



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



In the matter of:)
)
) ISCR Case No. 18-00961
)
Applicant for Security Clearance)

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: *Pro se*

10/26/2018

Decision

GLENDON, John Bayard, Administrative Judge:

This case involves security concerns raised under Guidelines F (Financial Considerations) and E (Personal Conduct). Eligibility for access to classified information is granted.

Statement of the Case

On April 6, 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 (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 April 21, 2018, and elected to have a hearing before an administrative judge. The case was reassigned to me on June 15, 2018. On June 21, 2018, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of

Hearing, scheduling the hearing on August 6, 2018. I convened the hearing as scheduled. Department Counsel offered four documents into evidence, which I marked as Government Exhibits (GE) 1-4. These exhibits were admitted into evidence without objection. Applicant testified but offered no documents. DOHA received the transcript on August 23, 2018 (Tr.).

Findings of Fact¹

In Applicant's answer to the SOR, she admitted all of the allegations under Guidelines F and provided additional explanations. She denied the allegations under Guideline E. Her admissions are incorporated in my findings of fact.

Applicant is 25 years old. She has never married and has no children. In December 2014, she graduated from college with a bachelor's degree. Applicant attended a private university and paid for her education and living expenses with financial aid and income from working part-time jobs. She has not served in the military.

After graduating, Applicant worked part-time at two restaurants as a hostess and had one position for a year working in a full-time position. In May 2017, Applicant submitted an application for a security clearance (SCA) required for a new job with a federal contractor. She began working in April 2018 after receiving an interim clearance. She considers this to be her first job since graduating from college. Her interim clearance was subsequently withdrawn due to the issuance of the April 6, 2018 SOR. Since then, she has been on unpaid leave status with her employer. At the time of the hearing, she had not received a paycheck from her new employer for about a month. At that point, she was working part-time as a restaurant server. She earned about \$1,200 to \$1,500 per month and was struggling financially. (Tr. 6, 24, and 38.)

Due to her age and other circumstances, Applicant's finances were intertwined with her mother's and her grandmother's. Applicant's mother and grandmother lived together in another state and shared living expenses. Her grandmother passed away in May 2018. Her mother has been trying to cover her own expenses, as well as the grandmother's, without the grandmother's help. This has been an additional strain on the family's finances. (Tr. 24, 33, and 35.)

SOR ¶¶ 1.a and 1.c: mother's charged-off loan deficiency following a car repossession and an unpaid rent collection account in the amounts of \$20,231 and \$5,423, respectively. When Applicant was a college student, she cosigned with her mother on two large financial obligations to help her mother. Applicant had better credit and her mother needed a car and a place to live with Applicant's grandmother and sister. In March 2013, when Applicant was 20 years old and a junior in college, she cosigned with her mother for a car loan in the amount of about \$20,000. Because Applicant had a

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

better credit history, she was the main credit applicant. She never drove the car. Applicant's mother had been employed at the time at a bank for more than ten years. In August or September 2013, her mother lost her job suddenly and was forced to return the car to the dealer. Unknown to Applicant, a deficiency of about \$20,000 resulted from the repossession, and the debt belonged to her. She first learned about this debt at her August 2017 background interview. (Tr. 18, 20.)

Applicant and her grandmother also cosigned a lease for Applicant's mother, grandmother, and sister at about the same time. Applicant was living on campus, and her family needed her help to secure housing. Her mother was then homeless, though she was employed. (Response to SOR at 3.) According to the government's credit report, the first delinquency on this lease occurred in July 2013, which was the same time frame as the auto repossession. Applicant's family voluntarily vacated the apartment and moved to another state because Applicant's mother was unable to find new employment in the area where she lived. As a cosigner, the collection account for \$5,423 became Applicant's debt. Again, she first learned about this debt during her background interview in August 2017. (Tr. 32.)

SOR ¶ 1.b: auto loan collection account with a balance of \$8,717. Applicant took out an auto loan in February 2014 to purchase a 2005 BMW. She was then 21 years old. She paid \$2,000 in cash and borrowed \$15,000. In May 2015, she suffered a hit-and-run accident with a tractor trailer, and her car was a total loss. Her insurance company paid the lender, and Applicant understood that paid off the balance on the loan. She believes the account should have been closed. It appears that unless there is an error on the credit report, the insurance company's payment on the claim was insufficient to pay off the loan. She never received a notice that she had any further financial obligations on this loan. As far as she is concerned, the matter has been paid off. (Tr. 26-27, 29.) In her background interview, Applicant acknowledged that her insurance company paid the lender \$5,000, which was the fair market value of the car at that time. (GE 2 at 10.) Applicant was under insured, possibly due to her lack of experience or the lack of finances to pay for additional insurance or both. She intends to make the necessary payment arrangements, though she does not have the financial resources available to resolve this debt at this time. (Response to SOR at 3.)

