d) and SOR ¶ 1.l (duplicate of SOR ¶ 1.f).⁵ Two student-loan accounts (SOR ¶¶ 1.h and 1.j) were current and in “repayment status” before the SOR was issued.⁶

Once Applicant became aware that her federal student-loan accounts (SOR ¶¶ 1.a, 1.b, 1.c, and 1.e) were delinquent, she took immediate action to rehabilitate them. The terms of the rehabilitation program required that she make timely payments for nine months, which she arranged via automatic deduction from her bank account, beginning November 2015. In December 2016, she learned that those automatic deductions stopped after only six months, in April 2016, due to an inadvertent error. She immediately took action to reinstate her rehabilitation program.⁷ As of October 2017, these accounts were in good standing.⁸

Applicant attributed her delinquent debts to the financial mismanagement of her third husband, of which she became aware during the course of their divorce. She also experienced a 19-month period of unemployment. However, the record does not contain sufficient details about the specific impact that each of these circumstances had on the accumulation of the SOR debt, or the extent to which other circumstances may also have contributed. The record is also silent as to whether she has sought out or received any financial counseling. The most recent credit report in the record reveals no new delinquent accounts.⁹ Applicant’s work performance and character are highly regarded by her colleagues.¹⁰

Policies

“[N]o one has a ‘right’ to a security clearance.”¹¹ 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.”¹² The President has authorized the Secretary of Defense or his designee

⁴ AX A at 16; AX B at 3-4.

⁵ GE 4 at 2; GE 5 at 4 and 5.

⁶ See also AE A at 14-15.

⁷ See also AE A at 1-13.

⁸ AX C.

⁹ GE 4.

¹⁰ AX B at 5-10.

¹¹ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹² *Egan* at 527.

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.”¹³

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. 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.”¹⁴ 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.¹⁵ “Substantial evidence” is “more than a scintilla but less than a preponderance.”¹⁶ The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.¹⁷ Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.¹⁸ An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.¹⁹

¹³ EO 10865 § 2.

¹⁴ EO 10865 § 7.

¹⁵ See *Egan*, 484 U.S. at 531.

¹⁶ See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

¹⁷ See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

¹⁸ Directive ¶ E3.1.15.

¹⁹ 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.”²⁰ “[S]ecurity clearance determinations should err, if they must, on the side of denials.”²¹

Analysis

Guideline F (Financial Considerations)

The 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. 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

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, corroborated by her credit reports, establish two disqualifying conditions under this guideline: AG ¶ 19(a) (inability to satisfy debt) and AG ¶ 19(c) (a history of not meeting financial obligations).

The security concerns raised in the SOR may be mitigated by the following potentially applicable factors:

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, a death, divorce or separation,

²⁰ ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

²¹ Egan, 484 U.S. at 531; See also AG ¶ 2(b).

clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(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; and

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Due to the lack of details in the record, I am unable to conclude that Applicant's debts were caused largely by circumstances beyond her control. Therefore, AG ¶ 20 (b) is not established.

Applicant took action well before the issuance of the SOR to resolve her student-loan debts. She has established a meaningful track record of regular and timely payments to both of her student-loan account creditors. While Applicant is not currently debt-free, her actions, both before and after the SOR was issued, demonstrate that she will follow through with repaying her remaining delinquent debts. She is currently managing her finances responsibly. I have no doubt about Applicant's current reliability, trustworthiness, or good judgment in light of the responsible manner in which she addressed her delinquent debts. Applicant's finances are under control. I conclude that AG ¶¶ 20 (a), (c), and (d) are established.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the following guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude that Applicant has mitigated the security

concerns raised by her financial indebtedness. Accordingly, Applicant 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 amended SOR:

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

Subparagraphs 1.a – 1.l: For Applicant

Conclusion

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

Gina L. Marine
Administrative Judge