



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



In the matter of:)
)
) ISCR Case No. 20-00824
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

03/26/2021

Decision

RIVERA, Juan J., Administrative Judge:

Applicant’s evidence is insufficient to demonstrate financial responsibility or that her financial problems are being resolved. The financial considerations security concerns are not mitigated. Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on July 5, 2019. She was interviewed by a government investigator on August 8, 2019, and on October 30, 2019. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued her a Statement of Reasons (SOR) on February 14, 2020, alleging security concerns under Guideline F (financial considerations). Applicant timely answered the SOR, and requested a decision based on the written record in lieu of a hearing.

A copy of the Government’s file of relevant material (FORM), containing the evidence supporting the security concerns, was provided to Applicant by letter dated January 19, 2021. Applicant received the FORM on January 28, 2021. She was granted a period of 30 days after receipt of the FORM to submit any objections to the FORM

and to provide material to refute, extenuate, and mitigate the concerns. Applicant responded to the FORM via a three-page letter dated February 9, 2021, with numerous documents in extenuation and mitigation, and two reference letters. The case was assigned to me on March 12, 2021.

Procedural Issue

In the FORM, Department Counsel advised Applicant that the FORM included two unauthenticated summaries of interviews with a government background investigator on August 8, 2019, and October 30, 2019. (FORM, Item 6) Applicant was informed she could object to the summaries of her interviews, and they would not be admitted or considered, or that she could make corrections, additions, deletions, and update the documents to make them accurate. Applicant was informed that her failure to respond to the FORM or to raise any objections could be construed as a waiver and the proposed FORM evidence would be considered.

Applicant's February 2021 response to the FORM included receipts for payments made on accounts alleged in the SOR, and other favorable evidence. Applicant did not raise any objections to the FORM or to me considering the unauthenticated summaries of her August and October 2019 interviews. Without objections, I admitted all of the FORM's proffered evidence and Applicant's documentary evidence and considered them.

Findings of Fact

In her answer to the SOR, Applicant admitted 9 of the 25 financial allegations (¶¶ 1.d, 1.f, 1.g, 1.h, 1.p, 1.q, 1.t, 1.v, and 1.x). She denied 16 SOR financial allegations (¶¶ 1.a through 1.c, 1.e, 1.i through 1.o, 1.r, 1.s, 1.u, 1.w, and 1.y). Notwithstanding, all of the SOR allegations are established by the record evidence. Her admissions 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 56-year-old consultant/program manager working for a Federal contractor. She has been married and divorced three times. She last divorced back in June 2000. She has one adult child, age 32. Applicant attended college between January 2008 and May 2013, and earned an associate's degree.

Applicant started working for her current employer, a Federal contractor and her clearance sponsor, in December 2015. According to her 2019 SCA, she has been fully employed, and without periods of unemployment, since 2015. However, Applicant disclosed in her 2019 SCA a work history marred by periods of unemployment. She was unemployed between July 2015 and December 2015; between November 2013 and April 2014; between November 2011 and August 2012; and between August 2009 and October 2009.

Applicant has four prior periods of employment with Federal contractors - between April 2014 and July 2015 (laid off); between December 2010 and November 2011; between October 2009 and May 2010; and between August 2006 and August 2009. She was granted eligibility for a secret clearance in August 2008.

In response to Section 26 (Financial Record) of her 2019 SCA, Applicant disclosed she had financial problems that included a delinquent car loan, a repossessed car, and cancelled credit cards. She attributed her financial problems to her periods of unemployment caused by corporate downsizing and her suffering from chronic migraines, which caused excessive absenteeism. Applicant noted that she currently (as of February 2021) was seeing a new neurologist and had her migraines under control and has not had to miss work.

The subsequent background investigation addressed her financial situation and revealed the delinquent accounts alleged in the SOR. During her August and October 2019 interviews with a government investigator, Applicant discussed her delinquent accounts, and that she filed for Chapter 7 bankruptcy in February 2, 2012, and was discharged of her dischargeable debts in May 2012 (SOR ¶ 1.x).

Applicant's explanations for the SOR accounts and the status of the accounts follow:

SOR ¶¶ 1.a (\$12,719) and 1.w (\$16,591) – These alleged the same account, a charged-off car loan. I find SOR ¶ 1.w for Applicant. Applicant stated that in December 2016, she took a loan of more than \$16,000 to purchase a car. She claimed the creditor told her that the first payment of \$450 was due three months later. (Item 6) The loan; however, required her to start making the first payment within 30 days and monthly thereafter. She failed to make the first three payments and the car was repossessed. She claimed she never received notice of her default or the repossession. I note that in her SOR answer (Item 2), Applicant stated she was granted 60 days to make the first monthly payment. Applicant claimed this charged-off account was supposed to be removed from her credit report, but provided no reason for that. She presented no documentary evidence to corroborate any of her claims. This debt is unresolved.

