



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



In the matter of: )  
)  
) ISCR Case No. 14-06484  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Nicholas T. Temple, Esq., Department Counsel  
For Applicant: *Pro se*

10/30/2018

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant’s periods of unemployment and underemployment contributed to or aggravated her financial problems. Under her circumstances, she has been responsibly addressing her delinquent accounts. With her current earnings, she should be able to pay for her family’s living expenses and current debts. Her financial problems are being resolved. Clearance granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on September 18, 2012, seeking to continue the 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) on August 15, 2015, alleging security concerns under Guideline F (financial considerations). She requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

The Notice of Hearing (NOH) was issued on December 30, 2015, setting a hearing for January 25, 2016. That hearing was cancelled on January 14, 2016, after Applicant’s employment was terminated and DOHA lost jurisdiction over her case.

Applicant was rehired by a federal contractor on March 1, 2017. (Tr. 11) Her case was reopened as a "priority case," and DOHA assigned the case to me on June 7, 2018. A new NOH was issued on June 20, 2018, setting the hearing for June 29, 2018. Applicant affirmatively waived her right to 15-days advanced notice of her hearing both on June 11, 2018, and at her hearing. (See Hearing Exhibit 1; Tr. 11-13)

At the hearing, the Government offered two exhibits (GE 1 and 2). Applicant testified and submitted two exhibits. (AE 1 and 2) All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on July 11, 2018.

### **Procedural Issues**

Department Counsel moved to amend the August 2015 SOR on June 7, 2018. The amendment requested the striking of SOR ¶ 1.a, and substituting for it four new financial specifications: SOR ¶¶ 1.a through 1.d. Applicant did not object and the amendment was granted as requested. (Tr. 14-15) The motion to amend the SOR, dated June 8, 2018, and Applicant's answers to the amended SOR, dated June 26, 2018, were made part of the pleadings and are attached to the record.

### **Findings of Fact**

In her Answer, Applicant did not specifically admit or deny any of the SOR allegations. However, through her comments, explanations, and the documentary evidence provided, she indirectly admitted all of the SOR allegations (¶¶ 1.a through 1.d). Applicant's admissions to the SOR and 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 41-year-old employee of a federal contractor. She completed an associate's degree in December 2006, and is currently working on her bachelor's degree. She has never been married. She has three adult children, ages 26, 22, and 20.

Applicant started working for federal contractors in 2000, and she has been consistently employed by federal contractors to present, except for two unemployment periods from October 2015 through June 2016 (nine months), and August 2016 through February 2017 (seven months). Applicant was granted a secret clearance in 2002, which was upgraded to a top-secret clearance in 2004. She has continuously held her clearance eligibility since 2002 to present, except for a period during which it was suspended due to a lack of sponsor. There is no evidence showing any additional security concerns, except for those in the current SOR.

Applicant's October 2015 employment termination apparently was due to disciplinary or performance-related issues. (Tr. 34-37) Following her termination, Applicant was underemployed or unemployed. During her period of unemployment, Applicant took temporary jobs, including a job as a driver. She received unemployment

benefits, took loans, and used her credit to pay her living expenses and her children's college expenses.

Applicant explained that between October 2015 and July 2017, her income was insufficient to pay her family's living expenses, assist her children with their college expenses, and pay her debts. An investment property and her home were about to be foreclosed and she had numerous delinquent debts. Applicant sold the investment property and modified the home mortgage, taking it out of foreclosure and bringing the mortgage to current.

In July 2017, Applicant's current employer, a federal contractor, hired her as a financial manager. Her income went from making \$25 an hour, to a yearly salary of \$115,000. Since July 2017, Applicant has been diligently addressing her delinquent accounts, many of which were not alleged in the SOR. Applicant was unable to start paying her delinquent accounts any sooner because she was the main breadwinner of the family and her income was insufficient to pay all of their financial obligations at the same time. Applicant had three children attending college. She elected to forego taking student loans for their children. Instead, she provided financial assistance to them to enable them to complete college without loans.

