



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



In the matter of:

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ISCR Case No. 19-01802

Applicant for Security Clearance

Appearances

For Government: Patricia M. Lynch-Epps, Esq., Department Counsel

For Applicant: *Pro se*

03/03/2020

Decision

HARVEY, Mark, Administrative Judge:

Applicant paid or settled all three of the debts alleged in the statement of reasons (SOR). She paid two of the SOR debts before the SOR was issued. Her credit report indicates she has a track record of successful debt resolution. She mitigated security concerns arising under Guideline F (financial considerations). Eligibility for access to classified information is granted.

Statement of the Case

On August 15, 2018, Applicant completed and signed a Questionnaire for National Security Positions or security clearance application (SCA). (Government Exhibit (GE) 1) On August 15, 2019, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant and recommended referral to an administrative judge to

determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guideline F. (HE 2) On August 29, 2019, Applicant responded to the SOR and requested a hearing. (HE 3)

On November 7, 2019, the case was assigned to me. On December 20, 2019, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for January 22, 2020. (HE 1) The hearing was held as scheduled. During the hearing, Department Counsel offered three exhibits; Applicant offered seven exhibits; there were no objections; and all proffered exhibits were admitted into evidence. (Transcript (Tr.) 16-21; GE 1-3; Applicant Exhibit (AE) A-AE G) I granted Applicant's request for additional time to submit documentation. On January 31, 2020, DOHA received a transcript of the hearing. I received four post-hearing exhibits, which were admitted into evidence without objection. (AE H-AE K) The record closed on February 21, 2020. (Tr. 55-56, 65-66)

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript.

Findings of Fact

In Applicant's SOR response, she admitted the SOR allegation in ¶ 1.a, and she denied the allegations in SOR ¶¶ 1.b and 1.c. (HE 3) She also provided mitigating information. Her admissions are accepted as findings of fact.

Applicant is 50 years old, and she has been an acquisitions lead and senior program analyst for a DOD contractor for five years. (Tr. 7-8, 25) She has been employed by the same employer or a predecessor employer of her current employer since 1996. (Tr. 24-25; GE 1) In 1988, she graduated from high school. (Tr. 7) She completed three years of college, and she has not received a degree. (Tr. 7) She has not served in the military. (Tr. 7) She was married from 1987 to 1989, from 1992 to 2004, and from 2004 to 2008. (Tr. 8; GE 1) Her children are ages 20, 25, and 31. (Tr. 9) She has custody of a four-year-old child. (Tr. 50) She has held a secret security clearance since 2008, and there is no evidence of security violations. (Tr. 23-24)

Financial Considerations

Applicant was not unemployed or under employed in the previous 10 years. She did not disclose any circumstances beyond her control that prevented her from paying her debts. She works one full-time and one part-time job to maintain her home and vehicle. (Tr. 23) For the last several years, she has received \$3,000 to \$4,000 each year from her part-time employment. (Tr. 28-30) She actively supports a high school and a local youth football organization. (Tr. 23)

The SOR alleges three delinquent debts totaling \$33,645 as follows:

SOR ¶ 1.a alleges that Applicant has a debt placed for collection for \$33,001. About 10 years ago, Applicant borrowed about \$35,000 using a line of credit option on a

credit card to renovate her basement after it flooded. (Tr. 22, 30-32, 34, 64-65) She made payments for a time, and then the creditor increased her interest rate without notifying Applicant. (Tr. 22) The interest rate went from 4.9 percent to 27.9 percent. (Tr. 31) She denied that she missed a payment. (Tr. 31-33) The creditor was unwilling to accept a payment for the amount of her previous payments. (Tr. 22) The creditor demanded a \$900 monthly payment and would not accept a \$400 payment. (Tr. 22, 34, 36) The balance was about \$25,000 in August 2013. (Tr. 34-35) In November 2015, a collection agent took over the account. (Tr. 37) She did not receive correspondence from the collection agent, and she did not contact the collection agent. (Tr. 37-38, 52) In October 2019, Applicant called the original creditor, and the original creditor told her the account is closed because of the age of the debt. (Tr. 22, 37-38) Moreover, the creditor did not have a record of the account. (Tr. 22, 37-38) She acknowledged she was responsible for the debt; she was willing to pay it; and she simply did not know who to pay or how to pay it. (Tr. 42-43, 53) After the hearing, she contacted the collection agent, and on January 27, 2020, the collection agent agreed to settle the debt for \$8,500. (AE J) On January 27, 2020, she paid the creditor \$2,550, and on January 29, 2020, she paid the creditor \$6,000. (AE K) This debt is settled and resolved.

