



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



In the matter of:)	
)	
1)	ISCR Case No. 18-01240
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

02/19/2019

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 May 13, 2016. She answered interrogatories from the Defense Office of Hearings and Appeals (DOHA) in April 2018. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued a statement of reasons (SOR) to her on May 30, 2018, alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on June 20, 2018. She submitted a one-page document with some explanations, and requested a hearing before an administrative judge from DOHA.

DOHA assigned the case to me on September 12, 2018, and issued a notice of hearing on November 13, 2018, setting the hearing for December 14, 2018. At the

¹ In April 2017, Applicant changed her name. (Tr. 12-13, See the state superior court’s Order for Name Change at GE 2.) The SOR caption is amended accordingly.

hearing, the Government offered seven exhibits (GE 1 through 7). Applicant testified and submitted no additional evidence. DOHA received the hearing transcript (Tr.) on January 7, 2019.

Findings of Fact

Applicant admitted the factual allegations in SOR ¶ 1.a, that she was \$33,395 in arrears in her \$305,325 mortgage, which was in a foreclosure status. Her admission to the SOR allegation, 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 41-year-old employee of a federal contractor. She recently completed an associate's degree and is currently pursuing her bachelor's degree. Applicant married in 2004 and divorced in 2013. She has no children.

Applicant worked as a personnel security specialist for a federal law enforcement agency between 2005 and 2012. She was unemployed between June 2012 and April 2014. She worked for a federal contractor between April 2014 and February 2015, and was unemployed between February and August 2015. She worked for a federal contractor between August 2015 and March 2016. Her current employer, a federal contractor, hired Applicant in March 2016 and is currently sponsoring the continuation of her clearance. She is a personnel security assistant. (Tr. 23)

Applicant was first granted a clearance when she was a stay-in-school student working for the federal agency in 1999. She did not remember the level of her first clearance, but stated that the DOD granted her a top-secret clearance in 2002, and subsequently other agencies granted her secret clearances related to her duties. (GE 1)

Applicant submitted a SCA in March 2010. (GE 7) She disclosed in her answers to Section 26 (Financial Record) that she had financial problems within the last seven years, including: filing for bankruptcy in 2003; having a house (purchased in February 2006) foreclosed in September 2008; and having delinquent debts in collection. Applicant explained that "due to the mortgage note being so high (\$2,800 a month) my spouse and I had to walk. No financial companies would refinance the loan." She also explained her Chapter 7 bankruptcy was discharged in 2003. She noted that she currently had some delinquent debts because her spouse has been unemployed since October 2009. (GE 7, Section 26)

The SOR concerns a single debt, a delinquent mortgage. (SOR ¶ 1.a) Applicant claimed she was delinquent in her mortgage payments because she was lied to during the purchase of the house in 2016. She was told the mortgage payment would be \$1,300, when in fact, the note payment was \$1,600. She claimed she did not know anything about escrow funds or any additional expenses for insurance and taxes. She could not afford the additional mortgage payments. She made two or three mortgage payments following the purchase of the house, and she then stopped paying the

mortgage in August 2016, because she had other living expenses to pay. Additionally, Applicant testified that she could not afford the mortgage payments because she provided financial support to her mother in an as-needed basis and incurred financial expenses related to the death of an unidentified family member. She provided no documentary evidence to support these last two claims.

At her hearing, Applicant admitted that she previously purchased a house in 2006 that was foreclosed for lack of payments in 2008. She claimed that she did not learn anything about escrow accounts from owning that property because the note payments were automatically drafted from her bank account. Applicant earns close to \$21 an hour. Her monthly take home pay is about \$2,500. She testified that she submitted several requests for a mortgage modification to the original creditor and to at least two subsequent mortgage account holders. Her last modification request is currently pending with the most recent mortgage note holder.

Although she is living in the house, Applicant has made no mortgage payments since August 2016. During 2017, she took in a renter for a period of eight months to increase her earnings to pay the mortgage. The renter paid her \$850 a month, for a total of \$6,800. Applicant claimed she saved \$1,000 from the renter's income to pay her mortgage. She presented no documentary evidence of any mortgage payments made since August 2016. She claimed that she used the rent income to pay other debts and old payday loans that she and her ex-husband incurred while married.

Applicant testified that she has been talking to telecommunication service providers, her home security service company, and other utility companies seeking to reduce the services she receives, or to cancel her service contracts, in an effort to reduce her expenses and be able to afford her mortgage payments. She presented no documentary evidence of these efforts.

Applicant noted that she purchased a 2018 car for about \$23,000 in 2017, with a monthly payment of about \$600. After realizing she was having difficulty making the monthly payments, she traded in the 2018 car for a 2007 luxury car that cost her \$12,000, with a monthly payment of \$316. (Tr. 32-36)

Applicant has not participated in financial counseling. She averred she is currently following a budget, but provided no documentary evidence to support her claim. She promised to take herself out of debt by concentrating on paying her mortgage first, and then addressing her remaining debts. She claimed she has been looking for a second job to increase her earning since 2016. As of her hearing date, she had not found any job opportunities. She promised to repair her credit and to be financially responsible in the future.

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. In June 2016, she purchased a home beyond her financial means. She made the first three payments on the mortgage and stopped making them because she could not afford to make the mortgage payments and to pay her living expenses. Although she has been living in the house, since August 2016, she has made no more mortgage payments.

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.

Four 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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;²

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 *Dormont 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).

None of the financial considerations mitigating conditions are raised by the facts in this case. AG ¶ 20(a) is not applicable because Applicant's financial problems are recent and ongoing. AG ¶ 20(b) is not applicable. Applicant claimed her 2013 divorce, providing financial assistance to her mother, and the death of a relative are circumstances beyond her control that likely contributed to her financial problems. Her evidence is insufficient to show that those factors contributed to or aggravated her financial situation. She purchased the property on her own three years after the divorce. She presented little evidence to articulate the extent of her financial help to her mother, or how the death of a relative impacted her financial situation. Moreover, Applicant failed to establish that she was financially responsible under the circumstances.

Applicant has not participated in financial counseling. She claimed she is currently following a budget, but failed to provide documentary evidence of a viable budget. I find Applicant's efforts to pay her mortgage lacking. Particularly, when she

² 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)).

purchased a 2018 car in 2017 above her financial means, and traded it in a couple of months for a 2007 luxury car to reduce her monthly payments from \$600 to \$316. Applicant's financial problem is not being resolved and her finances are not under control. AG ¶¶ 20(c) and (d) are not applicable.

Applicant should have been more diligent assessing her financial situation and her ability to pay her mortgage before she purchased the house. She claimed that she was the victim of a misrepresentation by the seller. She averred she was told the mortgage payment would be \$1,300, when in fact it was \$1,600 after the addition of escrow monies (insurance and taxes). Applicant repeatedly claimed she did not know anything about escrow monies and that she miscalculated what she could afford. I find her claims of lack of knowledge not credible considering that she purchased another house in 2006, which was foreclosed in 2008 for lack of payments. Applicant stated that she had to "walk" of that house because she could not afford the payments.

I note that Applicant has extensive experience working as a personnel security specialist for federal agencies and federal contractors. Additionally, she has possessed a clearance since 1999. Thus, Applicant is familiar with the security clearance process and with the security concerns raised by financial considerations. Her experience holding a clearance, submitting clearance applications, and working as a personnel security specialist placed Applicant on notice that her financial problems created a security concern. 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, 41, has been employed with the Government and federal contractors, and has held a clearance since 1999. 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, is:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against 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.

JUAN J. RIVERA
Administrative Judge