SOR ¶ 1.b – This is an \$8,226 charged-off car loan. Applicant claimed that this account was discharged through the bankruptcy in May 2012, and that it is no longer reflected in her credit reports. On the contrary, the record credit reports show that this account was opened in November 2012, five months after the May 2012 bankruptcy discharge. (Items 5, 7) She presented no documentary evidence to corroborate her claim that the account was included in her bankruptcy discharge. This debt is unresolved.

SOR ¶¶ 1.c (\$6,098) and 1.y (\$6,098) alleged the same charged-off account. I consolidated the allegations under SOR ¶ 1.c. I find SOR ¶ 1.y for Applicant. Applicant claimed having no knowledge of this account and denied it. The account is reflected in Applicant's February 2020 credit report. (Item 7)

SOR ¶ 1.d – This is a \$4,209 medical debt in collection. In her SOR answer, Applicant admitted the debt and claimed her insurance company should have paid it. She stated she was demanding payment from her insurance company. She presented no documentary evidence to corroborate her claims. This debt is unresolved.

SOR ¶ 1.e – This is a \$1,853 collection. During the August 2019 interview, Applicant discussed this account with the interviewer. She denied having any knowledge of it. In her SOR answer, she claimed she “disputed the account with no results.” The account is shown as outstanding in Applicant’s 2020 credit report. (Item 7) Applicant presented no documentary evidence to corroborate she disputed the debt or to establish the legal basis for the dispute. This debt is unresolved.

SOR ¶¶ 1.f (\$733 charged-off account); 1.g (\$648 charged-off credit card); 1.h (\$456 charged-off credit card) - Applicant admitted responsibility for these accounts during her 2019 interview. Apparently, she contacted the creditors and established payment plans back in 2017. She then hired a debt-recovery company in 2017 to help her resolve her delinquent accounts and assigned the accounts to it. The 2020 credit report notes that she disputed the debts after resolution and they were charged off. These debts are unresolved.

SOR ¶¶ 1.i (\$430), 1.j (\$335), 1.k (\$299), 1.n (\$78), 1.o (\$65), 1.r (\$209), and 1.s (\$64), alleged medical debts placed for collection. During her 2019 interview, Applicant claimed she was not aware of these delinquent accounts until she reviewed her credit report in August 2019. In her Answer to the FORM, Applicant claimed she was not notified of these debts, but was in the process of obtaining information to ensure she can pay them in full.

Applicant claimed she attempted to pay these medical debts with no results, because she did not have the account numbers and the creditors were not able to provide her with the account numbers. She promised not to stop attempting to clear up these debts. She presented no documentary evidence of efforts to settle, pay, or otherwise resolve these debts. These debts are unresolved.

SOR ¶ 1.l – This is a \$271 delinquent account placed for collection. Applicant disputed the account, as reflected in her 2020 credit report. (Item 7) She provided no evidence about the legal basis for the dispute or whether it has been resolved. This debt is unresolved.

SOR ¶ 1.m – This is a delinquent \$263 unsecured loan that was charged off. During her 2019 interview, and in her Answer to the FORM, Applicant claimed having no knowledge about this account. She presented no documentary evidence of efforts to contact the creditor, or to pay, settle, or otherwise resolve the account. This debt is unresolved.

SOR ¶ 1.p – This was a \$282 account placed for collection by a telecommunications services provider. Applicant’s documentary evidence shows she paid the account on January 28, 2020.

SOR ¶ 1.q – This is a \$6,374 account placed for collection by a landlord. Applicant’s documentary evidence shows that the creditor offered to settle the account for less than she owed (\$3,200), provided the payment was made by January 28, 2020. She presented no documentary evidence showing that she made the payment or that the account was otherwise resolved. The account is unresolved.

SOR ¶ 1.t – This is a \$406 account placed for collection. In her answer to the SOR, Applicant claimed she paid the debt. The 2020 credit report shows she started a payment plan in June 2018, but the account is still delinquent, and it was charged off. The evidence is insufficient to show that the account was resolved.

SOR ¶ 1.u – This was a \$410 account placed for collection. Applicant’s documentary evidence shows she paid the account on January 28, 2020.

SOR ¶ 1.v – This was a \$72 account placed for collection by a telecommunications services provider. Applicant’s documentary evidence shows she paid the account on January 28, 2020.

SOR ¶ 1.x – Applicant filed for Chapter 7 bankruptcy in February 2012 and her dischargeable debts were discharged in May 2012. She explained during the 2019 interview that she had too many periods of unemployment, her income was insufficient to pay her living expenses and her debts, and she fell behind on her debt payments and had to file for bankruptcy. Applicant stated that her financial status was much better after the bankruptcy.

