



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



In the matter of:)	
)	
)	
)	ISCR Case No. 18-00442
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: Ryan Nerney, Esq.

03/29/2019

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant failed to mitigate the security concerns regarding her financial considerations. Eligibility for access to classified information is denied.

Statement of Case

On March 2, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make the affirmative determination of eligibility for a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken 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* (January 2, 1992), as amended (Directive); and Security Executive Agent, Directive 4, *National Security Adjudicative Guidelines* (SEAD 4), dated June 8, 2017.

Applicant responded to the SOR on April 5, 2018, and requested a hearing. The case was assigned to other judges on May 13, 2018 and July 13, 2018, respectively, and reassigned to me on January 9, 2019. The case was scheduled for hearing on February 13, 2019. The Government's case consisted of five exhibits (GEs 1-5), which were admitted without objection. Applicant relied on one witness (herself) and 15 exhibits (AEs A-O), which were admitted without objection. The transcript was received on February 26, 2019.

Procedural Issues

Before the close of the hearing, Applicant requested the record be kept open to permit her the opportunity to supplement the record with documented responses from her credit reporting agencies to her disputed accounts. For good cause shown, Applicant was granted 30 days to supplement the record. (Tr. 80) Department Counsel was afforded five days to respond.

Within the time permitted, Applicant provided eight separate documents that were comprised of the following: excerpts from her 1099-Cs, proof of no collection accounts, disputes and outcomes, comprehensive dispute history and outcomes, a personal statement of Applicant, a student loan repayment plan, and additional letters of recommendation. Applicant's submissions were admitted as AEs P-W

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated 14 delinquent debts exceeding \$134,000. Allegedly, these debts remain unresolved and outstanding.

In her response to the SOR, Applicant admitted all but one of the allegations in the SOR with explanations. She admitted SOR debts ¶¶ 1.b-1.n and denied the allegations covered by SOR ¶ 1.a for stated reasons that she is in full compliance with her loan modification agreement of 2014. For the remaining debts, she claimed extenuating circumstances associated with periods of unemployment and difficult circumstances during the lengthy economic downturn beginning with the 2008 market crash. She further claimed that her remaining listed debts no longer appear on her 2018 credit report. She claimed that she has received financial counseling on the debts in issue. And, she claimed that she is honored to be working for her current employer and the Army as a contractor.

Findings of Fact

Applicant is a 39-year-old statistician for a defense contractor who seeks a security clearance. Most of the allegations in the SOR were admitted by Applicant and are adopted as relevant and material findings. The remaining allegation is reserved for fact-finding based on the developed evidence at hearing. Additional findings follow with respect to Applicant's admitted allegations

Background

Applicant cohabits with her partner and has one child (age six months) from this relationship. (GEs 1-2; Tr. 19) She earned a bachelor's degree from a prestigious private university in foreign affairs and a master's degree in economics from a respected state university in her former state of residence in December 2005. (GEs 1-2 and AEs G-I) She attended graduate classes in statistics from the same state university between January 2014 and May 2016 but earned no degree or diploma. (GEs 1-2 and AEs G-I) Since 2017, she earned a graduate certificate from an accredited state university in her current state of residence and is 12 hours short of earning a master's degree from the same university. (AEs G-I) Applicant reported no military service.

Since January 2018, Applicant has worked full time as a statistician for her current employer while she completes her graduate education studies. (GEs 1-2 and AEs G-H and U; Tr. 20) Between 2015 and 2017 she worked for a technical services company in her former state of residence as an analyst. (GE 1) Previously, she worked for other employers in various technical capacities. (GEs 1-2 and AEs G-H and U) She held a security clearance for a brief period in 2015 while she interned for the Army. (Tr. 21) For almost several months (October 2012-January 2013), she was unemployed. (GEs 1-2) During this period of unemployment, she devoted her energies to the real estate business her parents started in her former state of residence and earned very little money (GE 1; Tr. 21-24)

