



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



In the matter of:)
)
) ISCR Case No. 14-04429
)
Applicant for Security Clearance)

Appearances

For Government: Gina Marine, Esq., Department Counsel
For Applicant: *Pro se*

05/08/2015

Decision

DUFFY, James F., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is granted.

Statement of the Case

On November 25, 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 find under the Directive that it is clearly consistent with the national interest to grant Applicant access to classified information and referred her case to an administrative judge so that a determination could be made to grant, deny, or revoke her security clearance. In an undated

document, Applicant answered the SOR. On January 8, 2015, she supplemented her answer and requested a hearing. This case was assigned to me on February 3, 2015. On February 10, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing scheduling the hearing for February 25, 2015. The hearing was held as scheduled. Applicant waived the 15-day notice requirement for a hearing in ¶ E3.1.8 of the Directive.¹

At the hearing, Department Counsel offered Government's Exhibits (GE) 1 through 4, while Applicant testified and offered Applicant's Exhibits (AE) A through N. Applicant's objection to GE 3, a credit report, was overruled. All of the other exhibits were admitted into evidence without objection. Hearing Exhibit (HE) 1 is a prehearing guidance letter that was sent to Applicant; HE 2 is Department Counsel's list of exhibits. The record of the proceeding was left open to March 11, 2015, to provide Applicant an opportunity to submit additional documents, but she did not submit anything further. The transcript (Tr.) of the hearing was received on March 9, 2015.

Findings of Fact

Applicant, 43, is an assistant manager of a cleaning crew. She has been working for a defense contractor since January 2013. She was born in the Republic of the Philippines. Her father was a U.S. service member and her mother a citizen of the Philippines. She never knew her father and does not know if he is still living. In 1986, she came to the United States at age 16 and became a U.S. citizen in 1990. All of her immediate relatives continue to live in the Philippines. She received her general educational development (GED) certificate in 1993. She married in 1986 and divorced in 1990. She has four children, ages 5, 10, 12, and 21. This is the first time that she is seeking a security clearance.²

The SOR alleged that Applicant had nine delinquent debts totaling about \$34,534 (SOR ¶¶ 1.a-1.i). In her Answer to the SOR, Applicant admitted all of the allegations. Her admissions are incorporated as findings of fact.³

Applicant attributed her financial problems to periods of unemployment and underemployment. In December 2011, Applicant was fired from a supermarket because she was suspected of stealing a packet of cheese. She stated that she paid for the cheese and kept it in a refrigerator in a break room. When confronted about the cheese, she was unable to produce the receipt. She was unable to collect unemployment because the employer claimed she quit. From January 2012 to September 2012, she worked part time in a fast-food restaurant. From February 2012 to February 2013, she worked as a clerk in a gas station, earning minimum wage before obtaining her current

¹ Tr. 10-11.

² Tr. 5-6, 35-39; GE 1.

³ Applicant's Answer to the SOR.

job. She fell behind on her bills during these periods of unemployment and underemployment.⁴

SOR ¶ 1.a-1.d – delinquent medical accounts totaling \$1,372. In 2012 and 2013, Applicant suffered migraine headaches on about four occasions that caused her to seek medical treatment at a hospital. She did not have health insurance at that time. In February 2013, the hospital designated her indigent and canceled her existing medical debts. She provided a letter from her hospital indicating that “[a]ny existing accounts you have with our facilities have been adjusted accordingly.” This cancellation applies to these alleged debts.⁵

SOR ¶ 1.e – collection account for \$235. This medical account had a date of last activity of December 2007. Applicant was unsure about the status of this debt. This debt may fall under the hospital’s debt cancellation discussed above. However, Applicant did not provide sufficient evidence to conclude this debt is resolved.⁶

SOR ¶ 1.f – delinquent medical account for \$175. This debt was for a blood test. It had a date of last activity of August 2013. Applicant paid this debt in January 2015.⁷

SOR ¶ 1.g – collection account for \$9,894. This was a personal loan that had a date of last activity of April 2007. Applicant had insurance that would cover the payments on this loan in the event she lost her job. She was unable to collect on the insurance because the supermarket at which she was working claimed she quit, but she contends that she was fired. In February 2015, Applicant settled this debt with a payment of \$2,150.⁸

SOR ¶ 1.h – charged-off account for \$22,484. This was an automobile loan with a date of last activity of October 2008. After losing a job, she was unable to make the car payments. She voluntarily returned the car to the creditor. At that time, she claimed the balance of the auto loan was about \$11,000. She called the collection agency in an attempt to settle this debt and was informed that the account was closed. This account does not appear on her most recent credit report.⁹

⁴ Tr. 51-52, 68-84.

