



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



In the matter of:)
)
) ISCR Case No. 17-02623
)
Applicant for Security Clearance)

Appearances

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

08/09/2018

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Applicant demonstrated she is able to live within her means, and her outstanding delinquent debts do not reflect a security concern. Eligibility for access to classified information is granted.

History of the Case

Applicant submitted a security clearance application (SCA) on February 6, 2016. On August 30, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), for all decisions on or after June 8, 2017.

Applicant answered (Answer) the SOR on September 6, 2017, and requested a hearing before an administrative judge. The hearing was held on May 24, 2018. I admitted Government's Exhibits (GE) 1 through 13, Applicant's Exhibits (AE) A through E, and

Hearing Exhibit (HE)¹ I through II, without objection. Applicant also testified. I received the completed transcript (TR) on June 5, 2018. I held the record open until June 29, 2018, to allow Applicant to submit additional documentation. She submitted AE F, without objection, which I admitted.

Findings of Fact

Applicant is 49 years old and works as a human resource manager for a defense contractor. She has worked for her employer since August 2015. She held a DOD public trust position when she worked for a defense contractor in Iraq between 2007 and 2011. (TR at 9-11) She graduated from college in 2001. Applicant married in 1992, divorced in 2006, and has three adult children.

Applicant and her abusive ex-husband separated in 2004, and their divorce was finalized in 2006.² (TR at 28-30; GE 3 at 2) At the time of their separation, Applicant owned approximately 13 properties, 12 of which were investments. (TR at 29-33) Additionally, she was laid off for six months in 2004. (TR at 31)

In 2007, Applicant moved to Iraq for work where she investigated contractors who committed crimes while working in country. In late 2010, Applicant was off base doing an investigation. The helicopter she was on experienced incoming enemy fire, and she was injured in the escape from the aircraft. In early 2011, she returned to the United States for physical and psychological treatment. Applicant received disability payments from her employer in the amount of \$2,500 per month from 2011 until 2013. In 2014, she received a \$100,000 settlement which is to be disbursed over ten years. (TR at 13-14, 46-51)

SOR ¶ 1.a. alleges that Applicant filed Chapter 13 bankruptcy in approximately 1995. Her liabilities were about \$20,000 and consisted primarily of a vehicle loan and a small amount of credit card debt. She filed for bankruptcy because she was overwhelmed financially after the birth of her son, and the bankruptcy plan allowed her to consolidate and manage her debts. She paid all of her debts through the bankruptcy and the bankruptcy was satisfied. (Answer; TR at 21-22, 25-28; AE F)

Concerning SOR ¶ 1.b., Applicant denied filing Chapter 13 bankruptcy in 2005. She was going through a divorce and was laid off from her job. As a result, she consulted with an attorney regarding filing for bankruptcy, but she did not have the money to file. After gaining new employment, she decided against filing, and instead sold most of her

¹ HE I is the October 25, 2017 discovery letter sent by Department Counsel to Applicant.

² In 2006, Applicant filed a police report after she learned that approximately \$150,000 of accounts were fraudulently opened in her name. She believed her ex-husband's girlfriend opened these accounts. (GE 2 at 3)

investment properties.³ She later learned that the attorney filed without her knowledge, and the case was ultimately dismissed.⁴ (Answer; TR at 29-30; AE F)

SOR ¶ 1.c. alleges that a mortgage insurance company filed a \$21,300 judgment against her in 2013. Applicant denied this debt. In August 2007, she purchased a new primary residence for herself and her children. She was offered a purchase incentive package by the developers. She chose the package that paid for her closing costs and down payment, which was worth approximately \$20,000. (TR at 33-35) Later in 2007, she accepted a job in Iraq, where she lived full-time until her injury in late 2010. While Applicant was working in Iraq between 2007 and 2011, her oldest daughter had power of attorney (POA) for her. The mortgage payments were made according to the loan agreement.

In approximately 2010, Applicant's primary residence was valued at less than her mortgage-loan balance. The bank and Applicant's realtor suggested Applicant sell her home via a short sale. Both the bank and the mortgage insurance company failed to notify her that she qualified for a loan modification. At the short sale closing, her daughter was required to sign documents obligating Applicant to pay back the incentive money she received from the developer. (TR at 33, 36) Applicant's daughter learned of this contingency at the actual closing. (TR at 37-38)

In 2013, Applicant was deposed regarding this debt, and she agreed to make payments. At the time, she was unemployed and collecting disability payments related to her injuries sustained in Iraq. Despite her offer to make payments, she was not required to make payments until her disability status ended. In approximately 2014, Applicant was able to go back to work. She subsequently called and spoke to the attorney who represented the creditor at the deposition to establish a payment plan. He failed to respond to her request to make payments. She was transparent and made good-faith efforts to pay and resolve this debt, despite indications that it may not have been legitimate. (AE A; TR at 38-44, 52-54)

