



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 17-02677
)	
Applicant for Security Clearance)	

Appearances

For Government: Michelle Tilford, Esq., Department Counsel
For Applicant: *Pro se*

04/26/2018

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

History of the Case

Applicant submitted a security clearance application on May 11, 2015. On September 6, 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 (Exec. 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) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), for all adjudicative decisions on or after June 8, 2017.

Applicant answered the SOR on September 21, 2017, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on February

2, 2018, and the case was assigned to me on the same day. On February 6, 2018, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for February 27, 2018. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified, presented the testimony of three other witnesses, and submitted Applicant's Exhibits (AX) A through F, which were admitted without objection. I kept the record open until March 20, 2018, to enable her to submit additional documentary evidence. She timely submitted AX G, which was admitted without objection. DOHA received the transcript (Tr.) on March 6, 2018.

Findings of Fact¹

In Applicant's answer to the SOR, she admitted all the allegations. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 46-year-old technical writer employed by a defense contractor. She married in March 1990 and divorced in June 1994. She has two children, ages 26 and 20.

Applicant served on active duty in the U.S. Navy from January 1990 to January 2010 and retired as an electrician's mate first class (pay grade E-6). (AX A.) She held a security clearance in the Navy and later retained it as a contractor employee. Under the Navy tenure rules, she was required to retire after 20 years of service because she was not selected for promotion to chief petty officer. She knew about her impending mandatory retirement for about a year beforehand. (Tr. 61.) She purchased a condominium home for about \$300,000 in June 2009, about six months before she retired. (Tr. 48.)

After retiring, Applicant was unemployed from January to August 2010. She testified that she had saved up some money so that she could take time off to be with her children. (Tr. 44) She also testified that she was actively looking for employment during that period. (Tr. 49.) She began working a defense contractor in August 2010. She earned about \$38,000 per year, significantly less than she earned while on active duty, and she had a monthly financial shortfall of about \$2,000 per month. She voluntarily left this job in September 2012, because it involved extensive travel away from her children. (Tr. 44-45.) She was unemployed until September 2013, but she had a friend who helped pay the bills. When the friend left, Applicant began searching for another job. She worked for two months for a temporary employment agency and then was hired by a federal contractor in November 2013, earning about \$40,000 per year. Her son was then in college. He has now graduated from college, and her daughter is in college. (Tr. 57-58.)

¹ Applicant's personal information is extracted from his security clearance application (GX 1) unless otherwise indicated by a parenthetical citation to the record.

In September 2016, Applicant was laid off. (Tr. 44-46; AX B; AX C.) She was unemployed until mid-November 2016, when she began a new job that required a daily two-hour commute, but her annual pay increased to \$50,000 per year. (Tr. 46; AX E.) In February 2017, she began her current job, at about the same pay but near her home. (AX F.)

Applicant filed a Chapter 13 bankruptcy petition in September 2014. She testified that, although she was employed, she was about six months behind on her debt payments. (Tr. 45.) Her petition listed secured debts of about \$277,895 (the first mortgage on her home) and \$583 (delinquent condominium fees); an unsecured priority debt of \$144 for personal property taxes; and \$22,625 in unsecured nonpriority debts. (GX 4 at 16-23.) She did not make the payments to the bankruptcy trustee, and the bankruptcy petition was dismissed without prejudice in February 2017. (GX 4 at 1.)

Applicant refiled her bankruptcy petition in March 2017, and it was pending as of the date of the hearing. (GX 3.) This petition lists a balance of \$268,219 on the first mortgage on her home; a judgment for \$3,176 in unpaid condominium fees; six credit-card accounts totaling \$13,374; a personal loan for \$1,109; another personal loan for \$6,127; a student loan for \$1,278; and a line of credit for \$487. (GX 3 at 16-23.)

In her most recent bankruptcy petition, Applicant stated that her net monthly income was about \$4,863 and her expenses were about \$4,133, leaving a net monthly remainder of about \$750. (GX 3 at 27.) As part of her most recent bankruptcy, Applicant agreed to continue making the monthly payments of \$1,852 on her home and monthly payments of \$1,406 on the arrearage. (GX 3 at 46.) She made only one payment in September 2017. (Tr. 53-54.) At the hearing, she testified that she intended to dismiss her most recent bankruptcy so that she can sell her home. (Tr. 56.) As of the date of the hearing, she had not filed a motion to dismiss the bankruptcy and had not made any payments to the trustee. (Tr. 64.)

