



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



In the matter of:)
)
) ISCR Case No. 18-00677
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

10/30/2018

Decision

GLENDON, John Bayard, 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

On March 22, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F. The DOD CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended (Exec. Or.); 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 responded to the SOR on April 13, 2018. She requested a hearing before an administrative judge. The case was assigned to me on June 15, 2018. On June 21, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing,

scheduling the hearing on August 8, 2018. I convened the hearing as scheduled. Department Counsel offered five documents into evidence, which I marked as Government Exhibits (GE) 1-5. These exhibits were admitted into evidence without objection. Applicant testified and offered five documents, which I marked as Applicant Exhibits (AE) A-E and were admitted without objection. DOHA received the transcript on August 23, 2018 (Tr.).

I held the record open after the hearing to allow Applicant the opportunity to submit additional exhibits. On August 21, 2018, she provided Department Counsel with 21 pages of documents, which I have marked as AE F-L. These exhibits are admitted without objection.

Findings of Fact¹

Applicant was 26 years old at the time of the hearing. She has never married and has no children. She earned a bachelor's degree in December 2013. After graduating, she worked for two years for a non-governmental employer. She left that job in January 2016 and experienced four months of unemployment before she was hired in May 2016 by her current employer, a major defense contractor. This position is a better fit for her interests and education.

On August 7, 2016, Applicant submitted a security clearance application (SCA) in connection with her new job. Her employer pays her a good salary for a recent graduate and is also paying for her to continue her education. (Tr. 21-22.) Earlier this year, she was selected to be part of her company's management rotation program to expose new employees to various parts of the company. (AE K.) Her work and her certifications involve planning and project management.

Applicant testified that she is no longer a young college student. She is trying to be a responsible adult and to improve her credit. After living on her own following her graduation, she has learned the importance of having good credit. In June 2017, she moved back to her family home to save money, though she is still paying rent of \$500-\$750 per month, and she helps with some bills. This was a big step for her since she had not lived at home since high school. She was previously paying a substantial rent and was living above her means. She realizes the mistakes she made. She is now saving money to pay her debts. She recently cancelled her satellite TV contract to save another \$200 each month. (TR. 36; AE E.) She uses no credit cards, has no car loan, and drives a car with 250,000 miles, all in an effort to manage her expenses. She came from a background that did not teach her about the importance of handling her finances and credit. She is working hard to learn these skills.

At the hearing, she presented her plan with respect to improving the status of her student loans and paying off her smaller debts. With respect to her consumer debts, she

¹ Applicant's personal information is extracted from her security clearance application, dated August 7, 2017 (GE 1), unless otherwise indicated by a parenthetical citation to the record.

is paying off the smaller ones first, and then she plans to pay the two larger credit-card accounts, which total about \$4,300. (Tr. 14-20, 23, 25, 30, 35, and 43.)

SOR ¶¶ 1.a, 1.b, 1.c, 1.e, 1.g, 1.h, and 1.i: delinquent student loans owed to the U.S. Department of Education in the total amount of about \$16,000. Applicant paid for part of her college education with federal student loans. She believes she currently owes about \$18,000. At the time of her default she owed about \$30,000. She initially paid \$400 per month, but in early 2016, her income dropped and then she was unemployed until May 2016. (GE 2 at 5.) She was unable to continue paying her student loans for a period. Her wages were garnished once she was again employed and for over two years, her paychecks have been garnished in the amount of about \$600 per month. Before she moved back home, she tried to rehabilitate her student loans with additional payments beyond the amount of the garnishment. She was unable to keep that up. After her move, she has been voluntarily paying an additional \$90 per month that will lead to her loans being classified as in “good standing” and the garnishment will terminate. (GE 2 at 5.) She is also seeking to consolidate her student loans with Nelnet. (Tr. 23.) She submitted an application for Federal Direct Consolidation Loans, which was scheduled to be processed one month after the close of the record. (AE B, D.) She has also submitted an Income-Driven Repayment Plan Request. (AE D.) She is in the process of resolving her delinquency on her student loans.

SOR ¶ 1.d: credit card account in collection with a balance of \$2,830. Applicant took out this credit card while in college to pay for her rent and living expenses. She defaulted on the account in August 2013. (GE 2 at 5; GE 4 at 2.) She testified that she has made two payments to the collection agency in a total amount of less than \$300. She has made some efforts to resolve this debt and intends to do more when her finances permit. This debt is being resolved, though she has not developed a significant track record of payments on this debt.

SOR ¶ 1.f: credit card account charged off for \$1,472. Applicant opened this account in January 2013, again to help her pay her rent for two months while in college, and she defaulted a little over one year later. (GE 2 at 6; GE 5 at 2.) She has had difficulty obtaining the help she needs from the creditor to learn who owns the debt so she can make payments. She also admitted that she cannot afford to commit to paying too many debts at the same time. (Tr. 26-27.) The current student loan garnishment has limited the funds she has available to pay other debts and her living expenses. This debt is unresolved.

SOR ¶ 1.j: payday loan in collection with a balance of \$315. Applicant borrowed money while she was in college to help pay her rent. She defaulted shortly before she graduated. (GE 5 at 2.) Since then she had forgotten about this debt and is more focused on paying her student loans and the two credit card debts discussed above. (Tr. 27-28.) This debt is unresolved, though she intends to pay it next under her mitigation plan (Tr. 35.)

