



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



In the matter of: )  
)  
) ISCR Case No. 20-01010  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Raashid S. Williams, Esquire, Department Counsel  
For Applicant: *Pro se*

03/29/2022

**Decision**

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding financial considerations. Eligibility for a security clearance is denied.

**Statement of the Case**

On July 3, 2019, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On November 2, 2020, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to her under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and Directive 4 of the Security Executive Agent (SEAD 4), *National Security Adjudicative Guidelines* (December 10, 2016) (AG), effective June 8, 2017.

The SOR alleged security concerns under Guideline F (Financial Considerations) and detailed reasons why the DCSA adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On November 20, 2020, Applicant responded to the SOR and elected to have her case decided on the written record in lieu of a hearing. (Item 2) Because of health concerns associated with the COVID-19 pandemic and pandemic protocols, no further actions were taken regarding the case until the following year. A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant by the Defense Office of Hearings and Appeals (DOHA) on December 30, 2021, and she was afforded an opportunity after receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, Applicant was furnished a copy of the Directive as well as the Adjudicative Guidelines applicable to her case. Applicant received the FORM on January 4, 2022. Her response was due on February 3, 2022. Applicant chose not to respond to the FORM, for as of February 24, 2022, no response had been received. The case was assigned to me on March 17, 2022. The record closed on February 3, 2022.

### **Findings of Fact**

In her response to the SOR, Applicant admitted, with brief comments, nearly all of the SOR allegations pertaining to financial considerations (SOR ¶¶ 1.a. through 1.h., and 1.j. through 1.m.). Applicant's admissions and comments are incorporated herein. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following findings of fact:

#### **Background**

Applicant is a 55-year-old employee of a defense contractor. She has been serving as an administrative specialist with her current employer since January 2009. She received an associate's degree in 1985. She has never served with the U.S. military. She was granted a secret clearance in 2011. She was married in 1990 and widowed in 2007. She remarried in 2014. She has two children, born in 1992 and 1996, and one stepchild, born in 2004.

#### **Financial Considerations**

General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 2 (Answer to the SOR, dated November 20, 2020); Item 3 (SF 86, dated July 3, 2019); Item 4 (Enhanced Subject Interview (ESI), dated September 17, 2019); Item 5 (Equifax Credit Report, dated March 2, 2020); and Item 6 (Combined Experian, TransUnion, and Equifax Credit Report, dated July 17, 2019).

In her SF 86, with one exception pertaining to a credit card that was charged off in 2018, Applicant denied having any financial issues involving delinquent accounts that had, in the past seven years, been turned over to a collection agency; had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed; or been

over 120 days delinquent on any debt not previously reported. She also denied being currently (as of July 3, 2019) over 120 days delinquent on any debt. (Item 3 at 35-36)

On September 17, 2019, she was interviewed by an investigator with the U.S. Office of Personnel Management (OPM). During that interview, she acknowledged the one delinquent account that she has reported in her SF 86. When questioned by the investigator regarding other delinquent accounts, she denied ever neglecting her financial responsibilities, claiming that she lives within her means, and again denied any additional financial delinquencies. She stated that she had never been 120 days delinquent on any debt and had never had any credit card suspended, charged off, or cancelled for failing to pay as agreed. She denied ever having had any bills of debts turned over to a collections agency (Item 4, 3-4) She lied to the investigator.

Applicant was confronted with a myriad of collection accounts, many of which were charged-off accounts or over 120 days past due. The confrontation was successful, for she admitted that she was trying to conceal the accounts from the investigation. She did not think the finances were anybody's business, to include the government. She did not think the accounts were going to be discovered. She claimed she was scared to admit the accounts were delinquent because she did not want to lose her security clearance. She also acknowledged that she had had bad spending habits in the past and was very financially irresponsible. She also claimed that three back surgeries in 2016, 2017, and 2018 kept her out of work for two months after each surgery, and therefor was unable to pay anything other than her medical bills. After discussing her delinquent accounts, Applicant stated an intention to focus on settling or otherwise resolving them. (Item 4 at 6-7) She did not furnish any documents to verify that she had undergone such surgeries.

