



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



In the matter of:	)	
	)	
	)	ISCR Case No. 20-03102
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tara R. Karoian, Esq., Department Counsel  
 For Applicant: *Pro se*  
 11/08/2022

\_\_\_\_\_

**Decision**

\_\_\_\_\_

RIVERA, Juan J., Administrative Judge:

Applicant’s evidence is insufficient to establish good-faith efforts to resolve her financial problems and that her financial situation is under control. Clearance is denied.

**Statement of the Case**

Applicant submitted her most recent security clearance application (SCA) on March 9, 2020, seeking clearance eligibility required for her employment with a federal contractor. A Government background investigator interviewed her on April 10 and 21, 2020. After reviewing the information gathered during the background investigation, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) on December 4, 2020, alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on December 21, 2020, submitted five enclosures, 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 on July 15, 2021.

She received the FORM on August 2, 2021, and was given 30 days after receipt of the FORM to raise objections, to submit evidence in extenuation and mitigation, and to submit evidence of her efforts to resolve her financial problems. The case was assigned to me on August 17, 2022. Without objections, I admitted and considered the Government's proposed evidence and Applicant's response to the SOR with its enclosures.

### **Procedural Issues**

In the FORM, Department Counsel advised Applicant that the FORM included an unauthenticated summary of her April 10, 2020, interview with a government background investigator. (FORM, Item 8) 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 did not respond to the FORM. Without objections, I admitted and considered all of the FORM's proffered evidence.

### **Findings of Fact**

The SOR alleges seven delinquent medical accounts, totaling \$1,159 (¶¶ 1.a – 1.g); a delinquent credit card account, totaling \$296 (¶ 1.h); a charged-off communications services account, totaling \$1,134 (¶ 1.i); and six U.S. Department of Education (DOE) student loans in collection, totaling over \$32,125 (¶¶ 1.j – 1.o). Her student loans were assigned to collections in 2014 and 2015.

In her answers to the SOR, Applicant denied the allegations in SOR ¶¶ 1.a – 1.h, because she had either paid or settled the accounts. She admitted the remaining SOR allegations. (¶¶ 1.i – 1.o) Her admissions are incorporated into my findings of fact. After a thorough review of the record evidence, I make the following additional findings of fact:

Applicant is 36 years old. She graduated from high school in 2005, and attended college during three periods: August 2005 to July 2006; August 2007 to August 2009; and January 2014 to May 2016. She is still working on earning a college degree. She has been using student loans to pay for her education. She married in October 2012 and divorced in October 2017. She has two children, a son, age 13, and a daughter, age six.

Applicant's employment history indicates she worked for two federal contractors between April 2009 and April 2014. She stated that the Office of Personnel Management (OPM) granted her eligibility for access to secret information during part of that employment period. She was unemployed between April 2014 and May 2016; worked as a bartender between May 2016 and February 2017; and was unemployed between February 2017 and September 2017. She worked part-time as a bartender

between September 2017 and October 2017, and as an assistant property manager between October 2017 and December 2017. She was self-employed between December 2017 and January 2020, working at a greenhouse and landscaping business. Her current employer and security sponsor, a federal contractor, hired her in January 2020.

In Section 26 (Financial Record) of her 2020 SCA, Applicant revealed that she was having financial problems and disclosed some of the accounts alleged in the SOR. She attributed her financial problems to her 2017 divorce, her periods of unemployment and underemployment, and being the sole provider for her children.

An OPM investigator interviewed Applicant in April 2020. At the time, she was underemployed, doing part-time work for a greenhouse. She told the investigator that she was unable to pay her debts while separated from her ex-husband and after her divorce, because she was unemployed or underemployed. She prioritized her bill payments to pay for living necessities and the children's needs. She promised the investigator she would start paying her debts when she starts her full-time job. She stated that she was willing to pay her debts, but she did not have the earnings to do so. Concerning her student loan debt, she noted that the IRS withheld her 2018 tax refund and applied it to her student loan debt. (Item 8)