Applicant's finances

Between 2006 and the present, Applicant has operated a residential property business with her mother. Between 2006 and 2008, she and her mother purchased 11 residential properties (single family homes) in her prior state of residence that ranged in price from \$69,000 to \$180,000. (GEs 2-5; Tr. 24-26, 47-48) Applicant financed their purchases primarily with mortgages in her name individually, with some initial contributions from her mother who sold her home to help with the initial financing. (GEs 2-5; Tr. 25-26, 66-68, 70) In 2018, Applicant and her mother purchased a 12th home in her prior state of residence and financed their purchase with a \$64,000 mortgage. (GE 5; Tr. 47) Applicant and her mother purchased these properties with the primary goal in mind of raising money for their retirement. (Tr. 25-26) All told, Applicant generated loan proceeds for her residences totaling more than \$1 million based on her sole credit. (GEs 2-5; Tr. 26-27, 45-46)

Applicant has consistently borne full responsibility for the financing and management of the 12 properties she purchased with her mother. (Tr. 26) Credit reports and Applicant's payment history confirm that all of the residences are currently rented, and she is current with all of her mortgages. (GEs 2-5; Tr. 27-28, 46, 67) However, these properties have little equity, and some are underwater according to Applicant. (Tr. 53-54)

Besides the first mortgages on the 12 properties Applicant financed, Applicant secured a second mortgage on one of her properties in the amount of \$45,000 in 2006.

(GEs 2-5; Tr. 26-27, 70-71) The loan became delinquent in 2013 while Applicant was unemployed. (Tr. 28-29) After talking with the lender about her situation in 2014, she was able to obtain a loan modification on this loan that called for monthly loan payments of \$100. (AE A; Tr. 29-30) Applicant documented monthly payments since 2014 in compliance with her modification agreement. (AE A; Tr. 29-30, 70)

Between 2008 and 2013, Applicant struggled with her finances and used her credit cards to finance her household necessities and business expenses associated with her rental properties. (GEs 2-5 and AEs G-H and U; Tr. 23, 71) Altogether, Applicant accumulated over \$134,000 in delinquent credit card debt during this 2008-2013 time frame. (GEs 2-5) Three of the listed delinquent SOR debts (¶¶ 1.b-1.d) were canceled by the common creditor following Applicant's unsuccessful efforts to dispute inaccuracies and work out payment arrangements for the balances owed on all three delinquent accounts. (AEs B-D; Tr. 31-33)

In December 2017, the creditor for SOR debts ¶¶ 1.b-1.d issued 1099-C cancellation of debt notices for each of the debts that total approximately \$21,000. (AEs B-D; Tr. 31-32) Applicant is in agreement that the debts covered by the cancellation of debt notices for SOR debts ¶¶ 1.b-1.d were in default at the time the cancellation notices were issued and had not previously been addressed by her. Because of the cancellation of the debts by the creditor for SOR debts ¶¶ 1.b-1.d, federal taxes became due on the \$21,000 in imputed income from the debt cancellations. Excerpts from Applicant's 2017 federal tax return document Applicant's inclusion of the imputed \$21,000 as income from the canceled debts. (AE P) Applicant, accordingly, is credited with including her cancellation of debts covered in AE F as imputed income in her 2017 federal income tax return. Whether she ultimately owed any taxes for tax year 2017 after accounting for deductions is unclear. (AEs B-D and P; Tr. 33)

Applicant, however, has not been able to address any of the remaining credit card debts that exceed \$99,000 in the aggregate. (GEs 2-5; Tr.33-39) Applicant disputed these debts on grounds of inaccuracy (without disputing the entire amounts of the reported debts), and they have since been removed from her 2018 credit reports. (GEs 2-3 and 5 and AEs G-H; Tr. 39, 68-69) None of the removed debts, though, reflect documented disputed amounts, and Applicant did not provide any corroborative proof of her dispute letters to the credit reporting agencies, who never responded to her. (GEs 2-5 and AEs E-F; Tr.33-39, 72-79) Because Applicant has produced no evidence of her addressing any of these SOR debts, the removal of these remaining consumer debts from her credit reports cannot reasonably be attributed to payment or successful dispute initiatives, as opposed to other reasons like payment satisfaction or the age of the debts. (Tr. 73-78) Currently, Applicant has no specific plans in place to address any of her remaining delinquent debts covered in the SOR. (Tr. 68)

