



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 17-01819
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

08/24/2018

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 April 14, 2016. On June 26, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F. 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 June 8, 2017.

Applicant answered the SOR on July 13, 2017, and requested a hearing before an administrative judge.¹ The Government was ready to proceed on October 2, 2017, and the case was assigned to me on March 15, 2018. On April 13, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for May 16, 2018. I convened the hearing as scheduled.

¹ Because her initial SOR answer was deficient, Applicant submitted an updated answer on August 18, 2017.

Government Exhibits (GE) 1 through 4 were admitted into evidence, without objection. I appended to the record correspondence the Government sent to Applicant as Hearing Exhibit (HE) I, and the Government's exhibit list as HE II. At the hearing, Applicant testified and submitted Applicant Exhibits (AE) A through C, which I admitted into evidence, without objection. I left the record open until August 21, 2018. Applicant timely provided additional documents that were admitted into evidence as AE D through G, without objection. I appended the post-hearing submission email exchanges as HE III. DOHA received the transcript (Tr.) on June 5, 2018.

Findings of Fact²

Applicant, age 50, has been married since 1993. She has four adult children, the eldest of which is her 33-year-old daughter. She earned a master's degree in civil engineering in 1987. Applicant has been steadily employed as a database administrator since 2010. This is her first application for a security clearance.³

Applicant cosigned two student-loan accounts to help her eldest child pay for medical school. Her daughter was solely responsible for repaying them, with her first payments to begin upon her graduation in 2015. Applicant learned that those accounts were in collection status during a September 2016 interview she had in connection with her security clearance background investigation. Applicant was previously aware that her daughter had intermittently missed payments, but never to the point of defaulting on the loans. Applicant told the investigator that she would make inquiries about the account to determine her liability.⁴

Applicants and her daughter are estranged. After being unsuccessful at securing a position with a residency program, her daughter had a "mental breakdown" and cut ties with her family. Since then, her daughter has largely ignored Applicant's phone calls and text messages, except for a few text exchanges about the student loans following the 2016 interview. In March 2017, her daughter provided information about the creditor and told Applicant to do whatever she wanted with the loans.⁵

Given her inability to secure a commitment from her daughter to resolve the debt, Applicant initiated efforts to resolve it herself. In July 2017, she finalized an arrangement to repay the debt via an initial payment of \$661 followed by monthly payments of \$150. She is required to contact the creditor every six months to renew the arrangement. Applicant made consistent payments through August 2018, with the exception of two months (January and February 2018) when she neglected to timely contact the agency for the renewal. She missed the renewal date because the payments had been

² Unless otherwise indicated by citation to another part of the record, I extracted these facts from Applicant's SOR answer and her SCA (GE 1).

³ Tr. at 6-7, 32-35.

⁴ GE 2 at 4-5; Tr. at 24-28.

⁵ AE E and G; Tr. at 24-25, 31-32, 41-43, 47.

automatically deducted from her checking account so it was not on her radar and it just “slipped [her] mind.” As of April 2018, the balance of the two loans totaled \$31,414.⁶

Applicant attributed the delay in resolving the debt, once it was brought to her attention, to a combination of her daughter’s lack of responsiveness, her own procrastination, and the several months it took to negotiate the payment arrangement. There will be no further delays because Applicant is committed to staying “on top of it.” She has continued the automatic deduction for her \$150 monthly payments, and plans to schedule future renewal dates on her calendar so that she does not miss it again.⁷ She has a phone appointment with the lender on September 10, 2018, during which she will renew the arrangement and automatic deduction. She currently lives within her means and is managing her finances responsibly.⁸ Applicant’s current manager praised her work performance and advocated for Applicant to maintain her security clearance.⁹

Policies

“[N]o one has a ‘right’ to a security clearance.”¹⁰ 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.”¹¹ 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.”¹²

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

⁶ AE A through E and G; Tr. at 24-31, 48.

⁷ Tr. at 28, 40-50.

⁸ Tr. at 25 and 35.

⁹ AE F and G.

¹⁰ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹¹ *Egan* at 527.

¹² EO 10865 § 2.

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.”¹³ 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.¹⁴ “Substantial evidence” is “more than a scintilla but less than a preponderance.”¹⁵ The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.¹⁶ Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.¹⁷ An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.¹⁸

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”¹⁹ “[S]ecurity clearance determinations should err, if they must, on the side of denials.”²⁰

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

¹³ EO 10865 § 7.

¹⁴ See *Egan*, 484 U.S. at 531.

¹⁵ See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

¹⁶ See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

¹⁷ Directive ¶ E3.1.15.

¹⁸ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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

²⁰ *Egan*, 484 U.S. at 531; See also AG ¶ 2(b).

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 delinquent student-loan accounts establish 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 security concerns raised under this guideline have been mitigated by the following 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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and

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

Her daughter's default on the student-loan accounts was a circumstance beyond Applicant's control. She acted responsibly to resolve the debt once it became clear that her daughter would not do so as originally planned. While there was a delay in Applicant initiating contact with the creditor, it is not security significant in light of the record as a whole. Applicant has established a meaningful track record of payments sufficient to demonstrate that she will follow through with the payment arrangement. While Applicant is not currently debt free, given the circumstances under which she incurred this debt and the responsible manner in which she has addressed it, I have no lingering doubts about her reliability, trustworthiness, and good judgment.

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 adjudicative 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 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 SOR:

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

Subparagraphs 1.a – 1.b: For Applicant

Conclusion

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

Gina L. Marine
Administrative Judge