



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



In the matter of:)
)
) ISCR Case No. 18-01111
)
Applicant for Security Clearance)

Appearances

For Government: Andrea Corrales, Esq., Department Counsel
For Applicant: *Pro se*

03/15/2019

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 six of her delinquent accounts and filed for bankruptcy protection to resolve the remaining debts. Her financial problems are being resolved and are under control. Clearance granted.

Statement of the Case

Applicant submitted her most recent security clearance application (SCA) on November 11, 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 May 11, 2018. She answered the SOR and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA) on June 8, 2018.

DOHA assigned the case to me on September 12, 2018. The Notice of Hearing (NOH) was issued on November 28, 2018, setting a hearing for January 9, 2019. At the hearing, the Government offered three exhibits (GE 1 through 3). Applicant testified and

submitted five exhibits. (AE 1 through 5) AE 5 was received post-hearing. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on January 16, 2019.

Findings of Fact

In her SOR answer, Applicant admitted the 14 financial allegations in SOR ¶¶ 1.a through 1.n. 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 29-year-old employee of a federal contractor. She graduated from high school in 2007, and completed some college courses, but has not earned a degree. Shortly after high school, she enlisted in the U.S. Air Force where she honorably served on active duty until August 2012. She married her spouse in 2011. They have two children, ages six and one.

In her November 2016 SCA, Applicant disclosed that she had financial problems that included two voluntarily repossessed cars, delinquent rent payments, and delinquent credit accounts. Most of the disclosed debts are alleged in the SOR. Applicant explained that her financial problems resulted from her 2012 discharge from the service and her husband's 2014 discharge, both of which resulted in a loss of income. Without his earnings, they were unable to pay their living expenses and accumulated debts.

After her discharge from the Air Force in 2012, Applicant enlisted in the Air National Guard-Reserve (ANGR) where she worked part-time between September 2012 and May 2013. She worked in an ANGR full-time position between May 2013 and January 2015. She has been in an ANGR part-time position since January 2015. Her current rank is staff sergeant (E-5). Because of her position in the Air Force, she has held a secret clearance since 2007, which has been continued to present. A federal contractor, her current employer and clearance sponsor, hired Applicant as a systems administrator in August 2015, and she was been working there until the present.

Most of the alleged SOR debts date back to the period between her discharge from the service in 2012, and her husband's discharge in 2014. Applicant testified that she was unable to address her delinquent debts sooner, or more responsibly, because their earnings were insufficient to pay for their living expenses and accumulated debts. After her pregnancy discharge, she was supposed to become a stay-at-home mom, and her spouse was supposed to be the primary breadwinner. She also held a part-time ANGR position.

Applicant's spouse was discharged under a force-reduction program, and he was unable to find a job. Additionally, her husband has a post-traumatic stress disorder (PTSD) medical condition that has hampered his search for full-time employment.

As of her hearing day, Applicant's husband was attending a trade school to become an electrician. His studies are being paid by the Department of Veteran's Affairs (VA) and he receives a \$2,000 monthly housing allowance. She anticipates he will graduate around November 2019. Applicant's current monthly income is about \$3,242, and their gross income is about \$5,242. Applicant's budget shows a total of \$4,868 in monthly expenses, with little money left over after paying their living expenses.

Applicant and her husband have been contemplating filing for bankruptcy protection since 2016. She met with a bankruptcy attorney back in 2016, but resisted the idea. They did not file for bankruptcy protection because they were concerned about the security clearance consequences of filing for bankruptcy and because they did not have the money to pay the bankruptcy attorney fees – about \$1,500.

Applicant purchased financial books and sought information on how to resolve her delinquent debts. She tried to follow "Dave Ramsey's snowball effect" process to pay her debts. It recommends paying the smallest debt first, and continuing to pay the debts one by one. Applicant determined that the system would be okay to pay their small debts, but they would never be able to address the larger delinquent debts. Applicant met with a financial counselor from her ANGR unit in June 2018. After running the numbers, the financial counselor recommended Applicant file for bankruptcy protection.

Applicant's evidence shows that she paid 6 of the 14 delinquent SOR debts: ¶¶ 1.h (\$248); 1.i (\$185, AE 5); 1.k (\$324, AE 5); and 1.l through 1.n. Applicant anticipates resolving the remaining eight SOR debts through the Chapter 7 bankruptcy process, which was filed in January 2019. (See AE 5).

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. Applicant understands that for her to be eligible for a clearance, and to maintain her job with a federal contractor and the ANGR, she has to maintain and demonstrate her financial responsibility.

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;

(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; 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, 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].

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 circumstances beyond her control, including her pregnancy, her discharge from the service, her husband's discharge from the service, his inability to find job, and his PTSD medical condition.

Applicant paid six SOR debts and she intends to resolve the remaining debts through the Chapter 7 bankruptcy process. 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 received financial counseling and she is following a budget. Considering the evidence as a whole, Applicant is resolving her financial problems and her finances are under control. She credibly promised to maintain her financial responsibility. After her bankruptcy discharge, 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.

(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 29-year-old employee of a federal contractor. She served on active duty in the Air Force five years (2007 – 2012), and has continued to serve in the ANGR to present. She has worked for her current employer since 2015. The record evidence is sufficient to establish that her financial problems are being resolved, and her finances are under control. 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.n:	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