



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-04076

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel

For Applicant: *Pro se*

03/01/2016

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding financial considerations. Eligibility for a security clearance and access to classified information is denied.

Statement of the Case

On February 18, 2013, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.¹ On January 3, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to her, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective

¹ Item 4 (e-QIP, dated February 18, 2013).

September 1, 2006. The SOR alleged security concerns under Guideline F (Financial Considerations), and detailed reasons why the DOD CAF was unable to make an affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant received the SOR on January 12, 2015. On February 2, 2015, Applicant responded to the SOR allegations and elected to have her case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant on June 24, 2015, and she was afforded an opportunity, within a period of 30 days after receipt of the FORM, to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, Applicant was furnished a copy of the Directive as well as the Guidelines applicable to her case. Applicant received the FORM on June 29, 2015. A response was due by July 29, 2015. Applicant timely submitted information in response to the FORM, to which Department Counsel did not object, and they have been marked as Applicant Items (AI) A through C. The case was assigned to me on August 14, 2015.

Findings of Fact

In her Answer to the SOR, Applicant admitted nearly all of the factual allegations pertaining to financial considerations (§§ 1.a. through 1.d., 1.f. through 1.i., and 1.o.). The remaining allegations were denied (§§ 1.e., and 1.j. through 1.n.). Applicant's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 52-year-old employee of a defense contractor. She has been an analyst with her current employer since June 2008. She previously held a similar position with a different defense contractor further away from her residence from November 2001 until June 2008.² She received her bachelor's degree by on-line distance learning in information systems in June 2008.³ She has never served with the U.S. military.⁴ She has held a secret security clearance since February 1998.⁵ Applicant was married to her first husband in 1982 and divorced in 1986. She married her second husband in 1998.⁶ She has no children.

² Item 4, *supra* note 1, at 10-12.

³ Item 4, *supra* note 1, at 9; Item 7 (Personal Subject Interview, dated April 16, 2013), at 1.

⁴ Item 4, *supra* note 1, at 13.

⁵ Item 4, *supra* note 1, at 27-28.

⁶ Item 4, *supra* note 1, at 15-17.

Financial Considerations⁷

It is unclear when Applicant first experienced substantial financial difficulties, but in reviewing her credit reports, as well as her comments to the U.S. Office of Personnel Management (OPM) investigator, it appears that several delinquent accounts existed as far back as 2007-2010, with additional ones entering that status over the ensuing years. Although she does not specifically attribute any one particular cause to her initial financial problems, she did mention that her husband was injured on the job in 1998. Because of his injuries, he was unable to continue in his line of work for any length of time. He was laid off from his construction job in 2010, and remained unemployed until sometime in early 2013. Their home was damaged by a hurricane in August 2011, but insurance covered most of the damage. Their adjusted gross income dropped from \$93,910 in 2011 to \$67,544 in 2013, due in large part to her husband's loss of income. They had to defend a lawsuit from a contractor that was eventually dismissed. Applicant's wages were garnished in 2013.

As a result of her purported inability to maintain her monthly payments over a substantial multi-year period, a number of accounts were placed for collection, charged off, or went to judgment. Applicant had delinquent mortgage loans, home equity loans, student loan accounts, medical accounts, automobile loans, cellular telephone accounts, and credit card accounts.

The SOR identified 14 purportedly continuing delinquent accounts, totaling approximately \$74,811, which had been placed for collection or charged off, as well as a past-due mortgage of \$201,244 and a garnishment in the amount of \$75,154.55. Although Applicant offered comments regarding some of the accounts, with the exception of two accounts, she failed to submit any documentation to support her contentions pertaining to her actions or activities to resolve them. Those debts which Applicant has already either resolved, or is in the process of resolving, are described as follows: a second mortgage in the amount of \$65,687 that had been charged off (SOR ¶ 1.b.) but was forgiven, and the lien released by the mortgage holder;⁸ a first mortgage with a high credit of \$174,000, a past-due balance of \$2,647, and a remaining balance of \$201,244 (SOR ¶ 1.c.) for which Applicant submitted a loss mitigation application to her mortgage lender to execute a Deed in Lieu of Foreclosure in January 2015, but which has not yet been approved;⁹ and her defaulted combined student loan accounts with a high credit of \$59,665 and a past-due balance of \$74,482 (SOR ¶ 1.d.), for which a wage garnishment was filed with her employer in 2013 for \$75,154.55, and \$320.61 is taken from her salary every two weeks.¹⁰

⁷ General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 5 Combined Experian, TransUnion, and Equifax Credit Report, dated March 22, 2013); Item 8 (Equifax Credit Report, dated March 21, 2014); Item 9 (Equifax Credit Report, dated December 22, 2014); Item 7, *supra* note 3. More recent information can be found in the exhibits furnished and individually identified.