Applicant listed her home for sale in March 2018, about two weeks after the hearing. She is asking \$339,000 for the home. She intends to use any funds after paying the balance on her mortgage loan to pay her other delinquent debts. (AX G.) As of the date the record closed, she had not presented any evidence of purchase offers on the home, contacts with her creditors, payments, or payment plans.

Applicant's supervisor for the past year testified that he was aware of her two bankruptcies and that she has been honest and forthright about her financial problems. He testified that her work ethic, reliability, and trustworthiness have been "exemplary on all counts." (Tr. 19.)

A master chief petty officer who has known Applicant for 20 years testified that he trusts Applicant to take care of his personal property, residence, and financial matters when he deploys. He is aware of the second bankruptcy but not the first. (Tr. 29-31.)

The father of Applicant's daughter is employed by a defense contractor. He testified that he has known Applicant for 25 years. He regards Applicant as very strong, independent, and trustworthy. He gave her a power of attorney and trusts her to manage his personal affairs and take care of his children when he is deployed. (Tr. 35-40.)

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 § 2.

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, 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." 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. 15-01253 at 3 (App. Bd. Apr.20, 2016).

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.

Analysis

Guideline F, Financial Considerations

The SOR alleges Applicant's two bankruptcies (SOR ¶¶ 1.a and 1.b). The security 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. . . . 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 admissions in her answer to the SOR, her testimony, and the documentary evidence submitted at the hearing establish three potentially disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"); AG ¶ 19(b) ("unwillingness to satisfy debts regardless of the ability to do so"); 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;

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(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; and

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

AG ¶ 20(a) is not established. Applicant's delinquent debts are numerous, recent, and were not incurred under circumstances making them unlikely to recur.

AG ¶ 20(b) is not fully established. Applicant's mandatory retirement from the Navy was a condition beyond her control. However, she did not prepare for it responsibly. She knew ahead of time that she would be mandatorily retired, but she purchased a home six months before her retirement, and did no job hunting until she found herself unemployed. Her testimony was vague about her unemployment from January to August 2010. She testified that she had saved up some money so that she could spend some time with her children, but she also testified that she was looking for a job during this eight-month period. This period of unemployment was beyond her control, but I am not convinced that she aggressively and diligently sought employment.

Applicant's unemployment from September 2012 to September 2013 was voluntary and was a major factor in creating the financial problems reflected in her first bankruptcy. Her unemployment after being laid off in September 2016 was a condition beyond her control, and she acted responsibly by accepting a job in November 2016 that involved a lengthy commute, but she was already in financial distress. Furthermore, she presented no evidence of responsible conduct toward her creditors. She presented no evidence that she contacted her creditors, tried to refinance or modify her mortgage loan, or sought payment agreements with her unsecured creditors. She has made no payments on her second bankruptcy and now intends to dismiss it in the hope that she can sell her home at a profit sufficient to resolve all her delinquent debts.

AG ¶ 20(c) is not fully established. Financial counseling was required by Applicant's bankruptcy petitions, but her financial problems are not under control.

AG ¶ 20(d) is not established. A Chapter 13 bankruptcy is a legal and often appropriate means of resolving financial problems, but Applicant has not established a track record of payments under a bankruptcy plan. To the contrary, her first bankruptcy was dismissed for failure to make the required payments, and she has made no payments on her second bankruptcy and intends to dismiss it in the hope that she can

generate sufficient funds from the sale of her home to resolve her delinquent debts. Even if Applicant is able to sell her home for more than the balance on her loan, I am not confident, based on her track record, that she will establish and adhere to payment plans to satisfy the \$3,176 judgment for unpaid condominium fees and resolve more than \$22,000 in unsecured debts.

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 and applying the adjudicative factors in AG ¶ 2(d).²

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 some warrant additional comment. Applicant is financially naïve and undisciplined. She bought a home and committed herself to mortgage loan payments with no specific employment plans after retirement. Her testimony left me uncertain about her sense of urgency while job-hunting during the eight months after her retirement. She left the Navy with no firm financial plan and is still searching for a solution to her financial problems. She is trustworthy and reliable in her personal relationships, but she appears to lack good judgment in financial matters.

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 not mitigated the security concerns raised by her delinquent debts.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a and 1.b:

Against Applicant

² The factors are: (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.

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to continue Applicant's eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman
Administrative Judge