



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 17-01580
)	
Applicant for Security Clearance)	

Appearances

For Government: David Hayes, Esq., Department Counsel
For Applicant: *Pro se*

08/31/2018

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 was unable to meet her student-loan obligations. However, Applicant acted responsibly under the circumstances and has mitigated the potential financial security concern. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on May 13, 2016. On June 21, 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 (Ex. 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) effective June 8, 2017.

Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on August 30, 2017, and the case was

assigned to me on December 14, 2017. On February 14, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for March 7, 2018. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. She testified and submitted Applicant's Exhibits (AX) A and B, which were admitted without objection. DOHA received the transcript (Tr.) on March 16, 2018.

Findings of Fact

Applicant is a 30-year-old quality assurance analyst employed by a federal contractor since August 2015. She earned her bachelor's degree in 2010 and her master's degree in 2014. She and her cohabitant since 2012 have a toddler-age daughter. This is Applicant's first application for a security clearance. (GX 1; Tr. 42.)

The SOR alleges three delinquent student loans totaling \$102,837 and two delinquent medical accounts totaling \$225. In her Answer, Applicant admits each of the student loans, and denies the medical debts. With her Answer, Applicant provided an explanation of the origin and status of the student loans. The delinquent debts are reflected in Applicant's April 2017 and July 2016 credit bureau reports (CBR), listed on her e-QIP, and discussed in her personal subject interview (PSI) summary. (GX 4; GX 3; GX 1; GX 2.) Applicant's admissions are incorporated in my findings of fact.

When Applicant began college in 2006, she had a scholarship that paid 75% of her tuition. Applicant was residing at her parent's home and commuting to classes. Despite working part-time jobs, she needed additional money to assist with books and commuting costs. She met with representatives at the student-loan office at her university who provided her with information about a Tuition Answer Loan, a then-popular type of private student loan. Applicant provided the information about the loan to her mother, because the loan required a cosigner, and her mother agreed to cosign the loan of approximately \$1,000. This is the \$4,903 debt alleged in SOR ¶ 1.c. (Tr. 30.)

During her second semester, Applicant moved to off-campus housing and needed to borrow approximately \$3,000 to \$4,000 to assist with living expenses. She again met with representatives at the university who provided her with a loan application which required a cosigner. Applicant completed her portion of the loan application, and left it with her mother to sign and submit. At the same time, Applicant's mother was experiencing a financial crisis due to a readjustment of her mortgage-loan and needed approximately \$20,000-\$25,000 to keep her home out of foreclosure. Applicant's mother altered Applicant's student-loan application by requesting \$30,000, the maximum amount offered, cosigning the document, and submitting the application. (Tr. 30-35.)

In March 2007, Applicant received a \$30,000 student-loan disbursement. Applicant immediately discussed this disparity with her mother who stated that she needed the approximately \$25,000 surplus to keep the house from foreclosure and that she would withdraw a lump sum her 401(k) to repay the entire \$30,000 loan, plus the \$1,950 origination fee. (Tr. 14-16.) This is the \$77,972 debt alleged in SOR ¶ 1.a. (Tr. 31.)

Prior to the loan's becoming due, Applicant's mother's longtime federal-contractor employer lost its contract and shut down, and Applicant's mother was laid off. The local economy was hit hard, and Applicant's father, who owned a construction business, was no longer getting any work. Applicant's mother eventually found employment, but her father did not, and they experienced a period of significant financial strain. Applicant's father became ill, and ultimately passed away in early 2018. Applicant's mother now has the additional financial burden of Applicant's father's outstanding medical bills. Applicant's mother did not repay the loan as promised and has no intention of doing so. (Answer; Tr. 21; Tr. 36.)

Applicant borrowed a third private student loan to cover her tuition for the 2007 summer semester, as she did not receive scholarship money for the summer semester. This is the \$19,962 debt alleged in SOR ¶ 1.b. (Tr. 23.)

Applicant met with representatives at the financial aid office at her university during her second year of college. It was at that time that Applicant learned that she was eligible for federal student loans in lieu of private loans. Applicant borrowed federal student loans to complete her undergraduate degree and her master's degree, and the current balance is approximately \$132,000. Applicant has been repaying the loans since graduating in 2015, and has never missed a payment. However, her repayment schedule is based on her income and is due to increase by \$300 a month, which is the entirety of Applicant's average monthly net remainder. Because of this, Applicant placed the loans in forbearance for 12 months. (Tr. 19; Tr. 37.)