In her Answer to the FORM, Applicant stated her intent to get her finances back on track. In her opinion, her current financial situation is good. She believes this is proven by a 200-point increase of her credit ratings. She noted that she has eight new accounts where she has kept current. She also noted that she obtained six new credit cards with low credit limits to begin rebuilding her credit. Applicant stated that she is not shirking on her responsibility to pay her debts. She averred she is taking her financial responsibility seriously. She promised to continue paying off her delinquent debts, and to continue contacting the credit bureau agencies when there are discrepancies in her financial reports.

Applicant believes her job has provided her with financial stability. She has been able to excel in her career and achieve her goals. She has been studying and obtaining certifications to prepare herself for job promotions. Applicant’s good performance has allowed her to receive pay and merit increases annually. She claimed she has been able to meet her goal to pay all of her bills on time with no delinquencies.

Applicant did not present evidence of her current financial situation (gross monthly income, deductions, monthly expenses, and monthly net remainder). She did not present evidence to show that she has a working budget. There is some evidence to show that she sought assistance from a debt-resolution company to resolve her delinquent debts in 2017. However, she presented no documentary evidence to corroborate that she hired the debt-resolution company, or of what the company did to help her with her financial problems. There is no evidence to show Applicant has had recent financial counseling.

Applicant submitted favorable references from a manager and a coworker. The manager (M) has known Applicant for five years in a professional capacity. In his opinion, Applicant has displayed a high degree of integrity, responsibility, and ambition. Her leadership abilities, work ethic, and accomplishments have been highlighted by her two promotions. Applicant has been candid with her manager, discussing and keeping him abreast of her financial difficulties. He believes that she is honest, reliable, and a highly capable employee who displays good judgment. He endorses Applicant's eligibility for a clearance without reservations.

Applicant's coworker has known her for three years. In his opinion, she is a team player who has displayed integrity, responsibility, excellent work ethic, and good judgment. He highly recommends Applicant's eligibility for a clearance.

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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), 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 AGs 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 financial problems are documented in the record. The delinquent debts alleged in the SOR are established by her admissions and the record evidence. AG ¶ 19 provides 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 these disqualifying conditions, requiring additional inquiry about the possible applicability of mitigating conditions.

I considered the seven financial considerations mitigating conditions under AG ¶ 20; however, only two are potentially applicable:

(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; and

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

The Appeal Board concisely explained an 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. Sep. 24, 2013).

The AG ¶ 20(b) financial considerations mitigating condition is not fully established by the facts in this case and does not mitigate the security concerns. Applicant's financial problems started before she filed for Chapter 7 bankruptcy in 2012. After her 2012 bankruptcy discharge, she acquired the delinquent accounts alleged in the SOR, most of which are still ongoing and unresolved. Applicant's evidence is sufficient to establish that circumstances beyond her control contributed to her financial problems, i.e., her periods of unemployment and underemployment, and her medical issues with migraine headaches.

Notwithstanding, Applicant's evidence is insufficient to establish that she has been financially responsible under the circumstances. She claimed, without corroboration, that she hired a debt-resolution company in 2017. She failed to present evidence to show how the debt-resolution company helped her to resolve her financial problems. There is no evidence to show that she is following a budget or received recent financial counseling. Most of Applicant's efforts to resolve her debts happened after she submitted her 2019 SCA and she was interviewed by Government investigators about her delinquencies. She did not present sufficient evidence of good-

faith efforts to pay her debts before or after she received the SOR. AG ¶ 20(d) is not applicable.

The SOR alleged 24 delinquent or charged-off accounts. Applicant received favorable credit for resolving three of the SOR delinquent accounts (¶¶ 1.p, 1.u, and 1.v). I also gave her credit for the duplicate allegations (¶¶ 1.w and 1.y). Filing for bankruptcy is a legal recourse to resolve financial distress. SOR ¶ 1.x is resolved for Applicant. Applicant made a start in her path to acquiring financial responsibility, but she is not there yet.

Moreover, Applicant failed to submit documentary evidence of her current financial situation (gross monthly income, deductions, monthly expenses, and monthly net remainder) to show her ability to be financially responsible. Considering the evidence as a whole, Applicant's evidence is insufficient to demonstrate her financial responsibility, that her financial problems are being resolved, and that she has the financial ability to pay her debts. The financial considerations security concerns are not mitigated.

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. Security Executive Agent Directive (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, 56, has been employed with Federal contractors intermittently since 2006, but fully employed since 2015. This is not her first SCA. She was granted eligibility for a secret clearance in 2008. Her evidence is insufficient to establish a track record of 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. Unmitigated financial considerations security concerns lead me to conclude that granting a security clearance to Applicant is not warranted at this time.

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.l, 1.m-1.o, and 1.q-1.t:	Against Applicant

Subparagraphs 1.p and
1.u-1.y:

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 Applicant eligibility for a security clearance. Clearance is denied.

JUAN J. RIVERA
Administrative Judge