



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 17-01644
)	
Applicant for Security Clearance)	

Appearances

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

07/24/2018

Decision

HESS, Stephanie C., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Due to unusual circumstances largely beyond her control, Applicant experienced financial difficulties. However, Applicant has resolved her financial issues 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 February 17, 2016. On May 30, 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) implemented by the DOD on September 1, 2006.

Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on July 20, 2017, and the case was assigned to me on December 14, 2017. On February 13, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for March 6, 2018. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 5 were admitted in evidence without objection. Applicant submitted Applicant's Exhibits (AX) A and B, which were admitted without objection. I kept the record open until March 21, 2018, to enable her to submit additional documentary evidence. Applicant timely submitted AX C through H, which were admitted without objection. DOHA received the transcript (Tr.) on March 14, 2018.

The SOR was issued under the AG implemented on September 1, 2006. The DOD implemented the amended AG on June 8, 2017, while this decision was pending. This decision will be decided based on the amended AG effective June 8, 2017.

Findings of Fact

Applicant is a 45-year-old procurement engineer staff member currently employed by a federal contractor since January 2016. She has worked as a federal contractor since 2008. She earned an associate's degree in 2003, a bachelor's degree in 2006, and a master's degree in 2008. She married in 1999 and divorced in 2008. She has an adult daughter who is independent and a 17-year-old son for whom she provides monthly child support. This is her first application for a security clearance. (GX 1; Tr. 37.)

The SOR alleges four charged-off student loans, owed to the same creditor, totaling \$34,290, and a 2011 Chapter 7 bankruptcy. Applicant denies the charged-off student-loan debts and admits the bankruptcy. The student-loan debts are reflected in Applicant's March 2017 and February 2016 credit bureau reports (CBR). (GX 4; GX 3.) Applicant's admission is incorporated in my findings of fact.

Beginning in 2001, through the direction and assistance of her college's and university's financial aid offices, Applicant secured multiple subsidized and unsubsidized student loans to finance her undergraduate and graduate degrees. After graduating in 2008, Applicant entered various periods of student-loan repayment, deferment, and forbearance. (Tr. 25-28.)

When Applicant divorced in 2008, her ex-husband remained in the marital home. The divorce decree required Applicant's ex-husband to refinance the home, thereby releasing Applicant's liability for the mortgage loan. However, this transaction never transpired, and Applicant defaulted on the mortgage loan in an effort to receive a

mortgage-loan modification. Upon learning of the default and its negative impact on her credit, Applicant consulted an attorney who advised Applicant to file Chapter 7 bankruptcy. She did so in April 2011, and the bankruptcy was discharged in October 2011. Applicant's student-loan creditors, including the creditor of the student loans alleged in the SOR, were listed as required in her bankruptcy, but the debts were not included in the discharged debt. (GX 5; Tr. 26.) At the time the bankruptcy was initiated, Applicant's student loans were in deferment. According to her CBRs, the last activity on the SOR debts was October 2010. (GX 4; GX 3.) Applicant never received any notification from any of her lenders that she was in default or that any of her student-loan accounts had been charged off. (Tr. 18.)

In November 2011, Applicant consolidated all her subsidized student loans with monthly payments of \$99, and maintained payments, deferments, or forbearances on her unsubsidized loans. In September 2013, she consolidated all her unsubsidized loans, with the same creditor as her subsidized loans, with monthly payments of \$479. Applicant's total student-loan debt is currently approximately \$100,000, which is consistent with the original debt plus interest. She is current on her payments, and has never made a late payment to the current lender. (AX D; AX E; GX 4; Tr. 18-19; Tr. 30.)

Applicant's student loans have been sold multiple times since their originations, making maintaining accurate documentation of the history of the loans difficult. Applicant learned that four of her student-loan accounts were being reported as charged off while reviewing her CBR during her personal subject interview for her background investigation in April 2016. Following the background investigator's advice, Applicant sent a letter to the SOR-creditor requesting evidence of the debts. The creditor did not respond. She then successively disputed the incorrect information through an Internet credit-monitoring organization, and the four charged-off accounts alleged in the SOR do not appear on her March 2018 CBRs. (AX F; Tr. 19; AX G.) Upon receiving the SOR, Applicant acquired records of her student loans through a national student loan database. The documents show no record of any delinquent accounts with the SOR creditor, and show that Applicant's two consolidated student loans are current. (Answer.)

Applicant has never knowingly defaulted on any of her student loans. She has been routinely meeting her financial obligations for many years, including her child support payments, does not have any current or recent delinquent accounts, and is in an overall strong financial position. (Tr. 37; AX D; AX E.) She received a positive performance evaluation from her employer for 2017, and is a valued employee who acts with integrity. (AX C.) Applicant's testimony was sincere, and she understands and is respectful of the security clearance process.

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 disqualifying condition 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.

The unusual conditions that caused Applicant to file bankruptcy were largely beyond her control. Specifically, Applicant's ex-husband did not comply with the requirements of the divorce decree to refinance the marital home, but instead, became delinquent on the mortgage-loan payments. This conduct had a negative impact on Applicant's credit and, after seeking the advice of an attorney, resulted in Applicant's filing bankruptcy. The charged-off entries on Applicant's CBRs from the SOR-creditor are erroneous. The student-loan database lists all of Applicant's student loans, shows that they are consolidated into the two accounts, and that Applicant is current on those accounts. Applicant contested the derogatory information incorrectly listed on her CBR regarding the SOR student-loan debts and the erroneous entries have been removed from her 2018 CBR. Applicant has made a good-faith effort to pay or otherwise resolve his debts. Applicant is current with all her ongoing financial obligations, lives within her means, and her overall financial circumstances are strong. 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. 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:

Applicant has worked as a federal contractor for over 10 years. She is financially responsible. She is a highly valued employee. Her testimony was sincere and she is respectful of the security clearance process.

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 past financial issues. Accordingly, I conclude she has carried his 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 Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Stephanie C. Hess
Administrative Judge