



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



In the matter of:)
)
 1) ISCR Case No. 14-04994
)
 Applicant for Security Clearance)

Appearances

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

11/24/2015

Decision

DUFFY, James F., Administrative Judge:

Applicant mitigated the security concerns under Guideline F (financial considerations). Clearance is granted.

Statement of the Case

On February 9, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. DOD CAF took that action under Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the adjudicative guidelines (AG) implemented by DOD on September 1, 2006.

The SOR detailed reasons why DOD adjudicators could not make the affirmative finding under the Directive that it is clearly consistent with the national interest to grant

¹ The SOR was issued in Applicant's maiden and married names. Upon her divorce in 2014, she returned to using her maiden name. See AE I.

Applicant a security clearance. On April 27, 2015, Applicant answered the SOR and requested a hearing. The case was assigned to me on June 15, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on July 6, 2015, and the hearing was convened as scheduled on July 21, 2015. Applicant waived the 15-day notice requirement under ¶ E3.1.8 of the Directive.²

At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 5. Applicant testified and submitted Applicant Exhibits (AE) A through C. The record of the proceeding was initially left open until August 11, 2015, and later extended to November 13, 2015, to provide Applicant the opportunity to submit additional matters. Applicant timely submitted additional documents that were marked as AE D through K. All exhibits were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on July 28, 2015.

Findings of Fact

Applicant is a 42-year-old prospective employee of a defense contractor. She is expected to earn about \$80,000 annually in that job. She graduated from high school in 1991 and is one course short of completing double bachelor's degrees. She is divorced and had three children. One child is deceased. The surviving children are 23 and 26 years old. She currently resides with a cohabitant. She has held a security clearance for about 10 years.³

The SOR alleged that Applicant was granted a Chapter 7 bankruptcy discharge in 2003; failed to pay her federal income taxes as required for 2006, 2007, 2008, and 2010; and had 41 delinquent debts totaling \$45,912. In her Answer to the SOR, Applicant denied the allegations in SOR ¶¶ 1.j (\$495 debt), 1.mm (\$982 debt), and 1.oo (\$2,240 debt) and admitted the remaining allegations with comments. Her admissions are incorporated as findings of fact. Entries in a credit report (GE 4) substantiate the debts she denied.⁴

Applicant attributed her financial problems to a combination of reasons. First, she married in 1997 and divorced in 2014. Her ex-husband was unemployed about 90% of the time they were married. He was a truck driver, but had difficulty keeping a job due to traffic accidents and traffic infractions. They separated twice; first from 2000 to 2003 and next from 2007 to their divorce in 2014. Even when her ex-husband worked, he did not support her and drained her bank account on several occasions without her

² Tr. 10-11.

³ Tr. 5-7, 29-33, 68-69; GE 1; AE H, K.

⁴ Applicant's Answer to the SOR.

consent. In her Office of Personnel Management (OPM) interview in May 2013, she indicated that much of her debt was created by her ex-husband.⁵

Second, Applicant's 16-year-old son was murdered during a robbery in 2007. He had a life insurance policy that only covered \$5,000 of his hospitalization and funeral expenses, which totaled about \$32,000.⁶

Third, shortly after her son's murder, she went to work in Iraq for a federal contractor in support of the State Department. In that job, she earned about \$80,000 annually and would travel into dangerous areas to perform her duties. During a mortar attack, she was hit by shrapnel and thrown against a stone barrier. She broke bones in her back and remained immobilized in Iraq for about a month before she could be transported back to the United States. She had surgeries to remove her tail bone and implant a bracket in the back of her neck. She was unemployed for about eight months after the attack. She signed an injury waiver before beginning that employment and only received partial disability pay (about half of her salary) during her recovery.⁷

Fourth, Applicant was diagnosed with a chronic disease in 2010 that requires medical treatment. Fifth, she was laid off from her job due to an economic slowdown in September 2011 and remained unemployed for about 13 months. She depleted her 401(k) account while unemployed and was unable to pay her medical bills. In 2013, she obtained a job for about a year and was again laid off when her employer lost a contract. In 2014, she became a correctional officer. After completing the training course and working for about two months, she and two other officers were involved in an altercation with two inmates. During the scuffle, she broke both of her ankles. Her ankles were in casts for ten weeks. She received workman's compensation during her recovery, but it did not cover all of her medical bills. She left the correctional officer position because of her injuries and fear of working in that environment. At the time of the hearing, she had been unemployed since August 2014.⁸

SOR ¶ 1.a – Chapter 7 bankruptcy. Applicant and her ex-husband filed Chapter 7 bankruptcy in August 2003 and received a discharge of their debts in December 2003. Prior to the bankruptcy, her ex-husband was involved in an automobile accident and was sued for about \$100,000. An attorney advised them to file bankruptcy. She indicated that she did not have any credit card debt at that time and believed her consumer debts totaled about \$900.⁹

⁵ Tr. 29-37, 55-; GE 2; AE A. Applicant's husband was not the father of her children. See GE 1 and AE I.

