



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



In the matter of:)	
)	
)	ISCR Case No. 18-01354
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Mendez, Esq., Deputy Chief Department Counsel
For Applicant: *Pro se*

02/28/2019

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 November 3, 2017. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued a statement of reasons (SOR) on May 21, 2018, alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on June 1, 2018. She submitted a two-page statement explaining her financial problems, and she requested a decision based on the record in lieu of a hearing.

A copy of the Government’s file of relevant material (FORM), submitting the evidence supporting the security concerns, was provided to Applicant by letter dated July 19, 2018. Applicant received the FORM on August 1, 2018. She was allowed 30 days to submit any objections to the FORM and to provide material to refute, extenuate, and mitigate the concerns. The Defense Office of Hearings and Appeals (DOHA) received Applicant’s FORM response on August 27, 2018. The case was assigned to

me on October 11, 2018. Lacking any objections, I admitted and considered the Government's proposed evidence and Applicant's FORM response.

Procedural Issues

In the FORM, Department Counsel moved to withdraw the allegation in SOR ¶ 1.g.

By email dated November 29, 2018, I reopened the record and gave Applicant the opportunity to supplement the record with documentary evidence of her efforts to communicate with creditors, of any payments made, or of payment agreements established with her creditors. I also asked her for a recent statement of her debt management program showing all the monthly payments or deposits that she had made since July 2018, and whether she had paid or settled any accounts under the debt repayment program. I gave Applicant until December 14, 2018, to supplement the record. I also asked Department Counsel for a recent copy of Applicant's credit report. (See Hearing Exhibit (HE) 1). I received, marked as HE 2, and included the recent credit report in the record. Applicant failed to avail herself of the opportunity provided to supplement the record. She did not object to my consideration of HE 2.

Findings of Fact

Applicant admitted all of the remaining SOR allegations (¶¶ 1.a through 1.f). Her admissions to the SOR allegations 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 43-year-old employee of a federal contractor. She completed an associate's degree in 2017. Applicant married in 1997 and divorced in 2004. She has four children, ages 22, 19, 5, and 3.

Applicant enlisted in the U.S. Navy in 1993, and honorably served on active duty until she retired with the rank of E-6 in October 2013. Applicant has held a clearance since at least 2004. After she retired, Applicant could not find a job and was unemployed until May 2014. Applicant has been working for federal contractors since May 2014. Her current employer and clearance sponsor, a federal contractor, hired Applicant as an administrative assistant in October 2017. She requires the continuation of her clearance to retain her job eligibility.

Applicant disclosed in her 2017 SCA that she had financial problems, including delinquent personal loans in collection, garnishments of wages, debts over 120 days delinquent, a foreclosed house, and delinquent accounts placed for collection or charged off. Applicant explained that she suffered a severe financial hardship after she retired from the Navy because her only income was her retired pay and she was unemployed for about eight months. She was a single parent and the sole provider for her children, her mother, and her younger brother, both of whom came to live with her in October 2009.

Applicant was overwhelmed with her financial obligations and was unable to keep up with her debts and her living expenses. Applicant claimed that she contacted some of her creditors and collection agencies to let them know about her circumstances and to try to make payment arrangements; however, her creditors were unwilling to cooperate.

In her May 2018 answer to the SOR, Applicant stated that most of the SOR debts resulted from maintenance expenses for the house she owned at that time. She acknowledged responsibility for these debts and stated her intent to pay them off with the assistance of a debt management company. She claimed to be financially stable and that she had not acquired any additional delinquent debts. She noted that she was making \$1,375 a month on retirement income, \$1,499 per month in disability income, about \$2,500 a month in wages from her current job, and \$522 in child support.

In her August 2018 response to the FORM, Applicant stated that since receiving her SOR she enrolled in a debt management program. She anticipated paying off the delinquent accounts in 42 months. Applicant noted that her financial situation has improved significantly. She explained that the only reason she did not address the debts sooner was because she was under the mistaken belief that after the debts were charged off, there was nothing else she could do about them. After discussing her debts with the debt management company, she claimed to have taken the necessary steps to resolve her delinquent debts. Applicant presented no documentary evidence of her contract with a debt management company, of the debts included in the contract, of any payments made to her creditors or to the debt management company.

