



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-06399

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel

For Applicant: *Pro se*

11/21/2015

Decision

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) alleges 26 charged-off, collection or delinquent accounts totaling \$31,181. She failed to provide sufficient information about her finances and her progress in resolving her SOR debts. From May 2008 through March 2014 on five occasions, she was either terminated from employment or quit her employment after being told she would be fired; however, there is insufficient information about the circumstances of the terminations, and personal conduct security concerns are refuted. Financial considerations security concerns are not mitigated. Access to classified information is denied.

History of the Case

On May 14, 2014, Applicant completed and signed an Electronic Questionnaires for Investigations Processing (e-QIP) (SF 86). (Item 3) On January 20, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a statement of reasons (SOR) pursuant to Executive Order (Exec. Or.) 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 detailed reasons why the DOD CAF made a preliminary decision to deny or revoke Applicant's eligibility for access to classified information. Specifically, the

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SOR set forth security concerns arising under the financial considerations and personal conduct guidelines.

On March 5, 2015, Applicant responded to the SOR, and on March 11, 2015, she waived her right to a hearing. On June 29, 2015, Department Counsel completed the File of Relevant Material (FORM). On July 21, 2015, Applicant received the FORM. Applicant did not respond to the FORM.¹ On November 9, 2015, the case was assigned to me. The Government's case consisted of five exhibits. (Items 1-5)

Findings of Fact²

In Applicant's SOR response, she admitted SOR the allegations in ¶¶ 1.a, 1.c through 1.m, 1.t through 1.z, and 2.a through 2.e. She denied the remaining SOR allegations, and she provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact.

Applicant is a 30-year-old security employee of a defense contractor, who has been employed by a defense contractor since March of 2014.³ In 2004, she graduated from high school, and she has some college credits from a community college. She has never served in the military. She has never married, and she does not have any children.

Financial Considerations

Applicant described the source of her financial problems as illness, brief breaks in employment, and unemployment. (SOR response; SF 86) The information about special circumstances adversely affecting her finances was not specific about the impact on her finances, such as the costs of medical care, the periods of unemployment and scope or degree of underemployment, etc.

Applicant's history of delinquent debt is documented in her credit reports, SF 86 and SOR response. Her 26 charged-off, collection or delinquent SOR accounts totaling \$31,181 are described as follows: 21 medical collection accounts totaling \$21,200 in ¶ 1.a for \$81, ¶ 1.b for \$164, ¶ 1.c for \$427, ¶ 1.d for \$250, ¶ 1.e for \$170, ¶ 1.f for \$220, ¶ 1.g for \$200, ¶ 1.h for \$130, ¶ 1.i for \$50, ¶ 1.j for \$25, ¶ 1.k for \$25, ¶ 1.l for \$35, ¶ 1.o for \$595, ¶ 1.p for \$467, ¶ 1.q for \$470, ¶ 1.r for \$717, ¶ 1.s for \$270, ¶ 1.t for \$574, ¶ 1.u for \$287, and ¶ 1.v for \$17,417, and ¶ 1.z for \$268; a charged-off credit union debt

¹The Defense Office of Hearings and Appeals (DOHA) transmittal letter is dated July 8, 2015, and Applicant's receipt is dated July 21, 2015. The DOHA transmittal letter informed Applicant that she had 30 days after her receipt to submit information.

²Some details have been excluded in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

³Unless stated otherwise, the source for the information in this paragraph and the next three paragraphs is Applicant's May 14, 2014 Electronic Questionnaires for Investigations Processing (e-QIP) (SF 86). (Item 2)

in ¶ 1.m for \$8,027; a telecommunications collection account in ¶ 1.n for \$127; and three local government collection debts in ¶ 1.w for \$55, ¶ 1.x for \$65, and ¶ 1.y for \$65.

Applicant said she was in the hospital for treatment for a chronic disease, and she did not have medical insurance. (SOR response) Her illness resulted in the following medical collection debts: ¶ 1.c (\$427); ¶ 1.d (\$250); ¶ 1.e (\$170); ¶ 1.f (\$220); ¶ 1.g (\$200); ¶ 1.h (\$130); ¶ 1.t (\$574); ¶ 1.u (\$287); and ¶ 1.v (\$17,417). (SOR response) On March 5, 2015, she said she called an agent to set up bi-weekly payments from her checking account. (SOR response) Checking account statements showing payments were not provided.

