



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



In the matter of: )  
)  
) ISCR Case No. 20-01999  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Aubrey M. De Angelis, Esq., Department Counsel  
For Applicant: *Pro se*

08/10/2021

**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. Moreover, she falsified her 2019 security clearance application (SCA), so personal conduct security concerns are not mitigated. Clearance is denied.

**Statement of the Case**

Applicant submitted a SCA on November 27, 2019. She was interviewed by a government investigator on December 20, 2019. After reviewing the information gathered during the background investigation, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Facility (CAF) issued her a Statement of Reasons (SOR) on October 30, 2020, alleging security concerns under Guideline F (financial considerations) and Guideline E (personal conduct). Applicant answered the SOR (undated), 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 February 24, 2021. Applicant received the FORM on March 3, 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 by email dated, March 23, 2021. The case was assigned to me on May 17, 2021.

### **Procedural Issue**

In the FORM, Department Counsel advised Applicant that the FORM included an unauthenticated summary of her interview with a government background investigator on December 20, 2019. (FORM, Item 4) Applicant was informed she could object to the summary of her interview, and it would not be admitted or considered, or that she could make corrections, additions, deletions, and update the document to make it 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 responded to the FORM, but submitted no documentary evidence, and raised no objections to the FORM or to me considering the unauthenticated summary of her December 2019 interview. Without objections, I admitted and considered all of the FORM's proffered evidence.

### **Findings of Fact**

In her answer to the SOR, Applicant admitted the SOR allegations. The admitted financial allegations include a delinquent consumer account in collection for \$446 (¶ 1.a); 12 delinquent medical accounts in collection totaling about \$3,732 (¶¶ 1.b through 1.m); and five student loans in collection totaling about \$15,499 (¶¶ 1.n through 1.r), all of which are also established by the credit reports (FORM Items 6–8). Applicant also admitted to falsifying her 2019 SCA in failing to disclose any of her delinquencies. 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 28-year-old employee of a federal contractor. She has never been married and has no children. She graduated from high school in 2011, and attended two different colleges between September 2011 and March 2015; however, she did not earn a degree.

Applicant started working for her current employer and clearance sponsor in October 2019. This is her first clearance application. According to her 2019 SCA, Applicant was unemployed between July and October 2019; and employed between June 2018 and July 2019. In her November 2019 SCA, Applicant claimed her position was terminated in July 2019. However, during her December 2019 interview, Applicant

admitted that she was terminated because she was taking excessive time off. (Form, Item 5)

Applicant was employed between March and June 2018; unemployed between February and March 2018; and employed between November 2015 and February 2018. She was employed part time between June 2015 and January 2016; and fully employed between November 13, 2013 and June 2015. She was unemployed while in college between September 2011 and November 2013.

Section 26 (Financial Record) of Applicant's 2019 SCA asked whether in the past seven years she had: (1) bills or debts turned over to a collection agency; (2) any account or credit card suspended, charged off, or cancelled for failing to pay as agreed; (3) defaulted on any type of loan; and (4) been over 120 days delinquent on any debt; or was currently over 120 days delinquent on any debt. Applicant answered "NO" to all the above questions and deliberately failed to disclose the delinquent accounts and student loans in collection alleged in the SOR.

During her December 2019 interview, Applicant claimed that her failure to list her student loans was an oversight. She stated she fell behind on her student loans in 2013-2014, and claimed her mother told her that either she (her mother) or the state would take care of the loans. Applicant averred she discovered her student loans were delinquent and in collection when her income tax refunds were confiscated by the IRS to apply the refunds to her student loan debt starting in 2017.

Concerning the 12 delinquent medical and consumer debt accounts, Applicant told the investigator that her failure to disclose them in the 2019 SCA was an oversight. She stated that she went through a financial hardship and her debts became delinquent. Applicant claimed that between 2014 and 2016, she made sporadic payments of \$200 per month to resolve her medical bills, and she mistakenly believed the medical debts had been satisfied. Applicant presented no documentary evidence of payments made on any of the accounts alleged in the SOR since the day she acquired the obligations to the day she answered the FORM.

Applicant stated in her interview and in her answer to the FORM that her financial hardship was caused by periods of unemployment. She stated that she was immature regarding her finances in 2011-2012, but believed she had become more mature financially after 2015. Applicant told the investigator that she intended to establish payment plans to pay off her debts sometime in the future - when she has funds available to do so. Applicant believes that she lives within her financial means; that she can pay her debts through payment plans; and that her financial situation is stable.

In her answer to the FORM, Applicant stated that she did not intend to falsify her 2019 SCA. She noted that she had been struggling financially and mentally. (She did not explain what her mental struggles are.) Applicant averred she did not know her medical bills were accumulating because she believed her father was paying them or her insurance was doing so. Applicant promised to take control of her financial situation

and fix her financial problems. She claimed she was paying \$200 a month to a creditor, but failed to submit any documentary evidence of any contact with creditors, of any payment plans established, or of any payments made on any of the debts alleged in the SOR.

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 no evidence to show Applicant has had recent financial counseling.

### **Policies**

The SOR was issued under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and Security Executive Agent Directive (SEAD) 4, *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 her 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 one is 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.

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 in about 2012. All of the delinquent accounts alleged in the SOR are still ongoing and unresolved. Applicant's evidence is somewhat sufficient to establish that circumstances beyond her control contributed to her financial problems, i.e., her periods of unemployment and her mental struggles.

Notwithstanding, Applicant's evidence is insufficient to establish that she has been financially responsible under the circumstances. There is no evidence to show that she is following a budget or received recent financial counseling. Applicant submitted no documented evidence of good-faith efforts to resolve her debts before she submitted her 2019 SCA; after she was interviewed by a Government investigator about her delinquencies in 2019; after she received the 2020 SOR; or after she received the FORM. AG ¶ 20(d) is not applicable.

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.

### **Guideline E - Personal Conduct**

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security

clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes a condition that could raise a security concern and be disqualifying in this case:

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative.

When Applicant submitted her 2019 SCA, she knew her student loans were delinquent because the IRS had been confiscating her income tax refunds since 2017. Concerning her delinquent medical debts, most of those are for medical services she received on or after 2017. She failed to present documentary evidence to corroborate her claims that she was under her father's health insurance after she turned 21 year old, or that her mother told her she would pay her student loans. Applicant deliberately falsified her 2019 SCA to cover her financial problems. Her lack of candor and dishonesty demonstrate questionable judgment, unreliability, and an unwillingness to comply with rules and regulations, establishing the above disqualifying conditions.

AG ¶ 17 provides seven conditions that could mitigate security concerns raised under this guideline. Only two of those mitigating conditions are potentially applicable to the facts in this case:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

After thorough consideration of the facts, the above mitigating conditions are not supported by the facts in this case and they are not applicable. Applicant's evidence is insufficient to fully establish any mitigating factors under AG ¶ 17.

### **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, 28, has been fully employed with a federal contractor since 2019. Her evidence is insufficient to establish a track record of financial responsibility. Moreover, she falsified her 2019 SCA in failing to disclose her financial problems, as required. 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.

### **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.r:	Against Applicant
Paragraph 2, Guideline E:	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 Applicant eligibility for a security clearance. Clearance is denied.

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JUAN J. RIVERA  
Administrative Judge