



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



In the matter of: )  
)  
) ISCR Case No. 18-01134  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Moira Modzelewski, Esq., Department Counsel  
For Applicant: *Pro se*  
02/08/2019

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant’s evidence is insufficient to establish that she has been financially responsible and that her financial problems are being resolved or are under control. Clearance is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on March 1, 2015. She was interviewed by government investigators in April and July, 2016, and submitted responses to the Defense Office of Hearings and Appeals (DOHA) interrogatories in March 2018. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued a statement of reasons (SOR) on April 27, 2018, alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR (undated), submitted documentary evidence, and requested a hearing before an administrative judge from DOHA.

DOHA initially assigned the case to other administrative judge and issued a notice of hearing on October 18, 2018, setting the hearing for November 6, 2018. DOHA reassigned the case to me on October 30, 2018. At the hearing, the Government offered six exhibits (GE 1 through 6). Applicant testified on her own behalf and submitted four exhibits (AE 1 through 4). AE 4 was received post-hearing. All exhibits

were admitted as evidence without objections. DOHA received the hearing transcript (Tr.) on November 15, 2018.

### **Findings of Fact**

Applicant admitted SOR allegations 1.a, 1.d, and 1.e. She denied SOR allegations 1.b, 1.c, and 1.f through 1.i. Her admissions to the SOR allegations, and those at her hearing, are incorporated herein as findings of fact. After a thorough review of the record evidence, I make the following additional findings of fact:

Applicant is a 35-year-old employee of a federal contractor. She completed a bachelor's degree in communications in 2005 and a master's degree in adult learning and instructional technology in 2010. Applicant married in 2007 and divorced in 2009. She has a thirteen-year-old daughter of this marriage. She married her current husband in 2013 and now has a step-child.

Applicant has been consistently employed since 2005. She worked for a bank between 2005 and 2009, for the Army between 2008 and 2011 (overlapping jobs), and for the Air Force between 2011 and 2014. A federal contractor hired Applicant in June 2014 and is currently sponsoring the continuation of her clearance. She is a senior consultant and supervises two employees. She travels frequently to different military installations to teach a new accounting system. (Tr. 24) She was first granted a secret clearance in 2008, which has been continued to present.

Applicant disclosed in her 2015 SCA that she had financial problems, including about \$28,000 in delinquent student loans (received during 2006 and 2007), and delinquent accounts placed for collection or charged off, allegedly resulting from her 2009 divorce. She also disclosed that she travelled to Panama to visit family and friends for about a week each time in 2007 and 2012. She was questioned about her delinquent debts during her April and July 2016 interviews, some of which are alleged in the SOR. The status of the debts alleged in the SOR is as follows:

1. SOR ¶ 1.a alleged a charged-off car loan owing \$18,535. Applicant admitted this debt. She presented documentary evidence of one \$500 payment made in July 2016 and one \$500 payment made in October 2018. She claimed the debt was reduced to \$12,905 when she turned in the car to the creditor (sometime in 2016-2017), and that she had made a payment arrangement to satisfy the debt. Applicant testified that "every two months I have been attempting to make \$500 payments to decrease the balance." (Tr. 27) She presented no documentary evidence to show the debt has been reduced to \$13,000, that she settled it or established a payment arrangement, or that she made any additional payments to satisfy the debt. This debt is unresolved.

2. SOR ¶¶ 1.b (\$10,328) and 1.c (\$7,947) alleged delinquent student loans. Applicant denied she owed any money to the two alleged collection agencies, but she admitted that she owed four student loans that were currently in forbearance. The documentary evidence shows Applicant obtained the loans in 2006 and 2007, and they

became delinquent for lack of payment. In about 2014, she entered into a rehabilitation program, the student loans were purchased by other creditor, and the new creditor placed the four student loans in forbearance. (AE 4) Applicant claimed she is trying to make consistent payments on all her student loans, but she failed to submit documentary evidence to corroborate her claim of payments made. The student loans alleged in SOR ¶¶ 1.b and 1.c are resolved, but Applicant still owes over \$31,000 in student loans that are currently in forbearance.

3. SOR ¶¶ 1.d and 1.e alleged delinquent credit-card accounts owing \$2,469 and \$2,174, respectively, to the same creditor. Applicant admitted these were her accounts and stated that the debts were delinquent because her “ex-spouse [was] not fulfilling divorce obligations to make the payments on the accounts.” (SOR answer) I note that the divorce decree in evidence (AE 1) has no provisions concerning the allocation of marital assets or debts.

Applicant’s documentary evidence shows that she entered into a \$740 settlement agreement with the creditor for the account alleged in SOR ¶ 1.d, and \$652 to pay off the debt alleged in SOR ¶ 1.e. Both settlement agreements require Applicant to pay off the money not later than June 2019. Applicant claimed she made partial payments on both accounts and that she only owes \$350 and \$300 (respectively) to pay off the accounts. She presented no documentary evidence of any payments made in accordance with the settlement agreement.

4. SOR ¶ 1.f alleged a \$1,711 delinquent debt owed to a telecommunications provider, in collection by another company. SOR ¶ 1.g alleged a \$467 delinquent debt owed to the same telecommunications provider. Applicant discussed both debts with a government background investigator during her April 2016 interview. She believed both debts were the same, but they were alleged twice. She told the investigator that this was a joint account opened by her and her ex-husband. She claimed that he was supposed to pay the accrued debt after the divorce and failed to do so. She promised to contact the creditor and make payment arrangements. (GE 2) She presented no documentary evidence to show she contacted the creditor, or that she made any payments to resolve the debt.