⁶ Tr. 21, 38-39; GE 2; AE A.

⁷ Tr. 39-46; AE A.

⁸ Tr. 46-49; AE A, K.

⁹ Tr. 49-51; GE 2, 4.

SOR ¶ 1.b – judgment for \$4,962. In 2008, the judgment was filed against Applicant. This debt arose when she terminated a house lease early to reside with her husband. In 2010, she began making payments towards this debt. By May 2011, she had made payments totaling \$6,276, which included interest and court costs, and the balance had been reduced to \$353. However, she then encountered a period of unemployment that precluded her from making further payments. She testified that she wrote a letter to the creditor expressing her intent to pay the balance. This judgment does not appear on her most recent credit report.¹⁰

SOR ¶ 1.c – judgment for \$403. In 2009, this judgment was filed against Applicant for dental work her ex-husband had in 2008. She testified that it remains unresolved. This judgment does not appear on her most recent credit report.¹¹

SOR ¶¶ 1.d–1.f – failure to pay federal income taxes for 2006, 2007, 2008, and 2010, and federal tax liens for \$10,593 and \$1,810

For the years in question, Applicant testified that she filed her federal income tax returns when they were due, but fell behind on the payment of her income taxes. She indicated that the amount of her past-due taxes grew to about \$13,000. She provided Internal Revenue Service (IRS) account transcripts for 2007 through 2013. The transcripts confirmed the timely filing of her income tax returns and showed she had account balances of zero for 2007, 2008, and 2010. She did not provide an account transcript for 2006. However, her 2012 account transcript reflected a credit of \$426 for that year was transferred to her 2006 income tax return. In 2012, credits were also transferred to her 2007, 2008, and 2010 income tax returns. Her 2006 income tax delinquency is most likely resolved because the IRS would not have transferred credits to later-year returns until earlier deficiencies had been resolved.¹²

In December 2012, the IRS filed a \$10,593 tax lien against Applicant for her 2007, 2008, and 2010 income tax deficiencies. With the payment of her past-due income taxes for those years, the tax lien was released in March 2014.¹³

In April 2014, the IRS filed a \$1,810 tax lien against Applicant. The tax year for which this tax lien was filed is unknown. Her IRS account transcripts for 2009, 2012, and 2013 reflected account balances of zero. Her account transcript for 2011 reflected an account balance of \$3,192, which was not specifically alleged in the SOR, but may be the basis of the April 2014 tax lien. She testified that she made further payments and

¹⁰ Tr. 51-53, 74; GE 2-5; AE B.

¹¹ Tr. 53; GE 3, 4, 5.

¹² Tr. 53-55; GE 1, 2; AE C.

¹³ Tr. 53-55; GE 1, 2, 4, 5; AE C. Applicant's 2006 income tax deficiency may have been included in the 2012 tax lien, but sufficient information was not provided to draw that conclusion.

reduced the balance to \$335, but provided no documents confirming those recent payments. She indicated that she will continue to make payments to resolve her federal income tax deficiency.¹⁴

SOR ¶¶ 1.g, 1.h, 1.k–1.m, 1.p–1.r, and 1.t–1.kk – collection accounts totaling about \$15,000

These are 26 medical debts. They have dates of last activity or dates of assignment to collection that range from October 2010 to July 2013. All but three of the delinquencies predate 2013.¹⁵

Applicant testified that some of the larger medical bills arose from her son's murder. She indicated that the district attorney who prosecuted her son's murderer suggested that she not pay those bills because the district attorney would seek to have the murderer pay restitution. However, the district attorney's plea for restitution was denied. She testified that some of the medical bills arose from her back surgery. She noted that she has not had medical insurance for the past two years.¹⁶

SOR ¶¶ 1.i and 1.ll – collection accounts totaling \$4,716. These are two student loans. Applicant did not initially make the appropriate calls to place these loans in deferment upon becoming unemployed. In her post-hearing submission, Applicant provided a document showing her student loans are now deferred until May 2016.¹⁷

SOR ¶¶ 1.j – collection account for \$1,495. This was an apartment lease that Applicant cosigned for her daughter. Her daughter remained in the apartment until the lease terminated. Applicant testified that this debt is for a cleaning fee for the refrigerator and stove. She disputes this debt because they have pictures showing those items were clean when her daughter vacated the apartment. She indicated that this matter is in litigation.¹⁸

SOR ¶¶ 1.n, 1.o, 1.s, and 1.pp – collection accounts totaling \$3,024. These were joint accounts she had with her ex-husband for utilities and home services. He did not pay the bills after she moved from the house. She indicated that she is consulting with a law firm to file a civil action against her ex-husband to pay his portion of any joint bills.¹⁹

¹⁴ Tr. 54-55, 74-77; GE 1, 2, 4, 5.