Applicant's documentary evidence shows that she paid the accounts alleged in SOR ¶¶ 1.a, and 1.d through 1.g, on December 11, 2020. (Encl. 2) She did not present direct documentary evidence that she paid the accounts alleged in SOR ¶¶ 1.b and 1.c, but her December 2020 Experian credit report shows "0" accounts in collection. Considering that she paid her other medical accounts during that same period, I find these two accounts are resolved. (Encl. 4)

Applicant paid SOR ¶ 1.h on December 11, 2020. (Encl. 1) She made one payment of \$52 to the collector of the account alleged in SOR ¶ 1.i. It is not clear whether she entered into a payment agreement to resolve the account. Concerning her student loan debt, in June 2021, Applicant entered into a payment agreement with the DOE to start the process to rehabilitate her student loans. (Encl. 5; FORM, Item 3)

Applicant failed to submit documentary evidence about her efforts to contact creditors, of any payment agreements established, of any payments made to her creditors before she received the SOR on December 4, 2020. She presented no evidence to show she has participated in financial counseling or has a working budget. She did not present evidence of her current financial situation (gross monthly income, deductions, monthly expenses, and monthly net remainder). Without any documentary evidence of her current financial situation, it is not possible for me to assess whether she is financially overextended.

## 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 AGs 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. As alleged in the SOR, she accumulated seven delinquent medical accounts, totaling \$1,159 (¶¶ 1.a – 1.g); a delinquent credit card account, totaling \$296 (¶ 1.h); a charged-off communications services account, totaling \$1,134 (¶ 1.i); and six DOE student loans in collection, totaling over \$32,125 (¶¶ 1.j – 1.o). She presented no documentary evidence of any good-faith efforts on her part to pay, settle, or resolve her delinquent debts before receipt of the SOR.

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.

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, 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; and

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

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).

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

Applicant's financial problems could be attributed, in part, to circumstances beyond her control, i.e., her divorce, and the periods of unemployment and underemployment. She explained that her earnings were insufficient to pay her living expenses, take care of her children, and pay her delinquent accounts.

Applicant worked for federal contractors, holding a clearance, between 2009 and 2014. She did not explain why she was unemployed or underemployed between 2014 and 2017. She was self-employed between late 2017 and January 2020, and her current employer hired her in January 2020. Applicant provided no information concerning her earnings and financial situation during the period 2017 to January 2020, to explain what prevented her from contacting her creditors to resolve her debts.

Applicant was hired in January 2020, submitted her SCA in March 2020, and was interviewed in April 2020. She received favorable credit for paying or resolving eight of the 18 accounts alleged in the SOR, for establishing a payment agreement for the wireless services provider, and for starting the process to rehabilitate her student loans. Notwithstanding, she failed to establish her good-faith efforts to resolve her delinquent accounts and that her financial situation is under control.

Applicant presented no evidence to show she has participated in financial counseling or that she is following a working budget. She did not present evidence of her current financial situation (gross monthly income, deductions, monthly expenses, and monthly net remainder). Without any documentary evidence of her current financial situation, it is not possible for me to assess whether or not she is financially

overextended. Her evidence is insufficient to show she has been financially responsible under her circumstances.

Clearance decisions are aimed at evaluating an applicant's judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The guidelines do not require an applicant to establish resolution of every debt or issue alleged in the SOR. An applicant needs only to establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve issues or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts or issues alleged in an SOR be resolved first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts, or resolution of such issues, one at a time.

In this instance, the evidence is insufficient to demonstrate Applicant's current financial responsibility, and that her financial problems are being resolved and are under control. Mere promises to resolve financial issues in the future, without further confirmed actions, are insufficient. In this case, Applicant failed to submit sufficient documentary evidence of her offers to resolve her financial problems before receipt of the SOR. 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, 36, is being sponsored by a federal contractor for a clearance. She previously served seven years for other federal contractors while possessing a clearance. Although circumstances beyond her control contributed to her financial problems, her evidence is insufficient to establish that she has been financially responsible. She failed to establish she has taken good-faith efforts to resolve her financial problems.

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. 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. If Applicant continues on her present financial course, a security clearance could be in her future, but that time is not yet here. Financial considerations security concerns are not mitigated 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.h:	For Applicant
Subparagraphs 1.i – 1.o:	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's eligibility for a security clearance. Clearance is denied.

---

JUAN J. RIVERA  
Administrative Judge