Subsequently, Applicant disputed both debts through the credit bureau. (GE 5) She stated in her SOR answer: “I deny [these] claims because [they were] deemed fraudulent after investigation by the credit bureaus. Apparently, the debts were removed from her credit report as a result of her dispute.

5. SOR ¶ 1.h alleged a \$321 delinquent debt owed to a telecommunications provider, in collection by another company. During her April 2016 interview, Applicant disputed the debt, stating that she did not recognize the creditor, and indicated she would dispute it through the credit bureau. In her answer to the SOR, Applicant stated that she had paid the original creditor, and she was disputing the collections agency’s claim. She presented no documentary evidence of any payments made or disputes filed.

6. SOR ¶ 1.i alleged a \$293 delinquent debt in collection. The documentary evidence shows Applicant paid \$190 towards the debt, and it is no longer reflected on recent credit reports.

Applicant believes she has done her best to mitigate her delinquent debts. She averred that she stays on track with her finances and keeps everything in order. She believes she has “turned a leaf” with respect to her finances. She attempted to reach all of her creditors and to establish payment agreements. She tries to make all of her debt payments on time, and does not overextend herself financially. Her intention has always been to satisfy her debts. She believes she is making a decent amount of money (about \$5,000 monthly after taxes) and her income-to-debt ratio is sufficient for her to pay her living expenses and her debts.

Applicant attributed her financial problems to her 2012 divorce, and she said that she was a victim of identity theft. She failed to present documentary evidence to show she was a victim of identity theft. She believes she has taken the necessary steps to correct her financial problems. She enrolled in credit-monitoring and credit-counseling programs, and placed a lock on her credit. She promised to continue making payments on time and stay on top of her financial situation. She believes that she has matured and is now financially stable.

Applicant considers her current financial situation to be good. She lives within her financial means, and is trying to repair her credit. She believes she has changed and is now a financially responsible person. She promised to repair her credit and to be financially responsible.

### **Policies**

The SOR was issued under Executive Order 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 *National Security Adjudicative Guidelines* (AG), implemented by Security Executive Agent Directive (SEAD) 4, which are effective June 8, 2017, which are applicable to all adjudicative decisions issued on or after 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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. 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 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 or otherwise questionable acts to generate funds . . . .

Applicant's history of financial problems is documented in the record. Between 2006 and 2007, she obtained four student loans that became delinquent. Additionally, she had seven delinquent consumer accounts that were in collection or charged off. AG

¶ 19 provides three disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability to satisfy debts”; “(b) unwillingness to satisfy debts regardless of the ability to do so”; and “(c) a history of not meeting financial obligations.” The record established the above disqualifying conditions, 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;<sup>1</sup> 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.

The Appeal Board concisely explained Applicant’s responsibility for proving the applicability of mitigating conditions as follows:

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<sup>1</sup> 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].

(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. Jun. 4, 2001)).

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. Sep. 24, 2013).

Some of the financial considerations mitigating conditions are partially raised by the facts in this case; however, they do not mitigate the security concerns. AG ¶ 20(a) is not fully applicable because Applicant's financial problems are recent and ongoing. AG ¶ 20(b) is partially applicable, but does not mitigate the financial concerns. Applicant's divorce is a circumstance beyond her control that likely contributed to her financial problems. I also considered that she was a single mother raising a child with limited support. Notwithstanding, her evidence is insufficient to establish that she was financially responsible under the circumstances.

Applicant should have been more diligent addressing her delinquent debts sooner, contacting her creditors, and paying her debts. She has been continually employed since 2005. She started working for the federal government in 2008, and was granted a secret clearance. She submitted an SCA to renew her clearance in 2015, and shortly thereafter, she was interviewed twice concerning her financial problems. Her experience holding a clearance, submitting SCA, and the interviews placed Applicant on notice that her financial problems created a security concern. Applicant promised to take care of her financial problems and claimed she had contacted her creditors and established payment agreements. Applicant's documentary evidence fell short of corroborating her claims of financial responsibility.

Applicant claimed that she participated in financial counseling and is following a budget. However, her repayment efforts show that her financial problem is not being resolved and her finances are not under control. AG ¶ 20(c) is not applicable. AG ¶ 20(e) is not applicable because she failed to show she had a reasonable basis to dispute her delinquent accounts. On the contrary, the evidence shows that during her 2015-2016 interviews, Applicant stated many of the delinquent debts were her and her husband's accounts, and promised to contact her creditors and pay them. Sometime later, she disputed the accounts, and they were removed from her credit report without her making payments on her accounts. Considering the evidence as a whole, Applicant's evidence is insufficient to mitigate the financial considerations concerns.

## **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.

Applicant, 35, has been employed with the Government and federal contractors, and has held a clearance since 2008. Her evidence is insufficient to demonstrate financial responsibility and she failed to mitigate the financial considerations concerns.

## **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, 1.d-1.h:	Against Applicant
Subparagraphs 1.b, 1.c, and 1.i:	For Applicant

## **Conclusion**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national security interests of the United States to grant eligibility for a security clearance to Applicant. Clearance is denied.

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JUAN J. RIVERA  
Administrative Judge