SOR ¶¶ 1.b and 1.c allege that Applicant has two delinquent medical accounts for \$251 and \$393. Applicant said she paid both debts in 2018. (Tr. 43-44) On January 22, 2020, the creditor for the debt in SOR ¶ 1.b wrote that on October 30, 2018, the debt was “paid in full.” (AE I) On February 11, 2020, the creditor in SOR ¶ 1.c wrote that on October 30, 2018, the creditor received a payment for \$393, and the debt was “PAID IN FULL.” (AE H)

Applicant’s annual salary is \$94,000. (Tr. 45) She files her tax returns. (Tr. 52) She maintains \$1,000 to \$3,000 in her bank accounts. (Tr. 46) Her monthly mortgage payment is \$1,149. (Tr. 49) One of her vehicles does not have a lien, and she pays \$694 monthly for the other vehicle. (Tr. 49-50) She has a net monthly remainder after paying debts and expenses of about \$500. (Tr. 52)

Applicant’s May 10, 2019, and January 20, 2020 credit reports indicated only one negative entry, and that negative entry relates to SOR ¶ 1.a. (AE E-AE G; GE 3) Numerous accounts reflected a zero balance, paid, or otherwise successfully resolved. Her January 20, 2020 credit report shows good credit scores. (Tr. 23; AE A)

Character Evidence

Applicant’s five character witnesses have known her for up to 25 years. (Tr. 59; AE A-AE D) They included a supervisor, coworkers, and friends. (Tr. 59; AE A-AE D) The general sense of their statements is that Applicant is honest, responsible, diligent, trustworthy, helpful, generous, professional, and reliable. (Tr. 60-61; AE A-AE D) Their statements support continuation of her security clearance. (Tr. 60-61; AE A-AE D)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and DNI have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). “It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (citation omitted). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the

facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

Failure 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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant’s financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant’s self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant’s security eligibility.

AG ¶ 19 includes 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.” Applicant had sufficient income to pay or resolve her debts, and AG ¶ 19(a) is not established. The record evidence establishes AG ¶¶ 19(b) and 19(c).

AG ¶ 20 lists financial considerations mitigating conditions which may be applicable in this case:

(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, 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;

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

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA 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).

Applicant presented some important mitigating information. Applicant's credit reports reflect paid debts or debts with a zero balance or in current paid as agreed status, except for the debt in SOR ¶ 1.a. She did not provide evidence that her financial problems were largely beyond her control. Her income over the last 10 years was relatively constant. She did not have any periods of unemployment in the last 20 years.

Applicant provided proof that she paid or settled all three SOR-alleged debts. She paid the debts in SOR ¶¶ 1.b and 1.c before the SOR was issued. While she did not maintain contact with the creditor in SOR ¶ 1.a, she did maintain her other accounts in current status. She disputed the amount of interest that the creditor in SOR ¶ 1.a was charging. She offered to continue paying the creditor \$400 monthly, and the creditor refused to accept this payment.

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].

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) (internal citation and footnote omitted)). Applicant showed some good faith when she resolved all three of the SOR debts. I found her statement at her hearing to candid and credible. The delinquent debt in SOR ¶ 1.a occurred under such circumstances that it is unlikely to recur. There are clear indications her financial problems are under control. Her handling her finances does not cast doubt on her current reliability, trustworthiness, or good judgment. Financial considerations security concerns are mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an Applicant’s eligibility for a security clearance by considering the totality of the Applicant’s conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual’s age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), “[t]he ultimate determination” of whether to grant a security clearance “must be an overall commonsense judgment based upon careful consideration of the guidelines” and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is 50 years old, and she has been an acquisitions lead and senior program analyst for a DOD contractor for five years. She has been employed by the same

employer or predecessor employer since 1996. She completed three years of college. Applicant's five character witnesses have known her for up to 25 years. They included a supervisor, coworkers, and friends. The general sense of their statements is that Applicant is honest, responsible, diligent, trustworthy, helpful, generous, professional, and reliable. Their statements supported continuation of her security clearance. She has held a secret security clearance since 2008, and there is no evidence of security violations. See ISCR Case No. 18-02581 at 4 (App. Bd. Jan. 14, 2020) (noting admissibility of "good security record," but commenting that security concerns may nevertheless not be mitigated).

Applicant acted responsibly under the circumstances, when she resolved all of her debts. Her May 10, 2019, and January 20, 2020 credit reports indicated only one negative entry, and that negative entry relates to SOR ¶ 1.a. She settled SOR ¶ 1.a by paying \$8,500. She understands that she needs to pay her debts, and the conduct required to retain her security clearance.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

. . . the concept of meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has . . . established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted). Applicant understands what she needs to do to establish and maintain her financial responsibility. Her efforts at debt resolution have established a "meaningful track record" of debt re-payment. I am confident she will maintain her financial responsibility.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the

facts and circumstances in the context of the whole person. Applicant mitigated financial considerations security 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:	FOR APPLICANT
Subparagraphs 1.a through 1.c:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is granted.

Mark Harvey
Administrative Judge