Despite her mother's misuse of Applicant's student-loan funds, Applicant has sought out ways to resolve the loans. Applicant's Tuition Answer Loans have been sold multiple times to different creditors. In 2014, after completing her education and entering the workforce full-time, she contacted the current creditor in an effort to make repayment arrangements, but the creditor demanded payment in full for the combined total of the three loans which Applicant was unable to afford. (Answer.) Because the three Tuition Answer Loans were private, Applicant could not include them in the consolidation of her federal student loans. Applicant met with an attorney to discuss her options. The attorney did not recommend bankruptcy because releasing the delinquent student loans would be at the discretion of the bankruptcy judge. Instead, the attorney advised that after six years collection of the loans would be barred by the statute-of-limitations and recommended that Applicant allow collection of the loans to become unenforceable. The attorney did not recommend making any payments because such actions would restart the statute-of-limitations clock. Applicant does not have legal recourse to enforce her mother's promise to repay the loan. (Tr. 16-17; Tr. 20-22; Tr. 36.)

When Applicant borrowed \$30,000 in 2007, she was charged an origination fee of \$1,950. The loan carried an interest accrual rate of 14.75%. Under the terms of the loan, Applicant was required to pay \$186,316 in 300 installments of over \$620 a month for 25 years. (AX A.) However, because Applicant relied on her mother's assertion that she would repay the loan in its entirety, she did not anticipate being personally responsible

for repayment of the loan. Applicant would repay the delinquent student loans if she were able. (Tr. 29-34; Tr. 24-25.)

Applicant is unfamiliar with the \$140 medical debt alleged in SOR ¶ 1.d and the \$85 medical debt alleged in SOR ¶ 1.e. There is no contact information on the CBR for the creditors of these debts. Applicant has not received any correspondence from any creditor attempting to collect these debts. However, she is willing to pay them if she is able to identify the creditors. (Tr. 39.)

Applicant lives within her means, however, she is under constant financial strain. Applicant and her partner's young daughter, not yet two, has special needs. Applicant is unable to afford the significantly higher daycare costs for a special needs child, so her partner has become a stay-at-home father to care for their daughter. (Tr. 19-20.) Despite the demands on her finances, Applicant has not incurred any recent delinquent debt, has reduced her discretionary spending, and maintains a monthly budget. She has consistently and timely paid her federal student loans for over three years. (Tr. 39.) Following the advice of a renowned financial advisor, Applicant keeps a balance in her savings account of approximately \$3,500, which equals two months' rent. (Tr. 50-51.) Applicant was straightforward, sincere, and credible in her testimony.

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 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....

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 the following disqualifying conditions under this guideline:

AG ¶ 19(a): an 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; and

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.

When Applicant began college in 2006, despite receiving a 75% scholarship, she needed to borrow an additional \$1,000.

The conditions that caused Applicant to become delinquent on her student loans arose under unique circumstances which were largely beyond her control. Initially, Applicant sought the advice of representatives at her university's student-loan office and was steered into applying for a high-interest rate private loan. Then, without Applicant's permission or knowledge, her mother, as a required cosigner, altered the amount of the loan request. When Applicant received a disbursement for \$30,000 instead of the \$3,000 to \$4,000 loan she had applied for, her mother explained that she needed to borrow the remaining amount to prevent foreclosure of her home and promised to repay the loan in its entirety out of her 401(k). Applicant relied on the advice of the financial-aid office's representatives and the promise of her mother to Applicant's detriment. Applicant acted responsibly under the circumstances by identifying and contacting the creditor of her delinquent student loans and attempting to negotiate a repayment plan. When the creditor was unwilling to work with Applicant, she contacted an attorney who recommended that applicant wait for the loans to become unenforceable. Applicant was unable to identify the two creditors of the \$225 of medical debt alleged in the SOR, however, she is willing to pay these two accounts. With the exception of the delinquent student loans, Applicant has a sound financial record, which includes over three years of consistent repayment of her Federal student loans. She has no recent delinquent debt, lives within her means, and actively manages her finances. Applicant's delinquent debts are not due to lack of self-control, irresponsibility, or unwillingness to abide by rules and regulations. AG ¶¶ 20(a) and 20(b) 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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but I have also considered the following:

At the age of 18, Applicant relied on the recommendation of her university's student loan office's representatives and on her mother's promise which resulted in significant and untenable student-loan debt. Applicant's mother's refusal to repay the approximately \$25,000 of the original \$31,950 student loan that she used to prevent foreclosure of her home is the original cause of Applicant's financial difficulties. Applicant otherwise maintains control of her finances. Applicant was straightforward, sincere, and credible in her testimony.

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 potential security concerns raised by her financial issues. 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 through 1.e: For Applicant

Conclusion

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

Stephanie C. Hess
Administrative Judge