



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



In the matter of:)
)
) ISCR Case No. 17-01232
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

04/30/2018

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Applicant mitigated the security concerns raised by the default on the second mortgage of her former home. Eligibility for access to classified information is granted.

History of the Case

Applicant submitted a security clearance application (SCA) on March 16, 2016. On May 16, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD Consolidated Adjudications Facility (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 May 25, 2017, and requested a decision on the record without a hearing. On August 25, 2017, a complete copy of the File of Relevant Material (FORM), containing nine Items, was mailed to Applicant. The FORM notified

Applicant that she had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of her receipt of the FORM. On September 14, 2017, she responded to the FORM and submitted additional evidence. Applicant did not object to the Government's Items. Hence, Items 1 through 9 are admitted into evidence without objection. Applicant's FORM response is also admitted as Exhibit (AX) A, without objection. The case was assigned to me on March 1, 2018.

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

Findings of Fact²

Applicant is 47 years old and works as a configuration analyst for a defense contractor. She has worked for her employer and held a DOD clearance since 2006. Applicant continues to require a clearance for her employment. She was married to her first husband between 1995 and 2012, and they have three children. She married her second husband in 2014. Applicant received her bachelor's degree in 2009. Applicant denied all of the SOR allegations, with explanation.

Applicant's financial issues were the result of her abusive first marriage and subsequent divorce (Item 8 at 1). In May 2005, Applicant and her ex-husband purchased a home for approximately \$165,000. In August 2007, they opened a home equity line of credit (HELOC) in the approximate amount of \$23,830 to install a pool. This home was their primary residence and they owned it jointly. Applicant made timely payments to her first and second mortgages until November 2009, when her ex-husband lost his job. She worked two jobs to pay their family's bills, tried to negotiate the mortgage payments with the creditors, and continued to make partial payments toward both loans (Items 3 and 5 to 7). They listed their home for sale in November 2010. Applicant and her husband separated in February 2011, and she moved out of their house with their children (Items 3 and 8 at 1-2 and 4). In July 2011, their house was sold via a short sale for \$99,000. This house was sold again in April 2014 for \$154,000 and in April 2017 for \$172,403.

SOR ¶ 1.a. is related to the second mortgage on Applicant's former home.³ In July 2011, at the time of the sale, she believed because the lien holder of the second mortgage

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 Applicant's personal information is extracted from her security application (Item 4) unless otherwise indicated by a parenthetical citation to the record.

³ In July 2011, the debt in SOR ¶ 1.a. was charged off in the amount of \$19,533, and Applicant's credit reports report an outstanding balance of \$32,155 (Items 5-7). Her credit reports also reflect that the first mortgage was settled prior to foreclosure and has a \$0 balance (Item 5 at 4).

signed off on the short sale of the home, she was released from both mortgages (Item 3 and AX A).⁴ Applicant's 2012 divorce documents do not list her former house as community or individual property, nor do they list the two relevant mortgages as community or individual debt (Item 3 at 27-28).⁵ There is no evidence to suggest the creditor has attempted to seek a deficiency judgment (Items 5 to 7).

Applicant presented documentation demonstrating she has resolved the debts in SOR ¶¶ 1.b., 1.c., and 1.d. (Item 3 and AX A). Per her divorce decree, her ex-husband is responsible for the car loan alleged in SOR ¶ 1.b. (Item 3). When Applicant moved out of her former home, she did not turn off the utilities because her ex-husband was still living there.⁶ He did not pay the bills alleged in SOR ¶¶ 1.c. and 1.d. She paid both of these debts in May 2017, and provided documentation showing resolution (Item 8 at 3 and AX A). Applicant's most recent credit reports show no new delinquent debts or obligations (Items 3 and 7).

Policies

"[N]o one has a 'right' to a security clearance."⁷ 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."⁸ 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."⁹

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.

⁵ The state in which Applicant resides has anti-deficiency statutes regarding home foreclosures. See A.R.S. § 33-814 and A.R.S. § 33-729. These laws preclude creditors from seeking deficiency judgments on both first and second mortgages. It is not clear if these laws are applicable to Applicant, as she sold her home through a short sale rather than a trustee sale.

⁶ Applicant told the government investigator she timely paid her utility bills until she moved out of her home, her ex-husband was supposed to fulfill the payment obligations (Item 3).

⁷ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁸ *Egan* at 527.

⁹ EO 10865 § 2.

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.”¹⁰ 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.¹¹ “Substantial evidence” is “more than a scintilla but less than a preponderance.”¹² The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.¹³ Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.¹⁴ An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.¹⁵

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”¹⁶ “[S]ecurity clearance determinations should err, if they must, on the side of denials.”¹⁷

Analysis

The concern under Guideline F (Financial Considerations) is set out in AG ¶ 18:

¹⁰ EO 10865 § 7.

¹¹ See *Egan*, 484 U.S. at 531.

¹² See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

¹³ ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

¹⁴ Directive ¶ E3.1.15.

¹⁵ ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

¹⁶ ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

¹⁷ *Egan*, 484 U.S. at 531; See also AG ¶ 2(b).

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.¹⁸

The documentary evidence in the FORM 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").

AG ¶ 20 describes conditions that could mitigate security concerns. Three are potentially applicable in this case:

(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; and

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

Applicant has not paid the debt in SOR ¶ 1.a., however, the evidence clearly shows that she and her ex-husband believed the second mortgage for their home was resolved in the short sale. Her ex-husband's unemployment made it difficult for them to make payments to their mortgages. Applicant continued to make partial payments, tried to negotiate with the lien holders, and did not allow her home to go into foreclosure. If she had completely stopped making payments and walked away from her responsibilities, she

¹⁸ ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

would be not be responsible for either mortgage under relevant state anti-deficiency statutes. Instead, she worked with the bank to resolve the home through a short sale. During the past six years, the lien holder for the second mortgage on Applicant's former home has not filed a deficiency judgment against her.

Applicant provided documentation demonstrating the outstanding debt in SOR ¶ 1.b. was her ex-husband's responsibility per their divorce decree. She also provided documentation showing she paid the utility bills alleged in SOR ¶¶ 1.c. and 1.d. These bills were related to a period of time when her ex-husband was residing alone in their former home. One week after receiving the SOR, Applicant paid these debts in full.

Applicant's ex-husband was unemployed, abusive, and failed to provide child support. She worked two jobs to try to keep her family afloat financially and tried to work with her creditors, demonstrating she acted responsibly. Despite being a single mother, she managed to keep all of her other bills current, including her rent, student loans, car loan, insurance, and utilities. She has shown that her current finances are in good standing and she is living within her means. AG ¶ 20(a), 20(b), and 20(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 failure to pay her delinquent debt.

Formal Findings

I make the following formal findings on the allegations in the SOR:

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

Subparagraphs 1.a. to 1.d.:

For Applicant

Conclusion

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

Caroline E. Heintzelman
Administrative Judge