



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



In the matter of:)
)
) ISCR Case No. 14-03589
)
Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

02/20/2015

Decision

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On July 18, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. This action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented on September 1, 2006.

The SOR detailed reasons why DOD CAF could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant Applicant a security clearance. On August 14, 2014, Applicant answered the SOR and requested a hearing. This case was assigned to me on

November 5, 2014. On November 21, 2014, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing scheduling the hearing for December 9, 2014. The hearing was held as scheduled.

At the hearing, Department Counsel offered Government's Exhibits (GE) 1 through 3, while Applicant testified and offered Applicant's Exhibits (AE) A and B. The record of the hearing was held open until December 23, 2015, to provide Applicant the opportunity to submit additional documents. She timely submitted documents that were marked as AE C through F. All proffered exhibits were admitted into evidence without objection. Department Counsel's memorandum forwarding Applicant's post-hearing submission was marked as Hearing Exhibit 1. The transcript (Tr.) of the hearing was received on December 17, 2014.

Findings of Fact

Applicant is a 57-year-old administrative specialist who works for a federal contractor. She has worked for that employer since April 2013. She graduated from high school in 1975. She has been married and divorced three times. She has two children, ages 33 and 37, who live with her. This is the first time that she has sought to obtain a security clearance.¹

The SOR alleged that Applicant had three delinquent debts totaling \$160,719 (SOR ¶¶ 1.a – 1.c). In her Answer to the SOR, she admitted the debt in SOR ¶ 1.a and denied the remaining two debts (SOR ¶¶ 1.b and 1.c). Her admission is incorporated as a finding of fact.²

In her Electronic Questionnaire for Investigations Processing (e-QIP) dated April 16, 2013, Applicant disclosed that she was unemployed from August 2011 to February 2012, October 2012 to January 2013, and February 2013 to March 2013. These periods of unemployment occurred because she was laid off from a job and temporary jobs ended. She was employed as an office manager from February 2000 to July 2011.³

In her Answer to the SOR, Applicant admitted that she was indebted to a bank for the mortgage loan of \$145,587 in SOR ¶ 1.a. She stated that when she purchased the property in May 2005, she had sufficient income to make the mortgage payments, but did not have money to pay for repairs and other bills. She indicated that if the bank had been diligent, she never should have qualified for that loan. At the time of the purchase, she was earning about \$45,000 annually. She had the property appraised/inspected before the purchase. Soon after the purchase, she had to replace carpeting and the stove. Later, she encountered a mold problem, a leaky roof, and significant

¹ Tr. 4-5, 40-41; GE 1.

² Applicant's Answer to the SOR.

³ Tr. 41-42; GE 1.

plumbing issues. Home expenses far exceeded her expectations. She indicated that she tried to dispose of the home through a short sale or deed in lieu of foreclosure, but those efforts were unsuccessful. She also consulted with credit counselors. In May 2010, she decided to default on the mortgage loan because she was physically, emotionally, and financially spent. Up to that point, she had been current on her mortgage loan payments. She advised the lender that she would not be making any further payments. She testified that defaulting on the mortgage was a decision that she made because it was better to walk away from the home than to continue expending her limited resources on trying to fix it. She then went to live with family members. In her Answer, she indicated this debt remained delinquent. At the hearing, she indicated that the mortgage loan had not yet been foreclosed, the bank was still attempting to collect its money, and the home was vacant.⁴

The debt in SOR ¶ 1.b was a bank loan used for home repairs and improvements. This loan was opened in February 2008 and charged off for \$15,068 in December 2010. Applicant stopped paying on this loan when she defaulted on the mortgage loan. On May 7, 2013, the creditor issued Applicant an IRS Form 1099-C that reflected that this debt was cancelled in the amount of \$13,561. On her 2013 federal income tax return the amount of this cancelled debt was listed as discharged indebtedness excluded from gross income “to the extent insolvent (not a title 11 case).”⁵

The debt in SOR ¶ 1.c was a telecommunication service account that was placed for collection for \$64. In her Answer, Applicant indicated that she paid this account, but the creditor kept transferring this debt to collection agencies. In her post-hearing submission, she provided documentation showing this debt was paid on August 19, 2010.⁶

In her current job, Applicant’s annual income is about \$36,000. At the time of the hearing, she had about \$75 in a checking account and about \$40,000 in a 401(k) account. In her post-hearing submission, she presented a monthly budget that reflected her monthly income was \$3,120 and her monthly expenses were \$2,908, which left her a net monthly remainder of \$212. Her most recent credit report dated May 29, 2014, reflected no delinquent debts other than those alleged in SOR ¶¶ 1.a and 1.b.⁷

⁴ Tr. 16-35, 42-43, 49-51; GE 1, 2, 3. Applicant testified that she received a notice that a class action lawsuit was pending against the lender due to an insurance issue.

⁵ Tr. 35-37; GE 1, 2, 3; AE C, D.

⁶ Tr. 37-38; GE 2; AE C, E.

⁷ Tr. 38-40; GE 3; AE F.

Applicant presented a letter from her landlord reflecting that she is a good tenant, keeps the home neat and clean, is considerate to neighbors, and pays her rent on time. Her supervisor indicated that she is a dedicated, hardworking, and reliable employee.⁸

Policies

The President of the United States 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. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant 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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs 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 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, to reach his decision.

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 of 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. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the applicant has or 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.

⁸ AE A, B.

“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 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 or her] 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. Sep. 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

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18 as follows:

Failure or inability 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant accumulated two debts that she was unable or unwilling to pay for an extended period. This evidence is sufficient to raise the above disqualifying conditions.

Four mitigating conditions under AG ¶ 20 are potentially applicable:

(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;

(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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

In May 2005, Applicant purchased a home and encountered unexpected major repairs and expenses. She tried to dispose of the home through a short sale or deed in lieu of foreclosure, but those efforts were unsuccessful. She was current on her mortgage until she decided to default on the mortgage loan and a home improvement loan. She acknowledged that defaulting on those loans was a decision that she made because it was better to walk away from the home than continuing to spend her limited resources on trying to fix it. She noted that she earned enough money to pay the mortgage payments, but did not earn enough to cover repairs and other expenses, which are not uncommon with home ownership. She indicated that the bank should not have qualified her for the mortgage loan. In her e-QIP, she listed three periods of unemployment, but those periods occurred after she defaulted on the mortgage loan and home improvement loan in May 2010.

Applicant paid the debt in SOR ¶ 1.c. She received an IRS Form 1099-C for the debt in SOR ¶ 1.b and reported that debt cancellation on her federal income tax return as discharged indebtedness excluded from gross income due to insolvency. At the time of the hearing, the \$145,587 mortgage loan in SOR ¶ 1.a remained unresolved. The home had not yet been foreclosed, and the bank was still seeking to recover the mortgage loan. Applicant presented no plan for resolving the mortgage loan. Her financial problems continue to cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 20(d) applies to the paid debt in SOR ¶ 1.c. AG ¶¶ 20(a), 20(b), and 20(c) do not apply.

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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

(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.

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. AG ¶ 2(c).

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a valued employee. She purchased a home and encountered unexpected repair problems. She eventually decided to default on the mortgage loan and a home improvement loan in May 2010 rather than continuing to expend her limited resources on the repairs. Since then, she has not taken any action to resolve these delinquent debts. Despite the presence of some mitigation, security concerns remain.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude that Applicant failed to mitigate the financial considerations security concerns.

Formal Findings

Formal findings 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-1.b:	Against Applicant
Subparagraph 1.c:	For Applicant

Decision

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

James F. Duffy
Administrative Judge