Applicant said she paid the debt in SOR ¶ 1.i (\$50) on March 20, 2015. She said she paid the debts in SOR ¶ 1.j (\$25), ¶ 1.k (\$25), and ¶ 1.l (\$35) on unspecified dates.

On February 25, 2015, the credit union creditor in SOR ¶ 1.m (\$8,027) wrote that Applicant owed \$3,918 to the credit union. (SOR response) In February 2015, she made a \$25 payment, which the creditor accepted. (SOR response)

Applicant denied responsibility for the debt in SOR ¶ 1.n (\$127). (SOR response) She said the debt was not delinquent, and she would seek correction of her credit report to accurately reflect the status of this account. (SOR response)

Applicant denied responsibility for the medical-collection debts in SOR ¶¶ 1.b (\$164), 1.o (\$595), 1.p (\$467), and 1.q (\$470) because she was unaware of the debt or did not recognize the name of the collection agent seeking collection of the debt. (SOR response) For the debts in SOR ¶¶ 1.b and 1.o, she said she would dispute these two debts. (SOR response) For the other two debts, she said she will be "looking into this." (SOR response)

Applicant said she paid the three debts owed to a local government creditor for the debts in SOR ¶ 1.w for \$55, ¶ 1.x for \$65, and ¶ 1.y for \$65. (SOR response) On December 27, 2013, she paid a ticket for \$250; on October 27, 2010, she paid a ticket for \$55; and on December 9, 2010, she paid a ticket for an unspecified amount. (SOR response)

Personal Conduct

On Applicant's May 14, 2014 SF 86, she disclosed that on five occasions she was terminated from her employment or quit after being informed her employer intended to terminate her. Those five instances are described as follows:

In May 2008, she was terminated from her employment for abandoning her security post or for talking to other agency police. (SOR ¶ 2.e; Item 3) Applicant denied that she abandoned her post.

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In May 2011, Applicant quit after being told that she would be fired because she let her armed or security license expire. (SOR ¶ 2.d; Item 3) Applicant said she did not wish to continue the employment.

In May 2012, Applicant quit after being told that she would be fired. (SOR ¶ 2.c) Applicant said she quit because her employer was being unfair. Her employer alleged that she abandoned her post, moved her vehicle, and wore "loud pink nail polish." (Item 3)

In January 2013, Applicant was fired from her employment. (SOR ¶ 2.b) She said she was rushing to start work and signed in with an incorrect time. She also said she was fired for "poor attendance." (Item 3)

In March 2014, Applicant was fired from her employment. (SOR ¶ 2.a) She said she was terminated because of her time and attendance. Specifically, she "also left site early due to me being ill, and site manager was notified the next morning about it." (Item 3)

Applicant's FORM noted the absence of corroborating documentation and detailed explanations of the causes for her financial problems 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) As indicated previously, Applicant did not respond to the FORM.

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 revised 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. Thus, nothing in this decision should be construed to suggest that it is based, 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 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.” Applicant’s history of delinquent debt is documented in her credit reports, SF 86 and SOR response. Her records document credit-report evidence of 26 charged-off, collection or delinquent SOR accounts totaling \$31,181. 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;⁴ 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.

⁴The 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) 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)).

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; however, she presented some important mitigating information. The following circumstances beyond Applicant's control adversely affected her finances: Applicant had brief periods of unemployment after being fired; she had periods of being underemployed; and she had medical problems. She did not provide details about the degree of impact of these circumstances beyond her control. She did not describe financial counseling, and she did not provide her budget.

Applicant is credited with paying the following seven SOR debts: ¶ 1.i (\$50); ¶ 1.j (\$25); ¶ 1.k (\$25); ¶ 1.l (\$35); ¶ 1.w (\$55); ¶ 1.x (\$65); and ¶ 1.y (\$65); and with having the debt in SOR ¶ 1.m (\$8,027) reduced to \$3,918 and being in a payment plan. She is also credited with resolving the debt in SOR ¶ 1.n (\$127) because she said the debt was not delinquent.