⁸ Item 9, *supra* note 7, at 2; AI A (Applicant's Response to the FORM, undated); AI B (Letter, dated March 26, 2015).

⁹ Item 9, *supra* note 7, at 2; Item 5, *supra* note 7, at 7; AI A, *supra* note 8; AI C (Letter and Loss Mitigation Application, dated January 20, 2015).

Although Applicant failed to disclose in her e-QIP any delinquent accounts other than her defaulted student loans, when confronted with information pertaining to her delinquent accounts, she generally indicated little, if any, knowledge regarding them, and disputed many of them. She claimed to have requested deferment status for the student loans, but acknowledged those requests were denied. She did not claim that she had contacted any of her other creditors. There is no evidence to indicate that Applicant made any payments on any of the remaining SOR-related delinquent accounts, including two accounts with minimal balances of \$59 and \$60.

Those unaddressed, unresolved, delinquent accounts are as follows: a bank credit card with an unpaid balance of \$702 (SOR ¶ 1.a.); a cellular telephone account with an unpaid balance of \$848 (SOR ¶ 1.e.); a bank credit card with a past-due balance of \$525 that was charged off (SOR ¶ 1.f.); a bank credit card with a past-due balance of \$429 that was charged off (SOR ¶ 1.g.); a bank credit card with an unpaid balance of \$588 that was charged off and sold to a debt purchaser (SOR ¶ 1.h.); a bank credit card with an unpaid balance of \$631 that was charged off (SOR ¶ 1.i.); an unspecified type of account with a past-due balance of \$721 that was purchased by a company claiming to be a factoring company (SOR ¶ 1.j.); an unspecified type of account with an unpaid balance of \$611 that was charged off in 2007 (SOR ¶ 1.k.); an unspecified type of account with an unpaid balance of \$159 (SOR ¶ 1.l.); a medical account with an unpaid balance of \$60 (SOR ¶ 1.m.); a medical account with an unpaid balance of \$59 (SOR ¶ 1.n.); and an unspecified type of account with a past-due balance of \$1,155 that was purchased by a company claiming to be a factoring company (SOR ¶ 1.o.). While Applicant contended, without documentation to support her contention, that the accounts referred to in SOR ¶¶ 1.l. and 1.n. are the same account, a closer inspection of the credit reports reveals that there are two different account numbers and two different amounts.

Although Applicant disputed several of the accounts discussed with the OPM investigator in April 2013, to date, nearly three years later, she failed to submit any documentation to support her contentions or disputes. In April 2013, Applicant stated her monthly net income, combined with her husband's net income, was approximately \$4,213; her monthly household expenses, including her mortgage, were approximately \$2,230; and after making certain required debt payments, her monthly remainder was approximately \$847 available for savings or discretionary spending.¹¹ In January 2015, when she submitted her loss mitigation application, referred to above, she listed the family monthly gross income as approximately \$6,821; and her monthly expenses, of all types, as approximately \$6,802.¹² That leaves \$19 available for savings or discretionary spending. During the same interview, Applicant indicated that she hoped to have her delinquent accounts current by the end of 2013. She missed her stated goal.

¹⁰ Item 9, *supra* note 7, at 2; Item 5, *supra* note 7, at 7; Item 7, *supra* note 3, at 2-3; Item 6 (Incident History, dated June 17, 2015); Item 4, *supra* note 1, at 31.

¹¹ Item 7, *supra* note 3, at 5-6.

¹² *Al C*, *supra* note 9, at 3.

There is no evidence that Applicant ever sought the services of a financial advisor, or that Applicant ever received financial counseling. As of the date of her OPM interview, she had not done either. There is a paucity of evidence to indicate that her financial problems are now under control.

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.”¹³ 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. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”¹⁴

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”¹⁵ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation,

¹³ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹⁴ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

¹⁵ “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “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).

extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.¹⁶

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. 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 as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials."¹⁷

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."¹⁸ 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 as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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. . . .

¹⁶ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

¹⁷ *Egan*, 484 U.S. at 531.