For lack of sufficient income sources of her own and the economic unfeasibility of raising rents on any of the 12 properties she owns, Applicant has not been able to make any headway with her listed SOR debts and remains at risk to revenue setbacks on her real estate should she encounter loss of tenants or other unanticipated real estate

expenditures in the future. (Tr. 82-83) She has been a full-time student throughout 2017 and 2018, while reportedly holding down a full-time position since 2018, and has not been in a position to work out any payment plans with her remaining creditors or pursue any realistic opportunities to consolidate her debts. (GE 4 and AEs G-H and U; Tr. 39-41)

To her credit, Applicant enrolled in a financial credit counseling course in February 2019 and earned a certificate of counseling in February 2019. (AE L) At the time of her counseling, Applicant did not request a debt repayment plan preparation from her counselor, and none was prepared. (AE L) From her counseling sessions, she acquired lessons about the importance of budgeting and staying within budget. (AE L; Tr. 83) But without a payment plan or plans in place, predictable assessments of her ability to mount serious repayment efforts in the foreseeable future cannot be made.

Applicant currently grosses about \$106,000 a year based on her 2017 federal tax return and nets about \$4,400 a month from her current employer and maybe \$1,000 a month from her real estate investments. (AE P; Tr. 39-41) She has a 401(k) retirement plan with about \$20,000 in the account. (Tr. 42) Significantly, she expressed no plans at this time to use any of her monthly discretionary income to address any of her SOR debts. Her repayment plans at this time, though, are limited to paying off the roughly \$155,000 in aggregate student loans she has, once she completes her graduate studies, by setting aside \$1,500 a month to pay off the loans. (AE V)

Character references

Applicant is well-regarded by friends, former colleagues and tenants, and professors who have interfaced academically in her current graduate program. (AEs K and W) All credit Applicant with loyalty, a strong work ethic, honesty, reliability, and trustworthiness.

Policies

The SEAD 4, App. A lists guidelines to be used by administrative judges in the decision-making process covering security clearance cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and many of the conditions that could mitigate security concerns.

These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with App. A. AG ¶ 2©.

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in App. A, AG ¶ 2(d) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person.

The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk. The following App A, AG ¶ 2(d) factors are pertinent: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

Financial Considerations

The Concern: 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 or sensitive 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 acts or otherwise questionable acts to generate funds. . . . AG ¶ 18.

Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995).

As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. “[S]ecurity-clearance determinations should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Security concerns are raised over Applicant's accumulated delinquent debt that she has amassed over a five-year period (2008-2013) Altogether, Applicant accrued over \$135,000 in delinquent debt, mostly from credit cards she used to finance her residential properties and manage her home necessities. Most of her debts remain unresolved and outstanding.

Financial Concerns

Applicant's incurring of delinquent debts warrant the application of three of the disqualifying conditions (DC) of the Guidelines: DC ¶¶ 19(a), "inability to satisfy debts"; 19(b), "unwillingness to satisfy debts regardless of the ability to do so"; and 19(c), "a history of not meeting financial obligations."

Financial stability in a person cleared to protect classified information is required precisely to inspire trust and confidence in the holder of a security clearance that entitles him to access classified information. While the principal concern of a security clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in cases involving debt delinquencies.

Historically, the timing of addressing delinquent debts is critical to an assessment of an applicant's trustworthiness, reliability, and good judgment in following rules and

guidelines necessary for those seeking access to classified information or to holding a sensitive position. See ISCR Case No. 14-06808 at 3 (App. Bd. Nov. 23, 2016); ISCR Case No. 14-01894 at 5 (App. Bd. Aug. 18, 2015). Applicant's cited extenuating circumstances (i.e., unemployment, the 2008 market crash, and her education commitments) provide some mitigation credit for her failure to address her accrued debts. Based on her cited circumstances, MC ¶ 20(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," has some application to Applicant's situation.

Considering all of Applicant's cited circumstances, the "acting responsibly" prong of MC ¶ 20(b) has only limited application and cannot excuse her past failures to address her debts with evidence of payments and payment plans that reflect at least the beginnings of a good track record of addressing her remaining consumer debts. Failure to make more good-faith efforts to address her remaining debts, precludes her from fully availing herself of the benefits of MC ¶ 20(b). See ISCR Case No. 15-06440 at 3-5 (App. Bd. Dec. 26, 2017); ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. Nov. 29, 2005)). For similar reasons, MC ¶ 20(d), "the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts," is not available to her.

