



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-06623

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

07/28/2015

Decision

HARVEY, Mark, Administrative Judge:

Applicant’s statement of reasons (SOR) alleges 17 delinquent, charged-off, or collection accounts totaling \$34,955. She failed to provide sufficient documentation of her progress resolving her financial problems. Financial considerations concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On April 12, 2014, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of a security clearance application (SF 86). (Item 3) On March 14, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant, pursuant to 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* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR alleged security concerns under Guideline F (financial considerations). (Item 1) The SOR detailed reasons why DOD could not make the finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to

determine whether Applicant's clearance should be granted, continued, denied, or revoked. (Item 1)

On April 9, 2015, Applicant responded to the SOR allegations and waived her right to a hearing. (Item 2) A complete copy of the file of relevant material (FORM), dated June 15, 2015, was provided to her on June 29, 2015.¹ On July 14, 2015, Applicant responded to the FORM. Department Counsel did not object to Applicant's submission. The case was assigned to me on July 23, 2015.

Findings of Fact²

In Applicant's SOR response, she admitted SOR debts ¶¶ 1.a through 1.e, 1.g through 1.o, and she denied the remaining SOR debts.³ She also provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact.

Applicant is a 31-year-old bilingual call center operator, who has worked for a defense contractor since April 2014.⁴ From November 2013 to April 2014,⁵ and from November 2012 to July 2013, she was unemployed. From July 2013 to October 2013, she worked for a temporary staffing agency. From May 2011 to November 2012, she was a scheduler at a medical office. From March 2010 to May 2011, she was a collector for the Department of Education. From July 2009 to March 2010, she worked in bilingual customer service. From January 2008 to July 2009, she worked as a financial counselor. From May 2005 to January 2008, she worked in customer service. From September 2003 to May 2005, she was a stay-at-home mother. She received some unemployment compensation and support from her mother, when she was unemployed. She has never served in the military.

From 2007 to 2009, and from 2012 to 2013, she attended college. She did not receive a degree. In May 2010, she was married, and in May 2011, she was separated from her spouse. Her children were born in 2003, 2008, and 2013.

¹The Defense Office of Hearings and Appeals (DOHA) transmittal letter is dated June 17, 2015, and Applicant's receipt is dated June 29, 2015. The DOHA transmittal letter informed Applicant that she had 30 days after her receipt to submit information.

²Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

³The source for the information in this paragraph is Applicant's SOR response. (Item 2)

⁴Unless stated otherwise, Applicant's April 12, 2014 Electronic Questionnaires for Investigations Processing (e-QIP) version of security clearance application (SF 86) is the source for the facts in this paragraph and the next paragraph. (Item 3)

⁵In Applicant's Office of Personnel Management (OPM) personal subject interview (PSI), she disclosed unemployment from November 2013 to April 2014, September 2010 to May 2011, May 2007 to July 2007, November 2012 to July 2013, and September 2003 to May 2005. (Item 4) I have credited her with the unemployment described in her April 12, 2014 SF 86 and OPM PSI. (Items 3, 4)

On her April 12, 2014 SF 86, Applicant disclosed the voluntary repossession of two vehicles resulting in estimated delinquent debts of \$7,500 in 2008 and \$18,000 in 2010. She did not disclose her other delinquent debts.

Financial Considerations

Applicant's credit reports and SOR allege 17 delinquent, charged-off, or collection accounts totaling \$34,955. (Items 1, 5, 6; AE A) Applicant did not explain why she had delinquent debts in her SOR response; however, she did provide a detailed explanation to an Office of Personnel Management (OPM) investigator on June 24, 2014. She explained that being a single parent of three minor children, the purchase of two defective vehicles that were subsequently repossessed, and multiple periods of unemployment were the causes of her financial plight. She admitted responsibility for most of the debts on her credit report, intended to investigate her debts, and planned to seek discharge of her unsecured nonpriority debts under Chapter 7 of the Bankruptcy Code. (Item 4)

Applicant's SOR response indicated she used a credit-repair company and was successful in disputing the debts in SOR ¶¶ 1.a, 1.b, and 1.h. in one credit report. She successfully disputed the debt in SOR ¶ 1.g for \$6,820 from two credit reports.

The debts in SOR ¶¶ 1.c for \$3,992 and 1.h for \$2,589 are duplications of each other. She denied responsibility for the debts in SOR ¶¶ 1.f for \$164, 1.p for \$384, and 1.q for \$152, and they have been removed from all of her credit reports. There is no evidence of security violations, abuse of alcohol, or use of illegal drugs.

Applicant's FORM repeated the admonition about the absence of corroborating documentation and other mitigating information and explained that Applicant had 30 days from the receipt of the FORM "in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate. If you do not file any objections or submit any additional information . . . your case will be assigned to an Administrative Judge for a determination based solely" on the evidence set forth in this FORM. (FORM at 3) Applicant submitted three credit reports in response to the FORM. Those credit reports noted her credit score was "very poor."