Applicant was not represented by an attorney at the deposition, nor was her daughter represented by an attorney at the short sale closing. (TR at 40) Applicant later learned that her lender should have presented her with a loan modification, rather than a short sale. (TR at 40-41, 53-57)

SOR ¶ 1.d. alleges that an account was placed for collection in the amount of \$638. SOR ¶ 1.f. alleges that another account was placed for collection with the same agency in the amount of \$100. Applicant denied knowledge of these debts and only became aware of them during her security clearance interview. She was willing to pay the debts and attempted to find the creditor after her interview, but was unable to find a source to pay. (TR at 61-64)

³ Applicant also sold the property related to the debts alleged in SOR ¶¶ 1.g. through 1.i. (Tr. at 30)

⁴ Applicant learned of the 2005 bankruptcy during her security clearance interview in February 2017. (Tr. at 30 and GE 2)

SOR ¶ 1.e. alleges that an account was placed for collection with a different agency in the amount of \$571. Applicant is a court-appointed special-advocate and works as a volunteer *guardian ad litem*. In this capacity, she purchased season passes for three children to attend an amusement park.⁵ One child was accused of assaulting another child, and both children were removed from program. Applicant attempted to return the tickets, but the amusement park refused to cancel the memberships. (TR at 64-67; GE 3; AE B; AE C)

SOR ¶¶ 1.g. through 1.i. allege that, between 2010 and 2015, six county property tax liens were filed against Applicant, totaling \$941. These liens are for an investment property Applicant sold in approximately 2004. The county in which this property is located did not properly record the sale, and the company that purchased the property no longer exists. Applicant became aware of these liens during her security clearance interview and has been working to resolve this issue with the relevant tax authority. She will pay the outstanding tax bill in August 2018, and donate the property. (TR at 20-21, 33, 68-72; GE 5 through GE 13; AE D; AE F)

Applicant is able to live within her means and maintains a savings account. She and her partner earn collectively over \$150,000 per year. Their mortgage is \$623. According to her most recent credit bureau report dated February 18, 2016, she is paying her mortgage, car loan, and student loans in a timely and responsible manner. Additionally, she owns another property, which has no mortgage. Finally, while she held a position of trust, she committed no breaches or violations. (TR at 72, 81; GE 4; AE E)

Policies

“[N]o one has a ‘right’ to a security clearance.”⁶ 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.”⁷ 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.”⁸

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

⁵ Applicant was supposed to be reimbursed for this cost by the agency she was serving.

⁶ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁷ *Egan* at 527.

⁸ EO 10865 § 2.

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.”⁹ 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.¹⁰ “Substantial evidence” is “more than a scintilla but less than a preponderance.”¹¹ The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.¹² Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts.¹³ An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.¹⁴

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”¹⁵ “[S]ecurity clearance determinations should err, if they must, on the side of denials.”¹⁶

⁹ EO 10865 § 7.

¹⁰ See *Egan*, 484 U.S. at 531.

¹¹ See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

¹² ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

¹³ Directive ¶ E3.1.15.

¹⁴ ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

¹⁵ ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

¹⁶ *Egan*, 484 U.S. at 531; See also AG ¶ 2(b).

Analysis

Guideline F: Financial Considerations

The concern under Guideline F (Financial Considerations) 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. 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.¹⁷

The following disqualifying conditions under AG ¶ 19 are potentially applicable:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant's admissions and the documentary evidence establish AG ¶ 19(a) and 19(c).

AG ¶ 20 describes conditions that could mitigate security concerns. Two 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

¹⁷ ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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

While Applicant was serving overseas in Iraq, her mortgage lender took advantage of her and her daughter. Applicant was eligible for a mortgage-loan modification, however, her mortgage insurer and lender did not disclose this to Applicant but instead positioned the property for short sale. At the short-sale closing, Applicant's daughter was required to sign documents that were not provided to her or Applicant in advance. These documents obligated Applicant to pay back her original closing costs. A judgment was entered against her in 2013 but, due to her disability status, her payments were suspended. When her disability ended, she attempted to make payments to the creditor, but the company was unresponsive. She made a good-faith effort to resolve her other formerly delinquent debts.

Applicant has demonstrated that she is able and willing to live within her means and this is reflected in her credit report. I considered that Applicant is not required to be debt-free in order to qualify for a security clearance.¹⁸ Mitigation under AG ¶ 20(a), 20(b), and 20(d) is 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 applicable 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 the guideline at issue in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under this guideline, and evaluating all the evidence in the context of the whole person, Applicant has mitigated the security concerns at issue.

¹⁸ ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017) (An applicant does not have to be debt-free in order to qualify for a security clearance. Rather, all that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by "concomitant conduct" that is, actions which evidence a serious intent to effectuate the plan).

Accordingly, Applicant has carried her burden of showing that it is clearly consistent with the interests of national security of the United States 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: FOR APPLICANT

Subparagraphs 1.a.-1.l.: For Applicant

Conclusion

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

CAROLINE E. HEINTZELMAN
Administrative Judge