SOR ¶ 1.d: credit card account charged off for \$548. When she was a 19-year-old college student, Applicant opened a credit card account with her university's credit union. This is the only credit card she has ever had. She defaulted on paying this account shortly after she graduated from college. (GE at 2.) She was 22 years old at the time. At the hearing, she admitted she was not responsible financially as a student. She stopped using the card once she "maxed it out" at around \$500. (Tr. 33.) As a result, she forgot about the card. At her background investigation, she was reminded of this debt and is committed to paying it off. She made an initial payment of \$230 and planned to pay it off in July 2018. Before she could make the second payment, she lost her interim clearance and her employer put her on unpaid leave status. Without that paycheck, she has been unable to pay the balance of this debt. She intends to pay this debt when she has the funds. (Tr. 33-34.)

SOR ¶ 2.a: falsification allegation under Guideline E Applicant denies that she intentionally failed to disclose the above four delinquent debts in her SCA. She testified that she applied for housing on several occasions and has never had a negative credit problem. She credibly stated that she first learned about the debts in her background interview.

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 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; and

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(a) is established. Applicant's four debts arose during the 2013-2015 period when she was a college student or a recent graduate. They are relatively infrequent and arose under circumstances that are unlikely to recur. When she learned about the debts during her August 2017 background interview, she was not in a financial position to address them. As a recent college graduate, she has had no significant period of employment that would allow her to develop any savings or a retirement account from which she could borrow funds. Because of her weak financial circumstances, Applicant does not have the resources to address her debts. Her circumstances do not, however, cast doubt on her current reliability, trustworthiness or good judgment. She was about 20 years old when she assumed the financial obligations for the benefit of her mother. At that point, she had no reason to understand that she might someday be liable for an unpaid car loan or unpaid rent. The typical mitigation analysis in similar cases focuses on an applicant progress in making payments on his or her debts. This case is different because the circumstances under which Applicant's debts arose do not raise questions about her reliability, trustworthiness or judgment. The fact that the debts remain unpaid are simply the result of her lack of resources and income to pay them.

AG ¶ 20(b) is partially established. The bulk of Applicant's indebtedness arises from her family's use of her relatively positive credit history as a 20-year-old college student to permit her mother to buy a car and for her mother, grandmother and sister to qualify for housing. Her mother then became unemployed for an extended period, resulting in about \$26,000 of delinquent debts on Applicant's credit history. These were circumstances beyond Applicant's control. Her deficiency on her car loan following an automobile accident is also a circumstance beyond her control. Her small credit card debt when she was a college student is the result of her young age and lack of financial experience and sophistication. Upon learning about her four debts, Applicant's limited responses cannot be characterized as responsible, but her responses are the result of her very tight financial circumstances, which are attributable to her age and the recent loss of her regular paycheck.

Guideline E (Personal Conduct)

The security concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to

cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

The following disqualifying condition under this guideline is potentially relevant:

AG ¶16(a): deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant's admissions, testimony and the documentary evidence do not establish the above disqualifying condition. Applicant credibly testified that she had no knowledge of her obligations on the debts that arose from her mother's car repossession and unpaid rent until she was advised about these debts in her background interview. With respect to her car loan deficiency, she credibly testified that she was advised that her insurance company's payment to the lender for her car paid off the balance of her loan. Her misunderstanding of the situation and her obligation for the deficiency is likely the result of a simple miscommunication or perhaps Applicant's inexperience at age 23 with such matters. In any event, she was never notified that she owed the lender for the deficiency. The same is true with respect to her university credit card debt. She was never reminded of her obligation and had forgotten about this debt, since she had not used the card in years. In sum, the record evidence does not support a conclusion that the government has met its burden of proof by substantial evidence that Applicant's omission of these four debts in her SCA was intentional.

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 Guidelines F and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Some of the factors in AG ¶ 2(d) were addressed above, but other factors warrant additional comment. I have

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.

considered Applicant's age and lack of experience in financial matters when she took on the financial obligations that are now delinquent. Her involvement in her mother's obligations were more a matter of family concerns than it was of her knowledgeable participation. Due to her age when she assumed these financial obligations, she had no reason to understand the seriousness of the commitments she was undertaking. The motivation for her actions was to assist her family members, not to enrich herself. Based upon her experiences and the repercussions she has recently suffered, the likelihood that Applicant will again find herself indebted under similar circumstances, or any circumstances, is remote.

After weighing the disqualifying and mitigating conditions under Guidelines F and E, and 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
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Subparagraphs 1.a-1.d:	For Applicant
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Paragraph 2: Guideline E:	For Applicant
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Subparagraph 2.a:	For Applicant
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Conclusion

It is clearly consistent with the national security interests of the United States to grant Applicant access to classified information. Eligibility granted.

John Bayard Glendon
Administrative Judge