



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



In the matter of:)
)
) ISCR Case No. 17-04175
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

02/28/2019

Decision

RIVERA, Juan J., Administrative Judge:

Applicant demonstrated that circumstances beyond her control contributed to or aggravated her financial problems. She should have been more diligent addressing her delinquent accounts. Notwithstanding, she recently paid off all of her delinquent accounts (except one) and demonstrated that she is living within her financial means. Her financial problems are resolved or are being resolved. Clearance granted.

Statement of the Case

Applicant submitted her first security clearance application (SCA) on May 24, 2016, seeking eligibility for a clearance required for her position with a federal contractor. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued her a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations) on January 26, 2018. She answered the SOR and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA) on February 12, 2018.

DOHA assigned the case to me on July 19, 2018. The Notice of Hearing (NOH) was issued on November 28, 2018, setting a hearing for December 12, 2018. At the

hearing, the Government offered four exhibits (GE 1 through 4). Applicant testified, presented favorable character testimony through one witness, and submitted three exhibits. (AE 1 through 3) All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on January 2, 2019.

Procedural Issue

Applicant affirmatively waived her right to 15-days of advanced notice of her hearing. (Tr. 11-12)

Findings of Fact

In her SOR answer, Applicant admitted the factual allegations in SOR ¶¶ 1.a, 1.b, 1.d through 1.f, and 1.h. She denied the allegations in SOR ¶¶ 1.c and 1.g. Applicant's admissions to the SOR and those at her hearing are incorporated herein as findings of fact. After a thorough review of the record evidence, including her testimony and demeanor while testifying, I make the following additional findings of fact:

Applicant is a 38-year-old employee of a federal contractor. She completed a bachelor's degree in May 2012, and a master's degree in 2015, both in criminal justice. She married her first spouse in 2007, separated in 2009, and divorced in 2012. She married her second spouse in 2012 and divorced in 2016. She has two children, ages 18 and 10.

In her May 2016 SCA, Applicant disclosed that she had financial problems that included a repossessed car and numerous delinquent credit accounts, most of them alleged in the SOR. Applicant credibly explained that her financial problems resulted from her extensive periods of unemployment, her 2012 divorce, several relocations to different states seeking help from family members or job opportunities, and she being the sole provider for her children. Applicant noted that one of her children is entitled to court-ordered financial support; however, the father only provides sporadic support and is in arrears. (Tr. 25) Additionally, Applicant's 78-year-old mother developed breast cancer, and Applicant moved to another state to care for her mother and provided her with some financial assistance.

Applicant's employment history shows that she worked as a city police officer between 2001 and October 2005. She was laid off after a hurricane destroyed the city's infrastructure and was unemployed between October 2005 and June 2006. She was employed between June 2006 and February 2009, as an assistant bank manager. She was unemployed between February 2009 and January 2010. She was employed during a probationary period as a city police officer between January 2010 and December 2012. She was not offered the position after the probationary period ended, and was unemployed between December 2011 and October 2012.

Applicant was employed as a part-time legal clerk between October 2012 and August 2014, and unemployed between August 2014 and November 2014. She was

employed with a Federal agency between November 2014 and January 2015, and unemployed between January and March 2015. She was rehired by the federal agency in March 2015 and worked there until March 2016. Her current employer and clearance sponsor, a federal contractor, hired Applicant in March 2016, and she has been working there until the present.

Most of the alleged SOR debts date back to the period surrounding Applicant's 2009 marital separation and 2012 divorce. She stated that she did not address her delinquent debts sooner because she believed they were paid by her ex-husband after the divorce. She realized she had delinquent debts when she received the January 2018 SOR. Applicant explained that even if she had known about her delinquent debts sooner, she was the sole breadwinner of the family, and her income was insufficient to pay her family's living expenses and pay her debts.

Since January 2018, Applicant has been diligently addressing her delinquent accounts. The SOR alleged eight delinquent or charged-off accounts. Applicant's documentary evidence (AE 1) shows that she settled and paid seven of the SOR debts (¶¶ 1.a through 1.f and 1.h).

