



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



In the matter of:

Applicant for Security Clearance

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) ISCR Case No. 17-02079
)
)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

07/31/2018

Decision

HARVEY, Mark, Administrative Judge:

Applicant provided insufficient evidence that she was unable to make payments or otherwise resolve five debts in the statement of reasons (SOR). Financial considerations security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On December 2, 2015, Applicant signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On August 15, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992, and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

On September 27, 2017, Applicant provided a response to the SOR, and she requested a hearing. (HE 3) On November 1, 2017, Department Counsel was ready to proceed. On January 24, 2018, the case was assigned to me. On April 3, 2018, the

Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for April 18, 2018 using video teleconference. (HE 1) Applicant waived any issue regarding insufficient notice of the date, time, and place for his hearing. (Tr. 14-15) Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered four exhibits; Applicant did not offer any exhibits; there were no objections; and all proffered exhibits were admitted into evidence. (Tr. 12, 16-17; GE 1-4) On May 1, 2018, DOHA received the hearing transcript. Applicant did not provide any evidence after her hearing. The record closed on July 18, 2018. (Tr. 29-30)

Findings of Fact¹

In Applicant's SOR response, she admitted the debts in SOR ¶¶ 1.a through 1.e, and 1.g. She denied the SOR allegations in SOR ¶¶ 1.f and 1.h. (HE 3) She also provided mitigating information. (HE 3) Her admissions are accepted as findings of fact.

Applicant is 38 years old, and she has been employed as a security officer for a government contractor since November 2014. (Tr. 7, 19; GE 1) In 1998, Applicant graduated from high school, and she attended college for a time. (Tr. 7-8) She served in the Army from 1998 to 2004; her military occupational specialty (MOS) was aviation operations specialist (15P); she left active duty as a specialist (E-4); and she received an honorable discharge. (Tr. 8) In 2010, she married, and her three stepchildren are ages 17, 18, and 22. (Tr. 9)

Financial Considerations

Applicant's annual salary is about \$22,000. (Tr. 20) Her husband is unemployed. (Tr. 20) She had periods of unemployment and underemployment. (SOR response; GE 1) Her two stepdaughters are receiving Social Security disability and sometimes contribute to the household expenses. (Tr. 20) After paying monthly expenses, Applicant has little left over to pay her debts. (Tr. 21)

Applicant's SOR alleged eight delinquent debts totaling \$26,481, and they are as follows: (1) a debt relating to lease of an apartment for \$1,113 placed for collection (Tr. 21-22); (2) a telecommunications debt placed for collection for \$118; (3) a medical debt placed for collection for \$79; (4) a judgment on a student loan for \$17,694; (5) a charged-off debt for \$6,810 resulting from a loan for a vehicle, which was voluntarily repossessed or possibly stolen (Tr. 27-28); (6) an amusement park debt placed for collection for \$418; and (7)-(8) two telecommunications debts placed for collection for \$176 and \$73.

In September 2017, Applicant sent a total of \$45 to six SOR creditors in money orders of \$5 or \$10 each, and she provided copies of the money orders as part of her SOR response. (Tr. 21; SOR response) For each of the six debts, she said "I am currently

¹ Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

making payments to satisfy this debt. (SOR response) She said she made some other payments; however, she did not bring receipts to her hearing. (Tr. 21) She did not make any payments to the five SOR creditors in ¶¶ 1.a through 1.e after September 2017. (Tr. 23-24) She did not have funds left over after paying expenses to address her SOR debts. (Tr. 25)

Applicant said she disputed her responsibility for the debt in SOR ¶ 1.a because she believed she was unfairly evicted from her apartment. (Tr. 22) She did not have a copy of her dispute documentation; however, the dispute was noted on her credit report. (Tr. 28-29)

In 2004, Applicant received student loans from her attendance of training in massage therapy, resulting in a judgment on a student loan for \$17,694. (Tr. 26) In September 2017, she sent a \$10 payment to the creditor. (Tr. 27)

Applicant provided a receipt showing a zero balance owed for the debt in SOR ¶ 1.f, an amusement park debt placed for collection for \$418. (SOR response) Applicant contacted the creditor for the telecommunications debts in SOR ¶¶ 1.g (\$176) and 1.h (\$73). (Tr. 24) The creditor was unable to locate the accounts. (Tr. 24)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no 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 applicant’s 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 meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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, 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 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 “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, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 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). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005). “[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

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the

totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 includes two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts"; and "(c) a history of not meeting financial obligations." In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). The record establishes the disqualifying conditions in AG ¶¶ 19(a) and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions.

Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable in this case:

(a) the behavior happened so long ago,² 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;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

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

² A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)).

(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 DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Applicant presented some mitigating evidence. Applicant and her husband were underemployed or unemployed at times, and her stepdaughters are disabled. These are circumstances beyond her control that adversely affected her finances. She does not receive full mitigating credit under AG ¶ 20(b) because she did not act responsibly under the circumstances. She did not receive financial counseling. I have credited Applicant with mitigation of the SOR debts in ¶¶ 1.f, 1.g, and 1.h.

Applicant paid a total of \$45 to the five creditors in SOR ¶¶ 1.a through 1.e and one other creditor in September 2017 in \$5 or \$10 increments. She indicated she was "currently making payments" to the creditors. She did not adequately explain why she did not make any payments to the SOR creditors in ¶¶ 1.a through 1.e after September 2017. There is insufficient evidence about why Applicant was unable to make greater progress resolving the SOR debts in ¶¶ 1.a through 1.e. There is insufficient assurance that these five SOR debts are being or will be resolved in the near future. Under all the circumstances, she failed to establish that financial considerations security concerns are mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The 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.

Under AG ¶ 2(c), “[t]he ultimate determination” of whether to grant a security clearance “must be an overall commonsense judgment based upon careful consideration of the guidelines” and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is 38 years old, and she has been employed as a security officer for a government contractor since November 2014. In 1998, Applicant graduated from high school, and she attended college for a time. She served in the Army from 1998 to 2004; her MOS was aviation operations specialist; she left active duty as a specialist; and she received an honorable discharge. In 2010, she married, and her three stepchildren are ages 17, 18, and 22.

Several circumstances beyond her control adversely affected her finances. Applicant and her husband were underemployed or unemployed at times, and her stepdaughters are disabled. Her income is limited, and she has difficulty paying her monthly expenses.

Applicant paid \$45 to address the five delinquent debts in SOR ¶¶ 1.a through 1.e and one other creditor in September 2017. She did not establish she had insufficient income to make any payments after September 2017. Her actions show a lack of financial responsibility and judgment and raise unmitigated questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18. More information about inability to pay debts, financial history, or documented financial progress is necessary to mitigate security concerns.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that financial consideration security concerns are not mitigated.

Formal Findings

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:

AGAINST APPLICANT

Subparagraphs 1.a through 1.e:
Subparagraphs 1.f, 1.g, and 1.h:

Against Applicant
For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or reinstate Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

MARK HARVEY
Administrative Judge