To be sure, all of Applicant's remaining SOR debts have since been removed from her credit reports. Historically, removal of delinquent debts from an applicant's credit reports has never been enough to satisfy the good-faith requirements for favorably resolving the applicant's delinquent debts. "That some debts have dropped off his or [or her] credit report is not meaningful evidence of debt resolution." ISCR case No. 14-05803 at 3 (App. Bd. July 7, 2016)(citing ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015)) The Fair Credit Reporting Act requires removal of most negative financial items from a credit report seven years from the first date of delinquency or the debt becoming collection-barred because of a state statute of limitations, whichever is longer. See 15 U.S. § 1681c. And, in Applicant's case, she could not verify whether her remaining SOR debts were removed because of her dispute letter, or for some other reason. Removal of delinquent debts by themselves is not enough without other evidence of good-faith payment initiatives to favorably resolve raised debt issues.

To her credit, Applicant has made some progress with some of her debts. She is to be credited with keeping her real estate first mortgages in current status to date. Compliance with the terms of her modification agreement with creditor ¶ 1.a and the cancellation of debts with SOR creditors ¶¶ 1.b-1.d. and her ensuing inclusion of imputed income from these debt cancellations on her 2017 federal income tax return is worthy of credit to Applicant as well. In recognition of these combined efforts, she is entitled to partial application of MC ¶ 20(d), "the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts," of the financial guideline. Only partial benefit of MC ¶ 20(c) "the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is

being resolved or is under control.” For while the counseling was of meaningful benefit to her in improving her understanding of the importance of budgeting and managing her finances generally, she has not been able to use the counseling to make further gains in resolving her remaining SOR debts.

For lack of documented corroboration, other potentially applicable mitigating conditions are not available to Applicant. Application of MC ¶ 20(e), “the individual has a reasonable basis to dispute the legitimacy of the past-due debts 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,” requires documentation of Applicant’s reasonable dispute requests to the credit reporting agencies, which Applicant could not provide.

In evaluating Guideline F cases, the Appeal Board has stressed the importance of a “meaningful track record” that includes evidence of actual debt reduction through voluntary payment of debts. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) In Applicant’s case, her failure to demonstrate more concerted steps in resolving her SOR debts, a necessary beginning to stabilizing her finances consistent with clearance eligibility criteria, is concerning. Her accumulated delinquent debt accruals and heightened leveraging risks associated with her real estate portfolio place her at considerable disadvantage in her ongoing efforts to bring her finances under control. Taken together, her modest efforts to date in addressing her remaining SOR debts are not enough at this time to warrant favorable findings and conclusions with respect to raised security concerns about her finances.

Whole-Person Assessment

Whole-person assessment is unfavorable to Applicant. She has shown insufficient progress to date in addressing her remaining SOR-listed debts, even with her increased discretionary income. While her payment efforts associated with her mortgage debts, and to a lesser extent, her honoring of her tax obligations in connection with her three SOR debt cancellations, merit positive credit.

Applicant’s general contributions to the U.S. defense effort through her Army intern service and her statistical work are considerable and merit a good deal of respect and appreciation. The endorsements she has received from former colleagues, tenants, and her former graduate school professor reflect positive on her overall loyalty, honesty, reliability and trustworthiness. And, most importantly, the achievements she has established in her academic pursuits are impressive and will serve her well in her chosen field of statistics. But at this time, though, her positive credits are insufficient to surmount historical trust and judgment issues associated with her debt accumulations and inability to manage her finances in a sound and prudent manner, consistent with meeting the high standards set for approval of eligibility to hold a security clearance.

Overall, Applicant's actions to date in addressing her finances reflect too little evidence of restored financial responsibility and judgment to overcome reasonable doubts about her trustworthiness, reliability, and ability to protect classified information or occupy a sensitive position. See AG ¶ 18. Conclusions are warranted that her finances are insufficiently stabilized at this time to meet minimum eligibility requirements for holding a security clearance. Unfavorable conclusions are entered with respect to the allegations covered by SOR ¶¶ 1.e-1.n. Favorable conclusions are entered for SOR ¶¶ 1.a-1.d. Eligibility to hold a security clearance under the facts and circumstances of this case is inconsistent with the national interest.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

Subparagraphs 1.e-1.n:	Against Applicant
Subparagraphs 1.a-1.d:	For Applicant

Conclusions

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility to hold a security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge

