



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 18-01085
)	
Applicant for Security Clearance)	

Appearances

For Government: Benjamin R. Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

11/14/2018

Decision

FOREMAN, LeRoy F., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application on May 3, 2016. On April 25, 2018, 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 May 21, 2018, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on June 28, 2018, and the case was assigned to me on August 27, 2018. On the same day, the Defense

Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for September 27, 2018. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 3 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through F, which were admitted without objection. I kept the record open until October 18, 2018, to enable her to submit additional documentary evidence. At her request, I extended the deadline until October 25, 2018. She timely submitted AX G through GG. DOHA received the transcript (Tr.) on October 5, 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 62-year-old office manager and facility security officer employed by a defense contractor since December 1999. (Tr. 24.) She has held a security clearance since 2006. (Tr. 24.)

Applicant married in June 1971, divorced in March 1985, remarried in July 1985, and was widowed in December 2012. She has four adult children. She received an associate's degree in May 1994.

The SOR alleges a Chapter 13 bankruptcy, filed in 2012 and dismissed in May 2014, and 15 delinquent debts totaling about \$22,000. The bankruptcy and delinquent debts are reflected in credit reports from June 2016 (GX 2) and April 2018 (GX 3).

In May 2018, Applicant withdrew \$35,000 from her 401(k) retirement account to resolve her delinquent debts. She paid about \$10,000 in taxes on the withdrawal. She used \$16,000 to resolve her delinquent debts and put \$9,000 in a savings account to take care of unforeseen expenses. She has about \$40,000 remaining in her 401(k) retirement account. (Tr. 27.)

The evidence concerning the allegations in the SOR is summarized below.

SOR ¶ 1.a: Chapter 13 bankruptcy filed in July 2012 and dismissed in May 2014. The bankruptcy involved about \$119,000 in debts. Applicant's husband had two credit cards solely in his name, with balances of about \$15,000 each. He also opened two credit-card accounts in Applicant's name. Applicant had about \$20,000 in credit-card debt in her own name. When Applicant's husband retired from the Army, he designated his children from a previous relationship as the beneficiaries for his death benefits, but did not include Applicant among the beneficiaries. (AX E.) When he passed away after a long illness, leaving Applicant with substantially reduced income, she could not afford to make the payments to the bankruptcy trustee, and the

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

bankruptcy was dismissed. (Tr. 16-17.) The consumer debts alleged in SOR ¶¶ 1.b-1.h were included in the bankruptcy and remained unresolved after the bankruptcy was dismissed. (Tr. 34.)

SOR ¶ 1.b: credit-card account charged off for \$6,801. In May 2018, Applicant made a payment agreement providing for an initial payment of \$1,000, and monthly payments of \$100. On October 9, 2018, she settled this debt for \$3,770. (AX H; AX GG.)

SOR ¶ 1.c: credit-card account charged off for \$6,263. The creditor cancelled this debt on December 31, 2016, and issued an IRS Form 1099. Applicant included the amount of the forgiven debt in her federal income tax return for tax year 2016. (AX I; Tr. 18.)

SOR ¶¶ 1.d-1.h: credit-card accounts referred for collection of \$3,860; \$2,698; \$1,531; \$1,117; and \$423. Applicant paid these debts in June 2018. (Tr. 41; AX J-N.)

SOR ¶¶ 1.i-1.p: medical bills for \$319, \$124, and various amounts less than \$100. Applicant paid these bills in May 2018. (Tr. 42; AX O.)

Applicant's take-home pay is about \$880 per week. She owns her home and has monthly mortgage payments of \$1,504. She has no car payments. She uses a spreadsheet to track her income and expenses. She has virtually no net monthly remainder. (Tr. 24-29.)

Applicant has encountered several medical problems since her husband's demise. She was treated for skin cancer in May 2014. (Tr. 38.) She underwent an excision of a benign tumor on her upper back and shoulder in March 2015. (AX Q-S.) She had a stroke in March 2015 and was unable to work for a week. (Tr. 38-39.) She underwent laparoscopic cholecystectomy in June 2015. (AX X.) She underwent carotid artery stenting in March and April 2016. (AX P.) She takes medication for atrial fibrillation and hypertension. (AX AA.) She has TRICARE medical insurance but no private insurance. (Tr. 49.)

The vice-president of the contractor by whom Applicant is employed considers her "a vital part of this organization." He states that he has "complete trust in her and her character." The vice-president apparently was familiar with Applicant's financial history, and he commented, "We also understand that sometimes things happen that are out of our control. Meaning what our spouses do with our finances." (AX A.)

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 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 and the evidence submitted at and after the hearing establish the following 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 were numerous, recent, and were not incurred under circumstances making recurrence unlikely.

AG ¶ 20(b) is established. The evidence of the circumstances preceding the bankruptcy filing in July 2012 is sparse, but they strongly suggest excessive spending and credit-card debt on the part of Applicant and her husband as well as fraud by her husband. However, resolution of those debts by bankruptcy was thwarted by conditions largely beyond her control, *i.e.*, the death of Applicant's husband and his decision to give all his death benefits to his children instead of Applicant. Applicant's medical problems were also conditions beyond her control, but they appear to have had minimal effect on her ability to remain employed. Her medical debts were covered by insurance, and the amounts of the medical bills alleged in SOR ¶¶ 1.i-1.p indicate that the debts were copayments. Initially, Applicant did not act responsibly. Except for the credit-card debt in SOR ¶ 1.c, she took no significant action to resolve her debts until May and June 2018, after she received the SOR. She was overwhelmed by the loss of her husband, his failure to provide her with survivor's benefits, her drastic loss of income, and her persistent medical problems. However, the SOR apparently gained her attention, and she has since acted responsibly by using the resources from her 401(k) retirement account to resolve all her debts.

AG ¶ 20(c) is not fully established. Except for the counseling required by the bankruptcy court in 2012, Applicant has not received any financial counseling. However, her financial problems are under control.

AG ¶ 20(d) is established. Applicant has settled or paid all the debts alleged in the SOR.

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

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.

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 has been employed by a defense contractor since 1999 and held a security clearance since 2006. Her supervisor trusts her and is aware that her financial problems were caused, at least in part, by the financial irresponsibility of her deceased husband. Applicant was candid, sincere, and credible at the hearing. 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 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): FOR APPLICANT

Subparagraphs 1.a-1.p:

For Applicant

Conclusion

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

LeRoy F. Foreman
Administrative Judge