The remaining debt, SOR ¶ 1.g, alleged a delinquent car note for \$12,985. Applicant and her first husband purchased a car in 2008. When they separated in 2009, her ex-husband promised to make the car payments, but he failed to do so. When the creditor confronted her with the delinquent payments, she voluntarily surrendered the car to the creditor. I note that the debt is more than seven years old, and as such it is uncollectable. Her ex-husband has some responsibility for paying the debt. Additionally, Applicant disputed the debt (GE 2), and it is no longer reflected on Applicant's more recent credit reports.

Applicant acknowledged that she should have been more diligent paying her delinquent accounts. However, she believes she was doing the best she could do under her circumstances. She understands the seriousness of the security concerns raised by her financial problems. Applicant credibly promised to timely pay her debts in the future and to resolve her financial problems.

Applicant believes that with her current income, her financial situation is now stable, and she will be able to maintain her financial responsibility and eligibility for a clearance. Her hourly wage is \$30.80, and she makes between \$75,000 and \$85,000 a year, depending on overtime. Applicant has not received financial counseling, but she is following a budget, subscribed to credit reporting agencies to keep track of her finances, and purchased books to help her improve her credit. (Tr. 22-23).

Applicant owes about \$130,000 in student loans. She is current on her student loan payments and is paying them under an income-based repayment plan. Applicant understands that for her to be eligible for a clearance, and her job with a Federal contractor, she has to maintain and demonstrate her financial responsibility. A review of

Applicant's most recent credit reports shows that she has no current delinquencies, and she is keeping up on her finances.

Policies

The SOR was issued under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), implemented by the DOD on June 8, 2017.

Eligibility for access to classified information may be granted "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, § 2. 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).

The AG list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in SEAD 4, App. A ¶¶ 2(d) and 2(f). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; SEAD 4, ¶ E(4); SEAD 4, App. A, ¶¶ 1(d) and 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

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. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds . . .

Applicant's history of financial problems is documented in the record. AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts"; and "(c) a history of not meeting financial obligations." The record established the disqualifying conditions, requiring additional inquiry about the possible applicability of mitigating conditions.

The following 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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.¹

¹ 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,

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).

All of the above financial considerations mitigating conditions are raised by the facts in this case and mitigate the security concerns. She developed financial problems because of numerous periods of unemployment, her divorce, her being the sole family provider, and caring for and providing some financial assistance to her mother. Applicant recently paid off all the SOR debts (except SOR ¶ 1.g). Her ex-husband has some responsibility for the debt in SOR ¶ 1.g. She currently has no delinquencies reflected in her credit reports and appears to be living within her financial means. Applicant's financial problems occurred under circumstances unlikely to recur, and they do not cast doubt on her current reliability, trustworthiness, or judgment.

Applicant's efforts to resolve her debt, although recent, show diligence and responsibility in the handling of her financial obligations. Applicant has not received financial counseling, but she is following a budget. Considering the evidence as a whole, Applicant resolved or is resolving her financial problems and her finances are under control. She credibly promised to maintain her financial responsibility. Her earnings should be sufficient to pay for her family's living expenses and current debts.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. SEAD 4, App. A, ¶¶ 2(a) and 2(d). I have incorporated my comments under Guideline F in my whole-person analysis. Some of these factors were addressed under that guideline, but some warrant additional comment.

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 is a 38-year-old employee of a federal contractor. She has worked for her employer since 2016. This is her first clearance application. The record evidence is sufficient to establish that her financial problems are resolved or are being resolved, and her finances are under control. Applicant demonstrated a recent track record of paying her financial obligations. She is fully aware of the security concerns raised by her failure to maintain financial responsibility. She promised to maintain her financial responsibility. The financial considerations security concerns are 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:	FOR APPLICANT
Subparagraphs 1.a - 1.h:	For Applicant

Conclusion

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

JUAN J. RIVERA
Administrative Judge