In her 2012 SCA, Applicant disclosed that she had financial problems that included a delinquent mortgage, delinquent student loans, personal loans in default, and delinquent consumer credit accounts. The SOR alleged four delinquent or charged-off accounts. Based on Applicant's documentary evidence (submitted with the SOR response), the status of the alleged debts is as follows:

SOR ¶ 1.a (collection for \$1,045). Applicant paid this account in May 2018.

SOR ¶ 1.b (charged-off debt for \$4,080). Applicant paid \$1,025 and decreased the balance from \$4,080 to \$2,629 in April 2018. She anticipated paying off this debt by the end of 2018.

SOR ¶ 1.c (charged-off car loan for \$19,302). Applicant paid \$1,331 in June 2018. She established a monthly payment plan. The documentary evidence shows that she decreased the balance from \$19,302 to \$10,647.

SOR ¶ 1.d (charged-off loan for \$27,238). Applicant established a payment plan and has been paying \$455 a month. She decreased the balance from \$27,238 to \$21,333.

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 paid as much of her delinquent accounts as she could to balance the payments of her other debts. She understands the seriousness of the security concerns raised by her financial problems. She promised to timely pay her debts in the future. Applicant highlighted her 18 years of employment with federal

contractors while holding a clearance during most of that period without any issues or concerns, except for his financial problems. Applicant credibly promised to continue paying her debts and to resolve her financial problems. She 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 has not received financial counseling, but she is following a budget. (Tr. 50)

## 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. She developed financial problems around 2016, because she was terminated from her position. Because of her periods of unemployment and underemployment, she acquired substantial debt. 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 person has received or is receiving 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;

(d) the individual initiated and is adhering to 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:

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. Applicant's financial problems are ongoing and recent because she is still paying her delinquent debts. However, her financial problems occurred under circumstances unlikely to recur and they do not cast doubt on her current reliability, trustworthiness, or judgment.

---

<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. June 4, 2001)).

Applicant's financial problems could be attributed to, or were aggravated by, her periods of unemployment or underemployment with the subsequent decrease in family earnings. It is not clear whether Applicant losing her job was due to her own misconduct. Nevertheless, I find that Applicant's actions after losing her job demonstrate financial responsibility. She took part-time jobs to supplement her unemployment income and used her savings and credit to pay for some of her delinquent accounts.

The June 2018 credit report in evidence show 34 trade lines, with only the four accounts alleged in the SOR being delinquent. After obtaining full-time employment with her current employer in March 2017, Applicant started to address her delinquent accounts. She paid off one account and has reduced substantially her debt on the remaining three accounts. Applicant also identified as factors that prevented her from paying her debts more diligently including her mortgage payments, her financial support for three children attending college, and the necessity to pay other debts and living expenses.

Applicant is making a good-faith effort to resolve her debt. Her actions, although recent, show diligence and responsibility in the handling of her financial obligations. Applicant has not received financial counseling, but she is following a budget. She is in the process of addressing her financial obligations in a manner consistent with her financial resources.

I find that the evidence does not support a finding that she was negligent in the payment of her financial obligations. She simply was not able to pay all her debts at the same time. She divided her financial resources between her financial obligations and her living expenses in order to provide for her children's education.

The AGs do not require an Applicant to immediately resolve or pay each and every debt alleged in the SOR, to be debt free, or to resolve first the debts alleged in the SOR. An applicant needs only to establish a plan to resolve financial problems and take significant actions to implement the plan. Applicant has implemented a plan to resolve her financial problems and she has made significant progress implementing her plan.

Considering the evidence as a whole, and including her recent actions, Applicant demonstrated financial responsibility. She disclosed her financial problems in her 2012 SCA. Her financial situation is improving and there are clear indications that her financial problems are being resolved and are under control. She has been paying her delinquent accounts and promised to continue to do so. 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.

Applicant is a 41-year-old employee of a federal contractor. She has worked for federal contractors since 2000. She has held a clearance during most of her employment without any issues or concerns, except for her financial problems. The record evidence is sufficient to establish that her financial problems are being resolved and are under control.

Considering the evidence as a whole, Applicant demonstrated a recent track record of paying her financial obligations. 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.d:	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