⁵ Tr. 40-48; GE 3; AE A-D, J. Applicant made a payment of \$40 on the debt in SOR ¶ 1.a in December 2014. She attempted to make another payment and was told that she was not required to pay anything because of the earlier indigent designation. See Tr. 43-44.

⁶ Tr. 48-50; GE 3; AE A-D, J.

⁷ Tr. 50-51; GE 3; AE E, F.

⁸ Tr. 51-54; GE 4; AE M.

⁹ Tr. 54-56, 74-75; GE 3, 4.

SOR ¶ 1.i – collection account for \$374. This was cell phone account that was placed for collection in March 2013. It had a date of last activity of June 2009. She testified that she told the creditor to cancel the account because she could not afford the payments. She stopped using the cell phone, but the creditor kept billing her. In February 2015, she settled this debt for \$262.¹⁰

Applicant received financial advice from an accountant about two weeks before the hearing. Applicant took out loans for \$9,000 and \$12,000 to pay the alleged debts and other financial obligations. In March 2015, she will start repaying the \$12,000 loan by making monthly payments of \$374. Her monthly take-home pay is about \$2,200. She resides with a boyfriend and shares expenses with him. Her boyfriend is a truck driver whose income is irregular. At the time of the hearing, she had about \$1,000 in her checking account and \$20 in a savings account. She estimated her net monthly remainder had been about \$500, but it was unclear whether the monthly payment on the \$9,000 loan was deducted in making that calculation. She testified that she destroyed all of her credit cards.¹¹

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 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

¹⁰ Tr. 56-59; GE 4; AE N.

¹¹ Tr. 53-54, 59-75, 79-83.

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 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 disqualifying conditions 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 delinquent debts that she was unable or unwilling to satisfy for an extended period. The evidence established 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.

Applicant's debts are not the result of frivolous or irresponsible spending. She suffered from migraine headaches and encountered periods of unemployment and underemployment. Those events were conditions beyond her control that contributed to her financial problems. She made a good-faith effort to repay her creditor based on her limited means. She has paid three of the alleged debts (SOR ¶¶ 1.f, 1.g, and 1.i). Four debts (SOR ¶¶ 1.a-1.d), possibly five (SOR ¶ 1.e), were forgiven. She contacted the collection agency holding the debt in SOR ¶ 1.h in an attempt to resolve it and was told it was closed. She provided sufficient evidence to conclude that the alleged debts, with the exception of the small debt in SOR ¶ 1.e, have been resolved. Her delinquent debts do not cast doubt on her current reliability, trustworthiness, and good judgment. Applicant may continue to struggle financially, but she can be expected to act responsibly in handling her financial matters. All of the above mitigating conditions apply in varying degrees.

Whole-Person Concept

In the adjudication process, an administrative judge must carefully weigh a number of variables known as the whole-person concept. Available information about the applicant as well as the factors listed in AG ¶ 2(a) should be considered in reaching

a determination.¹² In this case, I gave due consideration to the information about Applicant in the record and concluded the favorable information, including the mitigating evidence, outweighs the security concerns at issue. Applicant met her burden of persuasion and mitigated the financial considerations security concerns. Overall, the record evidence leaves me with no questions or doubts as to her eligibility and suitability for a security clearance.

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: For Applicant

Subparagraphs 1.a-1.i: 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 a security clearance. Eligibility for access to classified information is granted.

James F. Duffy
Administrative Judge

¹² The nine adjudicative process factors listed at AG ¶ 2(a) 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.