



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 17-00095
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel
For Applicant: *Pro se*

03/01/2018

Decision

HESS, Stephanie C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Due to circumstances largely beyond her control, Applicant incurred significant delinquent medical debt between 2010 and 2015, which had a severe impact on her overall ability to maintain her finances, and resulted in her late filing and paying of her 2013 and 2014 taxes. However, Applicant mitigated the concern by acting responsibly under the circumstances. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on February 16, 2016. On March 13, 2017, the Department of Defense (DOD) sent her a Statement of Reasons (SOR), alleging security concerns under Guideline F. The DOD acted under Executive Order (E.O.) 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 implemented by DOD on June 8, 2017.

Applicant answered the SOR on March 23, 2017, and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on April 27, 2017. On April 28, 2017, a complete copy of the file of relevant material (FORM,) which included Government Exhibits (GX) 1 through 7, 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 May 2, 2017, and did not respond¹. The case was assigned to me on October 1, 2017. On January 24, 2018, I reopened the record until February 7, 2018, to permit the parties to submit additional or updated evidence. Applicant timely submitted Applicant's Exhibits (AX) A and B.

Findings of Fact

The SOR alleges 13 delinquent debts totaling \$13,073, and that Applicant failed to file her federal and state income tax returns as required for tax years 2013 and 2014. In her Answer, Applicant admits each of the debts, and denies the tax-related allegations. The debts are reflected in Applicant's credit bureau reports (CBRs) from January 2017 and March 2016. (GX 6; GX 7.) Her admissions in her Answer are incorporated in my findings of fact.

Applicant is a 49-year-old warehouse technician employed by a defense contractor since February 2016. She and her current husband married in 2004. Applicant has two adult children from her previous marriage, and three adult stepchildren from her husband's previous marriage. This is Applicant's first application for a security clearance. (GX 4; GX 5.)

Applicant struggled financially due to a history of low-paying jobs. She incurred significant medical debt between April 2010 and September 2015. The SOR debts are comprised of 12 medical debts totaling \$8,273, and a \$4,800 judgment entered against Applicant and her husband in 2012, for unpaid rent at a former apartment. (GX 5.) Applicant did not timely file her 2013 and 2014 federal and state returns because she did not have the money to pay her taxes at that time. However, she filed and paid her delinquent taxes, through a professional tax preparer, in March 2016. She has timely filed all her subsequent returns.

Applicant began her efforts to pay her delinquent debts in 2016, when her financial circumstances became more stable. She consolidated SOR debts ¶1.d through ¶1.g and ¶1.m, totaling \$2,867, and has paid \$1,160 on these debts. (AX B.) She paid the \$397 judgment alleged in SOR ¶ 1.i through a garnishment that was completed in March 2013. The \$248 debt alleged in SOR ¶ 1.c and the \$237 debt alleged in SOR ¶1.l are the same debt. Between 2016 and 2017, she paid two additional medical accounts, not alleged in the SOR, totaling approximately \$2,500, through garnishment.

¹The Defense Office of Hearings and Appeals (DOHA) transmittal letter is dated April 28, 2017, and Applicant's receipt is dated May 2, 2017. The DOHA transmittal letter informed Applicant that she had 30 days after her receipt to submit information. The DOHA transmittal letter and receipt are marked as Administrative Exhibit 1.

Applicant will pay SOR ¶¶ 1.a and 1.b, medical debts owed to the same creditor, totaling approximately \$2,900, and the \$248 medical debt alleged in SOR ¶ 1.c, as soon she is able. She disputed the \$1,151 debt alleged in ¶ 1.h, and SOR ¶ 1.k, a \$467 medical debt, does not appear on her most recent CBR.

Applicant lives within her means and has not incurred any recent significant delinquent debt. Throughout her financial struggles, Applicant was able to maintain the majority of her financial obligations, only falling behind on her rent in 2012, her taxes in 2013 and 2014, and her medical expenses. She continues to address her delinquent medical accounts, and is current on all of her other ongoing financial obligations, including her tax obligations. (GX 6.)

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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant’s 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.” See 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 an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual 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).

The record evidence establishes that SOR ¶¶ 1.c and 1.l are the same debt. Therefore, I have not considered the debt alleged in SOR ¶ 1.l when evaluating Applicant’s financial status. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant’s

favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice).

The record evidence establishes two disqualifying conditions under this guideline: AG ¶ 19(a) (“inability to satisfy debts”) and AG ¶ 19(c) (“a history of not meeting financial obligations”). The following mitigating conditions 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

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

AG ¶ 20(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's past financial problems were attributable to matters largely beyond her control. Specifically, she incurred significant medical debt between 2010 and 2015, which, combined with a series of low-paying jobs, had a severe impact on her overall ability to manage her finances. It is significant that all but one of Applicant's SOR debts are medical debts. Despite working in consistently low-paying jobs, Applicant has an overall history of living within her means and paying her financial obligations. Although she did not timely file and pay her taxes for 2013 and 2014, she has since filed and paid all overdue taxes, and timely filed all returns. After achieving steadier employment, Applicant began addressing her delinquent medical accounts in 2016. She has paid or is paying six of the debts. She has disputed two the debts, one of which has been removed from her CBR. She will pay the remaining three medical accounts as soon as she is able. She also repaid two unalleged medical debts totaling \$2,500. Although the two of her larger medical debts, and one SOR debt were paid through garnishment, the fact that a debt is paid through garnishment does not bar mitigation of financial concerns. ISCR Case No. 04-07360 at 2-3 (App. Bd. Sep 26, 2006). Applicant filed and paid for 2013 and 2014 overdue taxes in 2016. She has subsequently timely filed all returns as required.

Applicant acted in good faith by addressing her delinquent medical debts in filing and paying her past-due taxes. She has paid or is paying many of the SOR debts, and will pay the three remaining accounts as soon as she is able, while continuing to otherwise

live within her means. “Good faith” means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). 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.) A person is not required to establish resolution of every debt alleged in the SOR. He or she need only establish a plan to resolve financial problems and take significant actions to implement the plan. The adjudicative guidelines do not require that an individual make payments on all delinquent debts simultaneously, nor do they require that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant did not merely wait for her debts to drop off her CBR. Rather, she took affirmative action to responsibly pay her delinquent medical accounts and past-due taxes beginning in 2016, as soon as she was financially stable. The circumstances under which Applicant incurred significant delinquent medical debt occurred between 2010 and 2015, are unlikely to recur, and do not cast doubt on her current security worthiness. Although Applicant experienced past financial issues, she established and instituted a plan to pay or otherwise resolve her delinquent debts, has not incurred any recent delinquent debt, and lives within her means. Although Applicant’s finances are not perfect, she has made a good-faith effort to repay her debts and has established a plan to resolve her financial issues within her means. AG ¶¶ 20(a), 20(b), 20(d), and 20(e) apply.

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(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 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

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

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

Subparagraphs 1.a – 1.o:

For Applicant.

Conclusion

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

Stephanie C. Hess
Administrative Judge