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no 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 applicant's 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.

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, these guidelines are applied 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, 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 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 "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), § 3.1. Thus, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It 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. 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

Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

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.

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability or unwillingness to satisfy debts;" and "(c) a history of not meeting financial obligations." In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). Applicant's history of delinquent debt is documented in her credit reports and SOR response. Applicant's SOR alleges 17 delinquent, charged-off, or collection accounts totaling \$34,955. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five 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;⁶ and

⁶The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

(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.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013).

Applicant's conduct in resolving her delinquent debt does not warrant full application of any mitigating conditions to all of her SOR debts. She did not provide sufficient information about her finances to establish her inability to make greater progress paying her creditors. Underemployment, unemployment, purchase of two defective vehicles, and being a single parent of three minor children damaged her family finances and are circumstances largely beyond her control; however, she did not provide proof that she act responsibly under the circumstances.

Applicant is credited with resolving the debts in SOR ¶¶ 1.f, 1.h, 1.p, and 1.q. The debt in SOR ¶ 1.h for \$2,589 is mitigated because it was deleted from one credit report, and she said it was a duplication of the debt in SOR ¶ 1.c for \$3,992. She denied responsibility for the debts in SOR ¶¶ 1.f for \$164, 1.p for \$384, and 1.q for \$152; she utilized a credit repair company to dispute them; and they were removed from all of her credit reports.

In order to qualify for application of [the good-faith mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the good-faith mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

Applicant did not provide documentation showing her income and expenses, and she did not provide a budget. She presented insufficient evidence about what she has done since becoming employed with her current employer to pay her SOR debts or her other debts. Except as indicated in the previous paragraph, she did not provide any of the following documentation relating to the SOR creditors: (1) proof of payments, such as checking account statements, photocopies of checks, or a letter from the creditor proving that she paid or made any payments to the creditor; (2) correspondence to or from any creditors to establish maintenance of contact with creditors;⁷ (3) a credible debt dispute indicating she did not believe she was responsible for the debt and why she held such a belief; (4) attempts to negotiate payment plans, such as settlement offers or agreements to show that she was attempting to resolve these SOR debts; (5) evidence of financial counseling; or (6) other evidence of progress or resolution of her SOR debts.

Applicant's failure to prove that she has made more substantial steps to resolve her debts shows a lack of judgment and responsibility that weighs against approval of her security clearance. There is insufficient evidence that she was unable to make greater progress resolving her delinquent debts, or that her financial problems are being resolved, are under control, and will not recur in the future. Under all the circumstances, she failed to establish that financial consideration concerns are mitigated.

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 the 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. I have incorporated my

⁷“Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

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

There is some evidence supporting approval of Applicant's clearance. Applicant is a 31-year-old bilingual call center operator, who worked for a defense contractor since April 2014. Applicant was unemployed from November 2013 to April 2014, November 2012 to July 2013, September 2010 to May 2011, May 2007 to July 2007, November 2012 to July 2013, and September 2003 to May 2005. See note 5, *supra*, and accompanying text. She was also underemployed during portions of the previous ten years. She is separated from her spouse. She is a single parent of three minor children. These circumstances beyond her control contributed to her financial problems. She has attended college to improve her skills and employment. The debts in SOR ¶ 1.h for \$2,589, ¶ 1.f for \$164, ¶ 1.p for \$384, and ¶ 1.q for \$152 are mitigated. There is no evidence of security violations, abuse of alcohol, or use of illegal drugs. She disclosed two delinquent debts on her April 12, 2014 SF 86.

The financial evidence against approval of Applicant's clearance is more substantial at this time. Applicant has a history of financial problems. Her SOR alleges 17 delinquent, charged-off, or collection accounts totaling \$34,955. Although she mitigated 4 of the 17 SOR debts, she failed to provide sufficient documentation of progress to resolve her financial problems. She did not provide any evidence of payments to SOR creditors, payment plans, or her communications to SOR creditors, showing her attempts to resolve her SOR debts. Her failure to provide more corroborating documentation shows lack of financial responsibility and judgment and raises unmitigated questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18. More information about inability to pay debts or documented financial progress is necessary to mitigate security concerns.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont*, 913 F. 2d at 1401. Unmitigated financial considerations concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary to justify the award of a security clearance in the future. With more effort towards documented resolution of her past-due debts, and a track record of behavior consistent with her obligations, she may well be able to demonstrate persuasive evidence of her security clearance worthiness. Based on the facts before me and the adjudicative guidelines that I am required to apply, I conclude that it is not clearly consistent with the national interest to grant Applicant security clearance eligibility at this time.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Financial considerations concerns are not mitigated.

Formal Findings

Formal findings For or Against Applicant 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 through 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraphs 1.i through 1.o:	Against Applicant
Subparagraphs 1.p and 1.q:	For Applicant

Conclusion

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

Mark Harvey
Administrative Judge