Applicant did not provide any of the following documentation relating to the other SOR debts: (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 creditors; (2) correspondence to or from any creditors to establish maintenance of contact with creditors;⁵ (3) credible debt disputes indicating she did not believe she was responsible for the debts and why she held such a belief; (4) attempts to negotiate payment plans, such as settlement offers or agreements to show that she was

⁵"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.

attempting to resolve these debts; or (5) other evidence of progress or resolution of her debts.

On March 5, 2012, Applicant denied several debts and said she was going to dispute her responsibility for them. She failed to establish mitigation under AG ¶ 20(e) because she did not provide a copy of her letter to the creditor and credit reporting companies or other documents showing she disputed her responsibility for the debts.

Applicant's failure to provide more detailed information and corroborating documentation shows a lack of judgment and responsibility that weighs against approval of her security clearance. There is insufficient evidence about why she was unable to make greater progress resolving most of her SOR debts. There is insufficient assurance 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 security concerns are mitigated.

Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes two conditions that could raise a security concern and may be disqualifying in this case:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information:

(2) disruptive, violent, or other inappropriate behavior in the workplace;

(3) a pattern of dishonesty or rule violations; and

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(4) evidence of significant misuse of Government or other employer's time or resources; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing. . . .

On Applicant's May 14, 2014 SF 86, she disclosed that on five occasions she was terminated from her employment or quit after being informed that her employer intended to terminate her. Applicant denied that she left her post without permission in 2008, and she was unclear about whether she admitted leaving her post without permission in 2012. In 2011, the circumstances of her security or firearm license expiration are not detailed. She said in 2013, she was terminated for poor attendance; however, the record does not establish whether she actually missed work, and if she did miss work, how often she missed work, or why she missed work. There is no evidence from any employer contradicting her accounts for why she left her employment. There is no summary of Office of Personnel Management (OPM) personal subject interview (PSI) or witness interviews in the record. The record does not contain interviews of her former coworkers or supervisors, time-card evidence, records of employer counseling or reprimands. The Government has the initial burden of establishing why Applicant was terminated from employment and here, Applicant has essentially admitted her terminations from employment; however, she denied culpability for her terminations from employment. The disqualifying conditions alleged in the SOR under the personal conduct guideline are refuted.

Additionally, AG ¶ 17(e) provides one condition that mitigates security concerns in this case stating, "(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress." Disclosure of her negative history of employment and documentation in security files has eliminated Appellant's "vulnerability to exploitation, manipulation, or duress." Personal conduct 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 comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

There is some evidence supporting approval of Applicant's clearance. Applicant is a 30-year-old security employee of a defense contractor, who has been employed by her current defense contractor since March of 2014. She is a high school graduate, and she has some college credits from a community college. Her financial problems are initially attributed to her medical problems, unemployment, and underemployment. Applicant did not provide any employer evaluations or character statements. There is no evidence of abuse of alcohol or use of illegal drugs. She disclosed her financial problems and employment history of terminations on her May 14, 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 26 charged-off, collection or delinquent accounts totaling \$31,181. I have credited her with mitigating nine SOR debts, leaving her with 17 unresolved debts totaling \$22,707. She did not provide any evidence of payments to those remaining creditors, payment plans, or her communications to those creditors. She did not provide documentation showing her attempts to resolve those 17 debts in good faith. 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 her inability to pay her debts, her financial history, and her documented financial progress is necessary to fully 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 for 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.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that personal conduct concerns are refuted; however, financial consideration concerns are not mitigated, and it is not clearly consistent with the

national interest to grant Applicant security clearance eligibility at this time. 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.h:	Against Applicant
Subparagraphs 1.i through 1.n:	For Applicant
Subparagraphs 1.o through 1.v:	Against Applicant
Subparagraphs 1.w through 1.y:	For Applicant
Subparagraph 1.z:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a through 2.e:	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