SOR ¶ 1.k: delinquent utility account in collection with a balance of \$121.

Applicant testified that she had paid this debt in July 2018 and could provide evidence of the payment. (Tr. 28-29.) After the hearing, she produced a receipt supporting her testimony. (AE F.) This debt is resolved.

SOR ¶ 1.l: delinquent utility account in collection with a balance of \$36.

Applicant first became aware of this debt during her September 2017 background interview. Applicant believes that it is a final bill for electricity at a former residence. Applicant defaulted in June 2015. (GE 3 at 3.) At the hearing, Applicant testified that she had simply forgotten about the bill. (Tr. 29-30.) After the hearing, she provided an account statement evidencing that she had paid this bill. (AE G.) This debt is resolved.

SOR ¶ 1.m: credit card account charged off for \$1,472. Department Counsel conceded at the hearing that the debt alleged in SOR ¶ 1.m is a duplicate of the debt alleged in SOR ¶ 1.f. The debt is owed to the same creditor and in the same amount. (Tr. 25-27.) Applicant only had one credit card account with this creditor. This is a duplicate debt, which requires no additional resolution.

Character Evidence

After the hearing, Applicant submitted her 2016 and 2017 Year-End Performance Reviews (AE H, J) and her 2017 and 2018 Midpoint Performance Reviews (AE I and K.) She also submitted documentation evidencing her continuing education and professional certifications, which are paid by her employer. (AE L.) Her performance reviews are impressive. One review states that she “has become one of the most valuable employees within the organization. She is extremely reliable and focused on accurate and quality data. She is confident in the way she carries herself and is destined for higher positions here within the company.” (AE I.)

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, testimony and the documentary evidence in the record establish the following potentially disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts") 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 indication 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 creditors or otherwise resolve debts.

AG ¶ 20(a) is established. Applicant's debts were incurred when she was a college student. When she graduated in December 2013, she was not sufficiently mature and financially sound to be able to handle her debt obligations. In light of subsequent events, I conclude that these circumstances are unlikely to recur. In the last two years, she has accepted that she must adjust her lifestyle to accommodate the garnishment of her wages to make it possible to pay her student loans on a responsible, voluntary basis going forward. She no longer uses credit cards because she now appreciates her mistake in using credit to pay for her rent and living expenses when she was a student. She described herself as "young and dumb" when she incurred these debts. (GE 2 at 7.) She is now a reliable, mature professional with an excellent future ahead of her. Her past behavior does not cast doubt on her current reliability, trustworthiness or good judgment.

AG ¶ 20(b) is partially established. Applicant's debts arose out of her determination to better herself with a college education. The cost of that education and the opportunity cost of not being able to earn an income while she was a full-time student were not completely within her control. Her only other options were to forgo college, or perhaps, to go to college part time at night. Beginning two years after graduation, she was rewarded for the decision she made by being hired by an important employer and receiving an excellent employment opportunity. Since being granted that opportunity, she has resolved to straighten out her finances. She understands that this will take some time and that all of her debts cannot be addressed at once. She is acting responsibly under the circumstances.

AG ¶ 20(c) is partially established. Applicant offered no evidence that she has received any formal financial counseling. It is apparent, however, from reading her performance reviews that her work experience and certification courses have taught her a lot about financial planning. The choices she has made in her personal life reflect that she has learned a lot about managing her own finances. As a result of this experience, she is implementing her plan to resolve her debts.

AG ¶ 20(d) is established. Applicant has initiated a plan to reduce her living expenses so that she will not get further into debt. Her plan will also give her the extra funds needed to pay her student loans voluntarily and to pay off her two credit cards and the payday loan over time. She has applied for her student loans to be consolidated after two years of involuntary payments of \$600 per month and an extra \$90 per month. These payments have significantly reduced her student loan debt. She has also paid off two small debts. Applicant is acting in good faith to resolve her student loan delinquency and indebtedness and to address her three remaining, college-era debts, which total about \$4,500.

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 and applied the adjudicative factors in AG ¶ 2(d). Some of the factors in AG ¶ 2(d) were

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.

addressed above, but other factors warrant additional comment. I have considered Applicant's age at the time she failed to handle her finances responsibly. Her use of two credit cards to help her pay her rent evidences the difficulties she faced paying for her education and living expenses when she was in her college years. She also candidly discussed how her background did not prepare her to manage her finances. Applicant's work experience over the past two years has taught her a lot about planning and project management. She now has her own project to manage, and that is her finances. She has shown the flexibility to make difficult personal decisions and to make sacrifices to align her living expenses and debt repayments with her income. She presented herself at the hearing as an impressive, articulate individual, who is now maturely taking her financial responsibilities very seriously. She has made significant progress, personally and professionally, in the last two years. She still has some work to do on her finances, but she is determined to correct them.

After weighing the disqualifying and mitigating conditions under Guideline F, evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by her past actions.

Formal Findings

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

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraphs 1.a-1.m: For Applicant

Conclusion

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

John Bayard Glendon
Administrative Judge