



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



In the matter of:)
)
) ISCR Case No. 17-03139
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne M. Driskill, Esq., Department Counsel
For Applicant: *Pro se*

07/13/2018

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations) and Guideline J (Criminal Conduct). Applicant failed to mitigate her negative financial history, but mitigated the potential criminal conduct concerns. Eligibility for access to classified information is denied.

History of the Case

Applicant submitted a security clearance application on July 4, 2016. On September 26, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guidelines F and J. 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 the SOR on October 17, 2017, and requested a decision on the record without a hearing. On December 21, 2017, a complete copy of the File of

Relevant Material (FORM), containing six Items, was mailed to Applicant. The FORM notified Applicant that she had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of her receipt of the FORM. Items 1 through 6 are admitted into evidence without objection. She submitted additional evidence, which was admitted as Applicant's Exhibit (AE) A. The case was assigned to me on May 7, 2018.

Findings of Fact

Applicant is 42 years old and works as transitions manager for a defense contractor. She has worked for her employer since July 2016, and requires a clearance for her employment. She has been married since 1997, and she and her husband have three children. She has taken college courses, but does not have a degree. This is her first security clearance application.

Applicant attributes her financial problems to several periods of unemployment. Her husband became seriously ill in 2003 and was unable to work. She was unemployed between August 2004 and October 2006; May 2007 and September 2007; and March 2008 and April 2012. Applicant worked for her husband's company from April 2012 to July 2016, but the business experienced declines during this period. In September 2015, Applicant and her husband filed for Chapter 7 bankruptcy. In December 2015, their nearly \$100,000 of liabilities were forgiven, but she claims many these debts were related to her husband's business.

Applicant's most recent credit report reflects six delinquent debts totaling \$2,647. These debts all became delinquent between December 2015 and November 2016, after she filed for bankruptcy. In her June 2017 interview she maintained that the debt in SOR ¶ 1.c. is for DirecTV equipment that she returned to the creditor. (Item 3 at 12) She claims SOR ¶¶ 1.e. and 1.g. are duplicates, and the underlying debt was resolved through payments made in October and November 2017. Applicant admitted to all of the remaining debts and intends to pay them. She claims her post-bankruptcy financial issues were the result of paying college tuition for two children.

In 2004 and 2007, Applicant wrote three bad checks. When she wrote these checks, she was unaware she had insufficient funds in her checking account. Additionally, in 2007, she moved and did not receive the notification that checks had not cleared her account. She was also unaware of the outstanding arrest warrants. In March 2015, she was arrested. She paid and resolved these charges in June 2015. Applicant attests that this was an isolated issue from over ten years ago and she will not repeat this behavior. (Item 3 at 4)

Policies

"[N]o one has a 'right' to a security clearance."¹ As Commander in Chief, the President has the authority to "control access to information bearing on national security

¹ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

and to determine whether an individual is sufficiently trustworthy to have access to such information.”² 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.”³

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 classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Adverse 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.”⁴ Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Security Executive Agent have established for issuing national security eligibility.

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.⁵ “Substantial evidence” is “more than a scintilla but less than a preponderance.”⁶ The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability.⁷ Once the Government establishes a disqualifying condition, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the

² *Egan* at 527.

³ EO 10865 § 2.

⁴ EO 10865 § 7.

⁵ Directive ¶ E3.1.14.

⁶ *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

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

facts.⁸ An applicant has the burden of proving a potential mitigating condition, and the burden of disproving it never shifts to the Government.⁹

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”¹⁰ “[S]ecurity clearance determinations should err, if they must, on the side of denials.”¹¹

Analysis

Guideline F: Financial Considerations

The security 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.¹²

Applicant's admissions and record evidence 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”).

AG ¶ 20 describes conditions that could mitigate security concerns. Two are potentially applicable in this case:

⁸ Directive ¶ E3.1.15.

⁹ ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

¹⁰ ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002); Directive ¶ E3.1.15.

¹¹ *Egan*, 484 U.S. at 531; *See also* AG ¶ 2(b).

¹² ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

(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; and

(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;

Applicants are not required to be debt-free in order to qualify for a security clearance.¹³ In this case, the record evidence shows Applicant has a lengthy history of financial problems that were not completely resolved through bankruptcy. Although her debts are not related to frivolous or irresponsible spending, she has failed to demonstrate that her financial problems are unlikely to recur. Additionally, she did not provide supporting documentation showing the resolution of SOR ¶¶ 1.e and 1.g or that she disputed SOR ¶ 1.c. Mitigation under AG ¶ 20(a) and 20(b) was not established.

Guideline J: Criminal Conduct

The security concern under Guideline J (Criminal Conduct) is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. Two are potentially applicable in this case:

(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

Applicant's history of criminal activity between 2004 and 2007 establishes the above disqualifying conditions.

¹³ 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).

AG ¶ 32 provides conditions that could mitigate security concerns raised in this case. The following two are potentially applicable:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant's outstanding warrants date back to 2004 and 2007. They were all resolved in June 2015, three years ago. There is no evidence this behavior has recurred in the past ten years, and it appears to have been an isolated problem. Mitigation under AG ¶¶ 32(a) and 32(d) was 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 guidelines 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 these guidelines, and evaluating all the evidence in the context of the whole person, Applicant has not mitigated the financial security concerns at issue. Accordingly, Applicant has not 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.

This decision should not be construed as a determination that Applicant cannot or will not attain the type of financial stability necessary to justify the granting of a security

clearance. The award of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. A clearance is not granted due to Applicant's current circumstances. However, in the future, she may well demonstrate persuasive evidence of her security worthiness.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
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Subparagraphs 1.a – 1.g:	Against Applicant
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Subparagraph 1.h:	For Applicant
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Paragraph 2, Guideline J:	FOR APPLICANT
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Subparagraph 2.a.:	For Applicant
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Conclusion

I conclude that it is not 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 denied.

CAROLINE E. HEINTZELMAN
Administrative Judge