The status of the debts alleged in the SOR is as follows:

SOR ¶ 1.a alleged a credit card debt, and she owes \$5,342 that was charged-off in 2012. Applicant admitted this debt. She presented no documentary evidence of any efforts to contact the creditor, settle, or pay the debt. This debt is unresolved.

SOR ¶ 1.b alleged a credit card debt, and she owes \$4,680 that was charged-off. Applicant admitted this debt. She presented no documentary evidence of any efforts to contact the creditor, settle, or pay the debt. This debt is unresolved.

SOR ¶ 1.c alleged a credit card debt, and she owes \$4,504 that was charged off. The November 2018 credit report shows that Applicant is paying under a partial payment agreement. The debt is in the process of being resolved, and it is mitigated.

SOR ¶ 1.d alleged a credit card debt, and she owes \$2,148 that was charged off. Applicant admitted this debt. She presented no documentary evidence of any efforts to contact the creditor, settle, or pay the debt. This debt is unresolved.

SOR ¶ 1.e alleged a credit card debt, and she owes \$659 that was charged off. Applicant admitted this debt. She presented no documentary evidence of any efforts to contact the creditor, settle, or pay the debt. This debt is unresolved.

SOR ¶ 1.f alleged a credit card debt, and she owes \$516 that was charged off. Applicant admitted this debt. She presented no documentary evidence of any efforts to contact the creditor, settle, or pay the debt. This debt is unresolved.

Applicant stated that she is current on her more recent accounts, and pays her debts on time following a budget. She noted that her brother has a job and contributes to the household finances. Her mother receives social security disability payments and also contributes to the household finances and takes care of the children when Applicant is working. Her daughter just graduated from high school with honors, has a part-time job and also contributes to the household finances. Applicant contributes to two 401K retirement plans, holding approximately \$5,200 and \$1,800. She is currently enrolled in college and working on her bachelor's degree. Applicant's August 2018 financial analysis states that her monthly income is \$6,435; her monthly expenses total \$3,669; and she has \$2,766 of monthly disposable income.

Applicant repeatedly stated that she is not a security risk. She noted her military service and her love for the Navy, the United States, and her job. She claimed she has learned from her past mistakes and promised not to repeat the same financial mistakes. She averred that she has been working hard to resolve her financial problems.

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 2010 and 2018, she accumulated six delinquent 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;¹ 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:

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

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].

(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)).

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 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 unemployment, particularly as the sole provider for her children, mother, and sibling, is a circumstance beyond her control that likely contributed to her financial problems. Retirement from the military is inevitable for anyone serving beyond 20 years, and thus her retirement cannot be considered as a circumstance beyond her control. Nevertheless, she has been employed since 2014, and submitted little evidence to establish that she was financially responsible under the circumstances after she became employed.

Applicant should have been more diligent addressing her delinquent debts sooner, contacting her creditors, and paying her debts. She served in the Navy 20 years, and has held a clearance since at least 2004. Her service experience and familiarity with the security clearance process 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 attempted to contact her creditors and tried to establish payment agreements. She also claimed that she retained the services of a debt resolution company to assist her resolving her delinquent debts. Applicant’s documentary evidence fell short of corroborating her claims of financial responsibility or that she retained the services of a debt resolution company to help her address her delinquent accounts.

Applicant presented limited evidence to show that she participated in financial counseling or that she is following a working budget. Her documentary evidence is insufficient to show that her financial problem is being resolved and that her finances are under control. AG ¶ 20(c) is not applicable. AG ¶ 20(e) is not applicable because she presented no evidence of disputed 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, 43, served in the Navy on active duty for 20 years and has been employed with Federal contractors since 2014. She has held a clearance since 2004 that has been continued to present. Her evidence is insufficient to demonstrate financial responsibility and she failed to mitigate the financial considerations concerns.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards documented resolution of her delinquent debts, a healthy financial picture, and a track record of behavior consistent with her obligations, she may well be able to demonstrate persuasive evidence of her security clearance worthiness.

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 and 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d - 1.f:	Against Applicant
Subparagraph 1.g:	Withdrawn by the Government.

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