¹⁸ See Exec. Or. 10865 § 7.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly, under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant has had a long-standing problem with her finances which existed as far back as 2007-2010. A variety of mortgage loans, home equity loans, student loans, medical accounts, automobile loans, cellular telephone accounts, and credit card accounts became delinquent and were placed for collection and, in some instances, were charged off. AG ¶¶ 19(a) and 19(c) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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.” Also, under AG ¶ 20(b), financial security concerns may be mitigated where “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.” Evidence that “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” is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”¹⁹ Under AG ¶ 20(e) it is potentially mitigating if “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.”

AG ¶¶ 20(a), 20(c), 20(d), and 20(e) do not apply. AG ¶ 20(b) partially applies. The nature, frequency, and recency of Applicant’s continuing financial difficulties since about 2007 - 2010 make it difficult to conclude that it occurred “so long ago” or “was so infrequent.” Although she does not specifically attribute any one particular cause to her initial financial problems, she did mention that her husband was injured on the job in 1998, and because of his injuries, he had been unable to continue in his line of work for any length of time. He was laid off from his construction job in 2010, and remained unemployed until sometime in early 2013. Their home was damaged by a hurricane in

¹⁹ The Appeal Board has previously explained what constitutes a good-faith effort to repay overdue creditors or otherwise resolve debts:

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 [or statute of limitations]) 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)).

August 2011, but insurance covered most of the damage. Their adjusted gross income dropped from \$93,910 in 2011 to \$67,544 in 2013, due in large part to her husband's loss of income. They had to defend a lawsuit from a contractor that was eventually dismissed. Applicant's wages were garnished in 2013.

Those factors were largely beyond Applicant's control, but the specific impact of them individually or collectively, were not discussed. Applicant failed to demonstrate what actions she has taken to address her delinquent debts, and she has offered no documentary evidence of a good-faith effort to resolve any of them. With the exception of her first mortgage and her home equity line, she essentially ignored her delinquent accounts, many of which date to 2007 – 2010. Her defaulted student loans are being resolved by garnishment of her wages, not her positive efforts. She has failed to address any other delinquent accounts, including the ones with minimal balances of \$59 or \$60.

There is no evidence to indicate that Applicant ever received financial counseling. With approximately \$19 available each month for discretionary savings or spending, the overwhelming evidence leads to the conclusion that Applicant's financial problems are not under control. Applicant has not acted responsibly by failing to address her delinquent accounts and by failing to make limited, if any, efforts of working with her creditors.²⁰ Applicant's actions under the circumstances confronting her cast doubt on her current reliability, trustworthiness, and good judgment.²¹

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.

²⁰ "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.

²¹ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

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. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.²²

There is some evidence in favor of mitigating Applicant's conduct. She has been an analyst with her current employer since June 2008, and was previously in a similar position with a different defense contractor from November 2001 until June 2008. She received her bachelor's degree by on-line distance learning in information systems in June 2008. She has held a secret security clearance since February 1998.

The disqualifying evidence is more substantial. Applicant has repeatedly declared her intentions of bringing certain accounts current and repaying them. However, to date, she has failed to do so. Instead, she has attempted to extricate herself from the financial responsibilities of her first mortgage (the decision is still pending after 12 months) and the home equity line (the loan was forgiven and the lien released). Her large unpaid balance of defaulted student loans is being addressed by garnishment of her wages. Applicant has seemingly continued to ignore her remaining delinquent accounts. Applicant offered no evidence as to her reputation for reliability, trustworthiness, and good judgment. Applicant's long-standing failure over the years to voluntarily repay her creditors, even in the smallest amounts, or to arrange even the most reasonable payment plans, reflects traits which raise concerns about her fitness to hold a security clearance. There are clear indications that Applicant's financial problems are not under control. Applicant's actions under the circumstances cast doubt on her current reliability, trustworthiness, and good judgment. Considering the absence of confirmed debt resolution and elimination efforts, Applicant's financial issues are likely to remain.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:²³

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has ". . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his [or her] actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding

²² See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

²³ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

indebtedness is credible and realistic. See Directive ¶ E2.2(a) (“Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Applicant has demonstrated an essentially negative track record of voluntary debt reduction and elimination efforts, generally ignoring her delinquent debts. Overall, the evidence leaves me with substantial questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has failed to mitigate the security concerns arising from her financial considerations concerns. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b & 1.c:	For Applicant
Subparagraphs 1.d – 1.m:	Against Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	Against 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.

ROBERT ROBINSON GALES
Administrative Judge