



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



In the matter of:)
)
) ISCR Case No. 17-03770
)
Applicant for Security Clearance)

Appearances

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

10/16/2018

Decision

HARVEY, Mark, Administrative Judge:

Applicant provided insufficient evidence that she was unable to make greater progress addressing her delinquent debts. She owes delinquent federal income taxes for tax years 2014 and 2015, and she has not established a payment plan with the Internal Revenue Service (IRS). Financial considerations security concerns are not mitigated. Eligibility for access to classified information is denied.

History of the Case

On October 9, 2016, Applicant signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On January 25, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) generated the statement of reasons (SOR). The SOR was issued 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, *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. The SOR set forth security concerns arising under Guideline F.

On February 19, 2018, Applicant provided a response to the SOR, and she requested a hearing. (HE 3) On March 29, 2018, Department Counsel was ready to proceed. On July 23, 2018, the case was assigned to me. On August 16, 2018, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for September 24, 2018. (HE 1) Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered four exhibits; there were no objections; and all proffered exhibits were admitted into evidence. (Tr. 12, 15-17; GE 1-4) On October 1, 2018, DOHA received the hearing transcript.

Findings of Fact¹

In Applicant's SOR response, she admitted all of the SOR allegations. (HE 3) She also provided mitigating information. (HE 3) Her admissions are accepted as findings of fact.

Applicant is a 56-year-old information technology specialist, and she has worked for her current employer since June 2018. (Tr. 6-7, 18) In 1980, she graduated from high school. (Tr. 6) In 2014, she received a bachelor of science degree in computer information systems with a specialization in information systems security. (Tr. 7) She has not served in the military. (Tr. 7) In 1981, she married, and in 1992, she divorced. (Tr. 8) In 2000, she married, and in 2004, she divorced. (Tr. 8) In 2005, she married, and in 2008, she divorced. (Tr. 8) Her three children are ages 30, 33, and 36. (Tr. 8)

Financial Considerations

Since 2002, Applicant was employed except for one month (mid-July to mid-August 2016). (Tr. 8, 22) Her highest salary since 2002 was when she received \$28 an hour from November 2017 through March 2018. (Tr. 23) Her current salary is \$18.20 an hour. (Tr. 23)

The status of the SOR allegations is as follows:

SOR ¶ 1.a alleges Applicant failed to file her federal and state income tax returns for tax years 2014 and 2015 as required by law. She admitted she failed to timely file her tax returns for those two years, and they were filed in April 2018. (Tr. 28-29, 39) She timely filed her subsequent federal income tax returns. (Tr. 30)

SOR ¶ 1.b alleges Applicant owes a federal income tax debt of \$2,500 for tax year 2014. She said she owed about \$3,000 for 2014 and about \$3,000 for 2015 for her federal income taxes and about \$300 for 2014 and \$300 for 2015 for her state income taxes. (Tr. 29, 39-40) She and the IRS have not agreed on a payment plan to resolve her federal income tax debt. (Tr. 30)

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

SOR ¶ 1.c alleges a college-tuition debt placed for collection for \$2,670. Applicant said she settled the debt in March 2018 with a payment of \$267. (Tr. 31)

SOR ¶¶ 1.d through 1.g and 1.i through 1.m allege nine delinquent medical debts totaling \$4,105 for the following amounts: \$1,231; \$465; \$459; \$432; \$201; \$190; \$131; \$66; and \$930. A collection company was seeking payment of \$2,188 to address five of her medical debts for the following amounts: \$432; \$459; \$1,231; \$190; and \$465. (Tr. 32-35) She planned to pay \$547 each week for four weeks to the collection company. (Tr. 32-34) She said she separately paid some of her medical debts. (Tr. 36-37) She was unable to contact the creditor for the medical debt in SOR ¶ 1.m for \$930. (Tr. 37)

SOR ¶ 1.h is a telecommunications debt placed for collection for \$309. Applicant said she paid this debt in February 2018. (Tr. 35)

In 2014, Applicant graduated from college. (Tr. 38) Her credit report indicates she owes \$76,714 in student loans, and their status is shown as the loans being in deferment. (Tr. 41; GE 2) She did not make payments on her student loans because she could not afford payments. (Tr. 38) Her student loans went into deferment when she said she was unsure whether she was going to be employed, and she did not tell the creditor when she became employed. (Tr. 39) Interest continues to accrue on her student loans.² She did not indicate she received financial counseling, and she did not provide a written budget.

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

² Applicant’s statement of reasons (SOR) does not allege Applicant’s student loans are problematic or that she owes \$3,000 in delinquent federal income taxes for tax year 2015. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

- (a) to assess an applicant’s credibility; (b) to evaluate an applicant’s evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

Id. (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See also ISCR Case No. 12-09719 at 3 (App. Bd. April 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). The allegations not alleged in the SOR will not be considered except for the five purposes listed above.

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 three disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts"; "(c) a history of not meeting financial obligations"; and "(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required." 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), 19(c), and 19(f) requiring additional inquiry about the possible applicability of mitigating conditions.

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

(a) the behavior happened so long ago,³ 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;

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

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).

³ 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)).

Applicant presented some mitigating evidence. She was unemployed for one month in the previous five years. She was underemployed. These are circumstances largely beyond her control. She said she paid several debts and made progress on her resolution of other debts, and I have credited her with mitigation of SOR ¶¶ 1.c through 1.m.

Applicant did not indicate she received financial counseling and she did not provide a written budget. She failed to file her federal and state income tax returns for tax years 2014 and 2015 until April 2018. She owes \$3,000 in federal income taxes for tax years 2014 and 2015. She does not have an established payment plan with the IRS. There is insufficient assurance that her federal income tax debts are being resolved. Under all the circumstances, Applicant 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 a 56-year-old information technology specialist, and she has worked for her current employer since June 2018. In 2014, she received a bachelor of science degree in computer information systems with a specialization in information systems security.

Applicant said she made payments and has resolved or is resolving all of the SOR debts, and she is credited with mitigation of SOR ¶¶ 1.c through 1.m. Underemployment (low pay) is the primary reason she did not address these SOR debts sooner.

Applicant did not provide a good reason for her failure to timely file her federal and state income tax returns for tax years 2014 and 2015. She has not established a payment

plan with the IRS to address her federal income tax debt. Her student loans are coming out of deferment, and the requirement to pay her student loans will make resolution of her remaining SOR debts more difficult. Her actions show a lack of financial responsibility and judgment and raise unmitigated questions about her reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont*, 913 F. 2d at 1401. Unmitigated financial considerations concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards documented resolution of her past-due debts, and a track record of behavior consistent with her obligations, she may well be able to demonstrate persuasive evidence of her security clearance worthiness.

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 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 and 1.b:	Against Applicant
Subparagraphs 1.c through 1.m:	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 Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

MARK HARVEY
Administrative Judge