¹⁵ GE 4, 5.

¹⁶ Tr. 57-58, 62-63; GE 2, 4, 5.

¹⁷ Tr. 58-61, 77-78; GE 4, 5; AE J.

¹⁸ Tr. 59-60; GE 4, 5.

¹⁹ Tr. 56, 61-62, 66-67, 72-73; GE 4, 5. Applicant's divorce decree states that "[t]he parties agree that they shall each be responsible for any and all debts in his or her individual name and shall hold the other harmless for same." The divorce decree does not address joint debts. See AE I.

SOR ¶ 1.mm – collection account for \$982. This was a travel credit card account. Applicant testified that she had copies of her travel documents that she submitted to her employer before being laid off. She claimed this bill should have been paid by her former employer. This debt does not appear on her most recent credit report.²⁰

SOR ¶ 1.nn – collection account for \$732. This was a credit card account that was used by Applicant's ex-husband. She indicated that he has previously and still is opening accounts in her name without her knowledge. She indicated that there are fraudulent accounts on her credit report. An extended fraud victim alert has been placed on her credit report. She was not aware of the fraudulent accounts until initiation of the security clearance process. This debt does not appear on her most recent credit report.²¹

SOR ¶ 1.oo – collection account for \$2,240. Applicant had no knowledge of this account. This debt does not appear on her most recent credit report.²²

SOR ¶ 1.qq – collection account for \$178. This was an account that Applicant cosigned for her living son. It had a date of last activity of July 2009. He was incarcerated for a federal offense for about five years and was recently released from custody. She did not know the status of this debt, but indicated that he was trying to resolve some of his debts. This debt does not appear on her most recent credit report.²³

Applicant was a credible witness. She indicated that she fully intends to repay her debts once she becomes employed. She submitted letters of reference from individuals that have known her for many years. The letters attest to her honesty, trustworthiness, and character and describe her as a person of integrity.²⁴

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*

²⁰ Tr. 63-64; GE 4.

²¹ Tr. 64-65; GE 4.

²² Tr. 66; GE 4.

²³ Tr. 31-33, 67-68; GE 4.

²⁴ AE A, E-G.

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, in reaching a 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. “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 this guideline 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.

The evidence established that Applicant accumulated delinquent debts that she was unable to pay for an extended period. AG ¶¶ 19(a) and 19(c) apply in this case.

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

Applicant's financial problems arose because of her ex-husband, her periods of unemployment, her medical problems, and her son's murder. These were all conditions beyond her control that combined to overwhelm her financially. Credit reports reflect that her delinquent debts date back before April 2013. She is currently unemployed, resides with a cohabitant, and has not incurred new delinquent debts. She has a pending job offer for a position in which she will earn about \$80,000 annually. When she worked, she made payments toward the delinquent debts and acted in a responsible manner. She credibly testified that she intends to repay the debts once she becomes fully employed. AG ¶ 20(b) applies. AG ¶¶ 20(a), 20(d), and 20(e) partially apply. AG ¶ 20(c) does 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.

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.

My comments under Guideline F are incorporated in this whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant presented a strong whole-person case. She served in Iraq and was seriously injured in a mortar attack. She worked as a correctional officer and was seriously injured during an altercation with inmates. She has a reputation for honesty, integrity, and trustworthiness. Although she still has a number of delinquent debts, she provided sufficient evidence to show that she will act responsibly in addressing those debts. Her delinquent debts do not cast doubt on her current reliability, trustworthiness, and good judgment.

Overall, the record evidence leaves me with no questions or doubts as to her eligibility and suitability for a security clearance. Applicant mitigated the security concerns under the financial considerations guideline.

Formal Findings

Formal findings as required by Section E3.1.25 of Enclosure 3 of the Directive are:

Paragraph 1, Guideline F: For Applicant

Subparagraphs 1.a-1.qq: For Applicant

Decision

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Clearance is granted.

James F. Duffy
Administrative Judge