The SOR alleged 13 still-delinquent accounts totaling approximately \$27,338, as set forth below, divided into four separate categories:

Among the accounts that were charged off, and for which Applicant made no claims that she had made any efforts to resolve, there are: SOR ¶ 1.a., a credit-card account with an unpaid balance of \$872; SOR ¶ 1.b., a charge account with an unpaid balance of \$829; SOR ¶ 1.c., a credit-card account with an unpaid balance of \$787; SOR ¶ 1.e., a credit-card account – the one identified in the SF 86 and during the OPM interview – with an unpaid balance of \$593; SOR ¶ 1.f., an unspecified type of account with an unpaid balance of \$454; and SOR ¶ 1.g., a credit-card account with an unpaid balance of \$451. (Item 5 at 2; Item 6 at 11-12) None of the accounts have been resolved.

Among the accounts that are merely delinquent, and for which Applicant made no claims that she had made any efforts to resolve, there are: SOR ¶ 1.h., an unspecified type of account with an unpaid balance of \$425; SOR ¶ 1.k., an unspecified type of account with an unpaid balance of \$3,009; and SOR ¶ 1.l., an unspecified type of account with an unpaid balance of \$572. (Item 6 at 10, 12) None of the accounts have been resolved.

Among the accounts that were delinquent, and for which Applicant contended that she had either paid off or was currently on a payment plan: SOR ¶ 1.d., a credit-card

account with an unpaid balance of \$686 (purportedly paid off); SOR ¶ 1.j., an unspecified type of account with an unpaid balance of \$613 (purportedly paid off); and SOR ¶ 1.m., an unspecified type of account with an unpaid balance of \$915 (purportedly on a payment plan). (Item 6 at 10-13; Item 5 at 2) Applicant failed to furnish any documentary evidence, such as statements or receipts from the creditors, cancelled checks, check registers, or payment plans, to support her contentions that payments had been made towards any of the three accounts in this particular category or that a payment plan was actually accepted by a creditor. The accounts have not been resolved.

The fourth category refers to an account that Applicant not only claimed was not her account, but also stated that she had disputed in August 2019 and several times thereafter, but never received a response: SOR ¶ 1.i., a credit-card account with an unpaid balance of \$17,583. (Item 6 at 5, 9; Item 4 at 6; and Item 2 at 4) Applicant failed to furnish any documentary evidence, such as written disputes identifying the addressed recipients of the disputes. The account has not been resolved.

There is no evidence of financial counseling, a budget, or anything to describe with any specificity Applicant's current financial situation. She did not report her net monthly income, her monthly household expenses, or any monthly debt payments. In the absence of such information, I am unable to determine if she has any monthly remainder available for savings or spending. There is a paucity of evidence to indicate that her financial problems are now under control, and it is difficult to determine if Applicant is currently in a better position financially than she had been.

## **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. The President has authorized the Secretary of Defense or his designee to grant an applicant 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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.)

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense

decision. The entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.” “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” (ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1)) “Substantial evidence” is “more than a scintilla but less than a preponderance.” (See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994))

The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. 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 as to potential, rather than actual, risk of compromise of classified information. Furthermore, “security clearance determinations should err, if they must, on the side of denials.” (*Egan*, 484 U.S. at 531)

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 I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

## Analysis

### Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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. 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG ¶ 19:

- (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.

The SOR alleged 13 still-delinquent accounts totaling approximately \$27,338. Applicant attributed her inability to maintain those accounts in a current status, in part to three back surgeries in 2016, 2017, and 2018 that purportedly kept her out of work for two months after each surgery; her inability to pay anything other than her medical bills after her surgeries; and her acknowledgement that she had had bad spending habits in the past and was very financially irresponsible. AG ¶¶ 19(a) and 19(c) have been established, but there is no evidence that Applicant has been unwilling to satisfy her debts regardless of an ability to do so, and AG ¶ 19(b) has not been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties under AG ¶ 20:

- (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 the absence of documentary or otherwise evidence to verify that Applicant took any positive action to resolve her delinquent accounts or that she underwent back surgeries, none of the conditions apply. As noted above, Applicant identified several factors for the reasons she was not proactive or successful in addressing her accounts: (1) her three back surgeries that kept her out of work for two months after each surgery; (2) her inability to pay anything other than her medical bills after her surgeries; and (3) she had had bad spending habits in the past and was very financially irresponsible. Although she was employed without interruption since January 2009, she has made only three unverified claims of positive resolution action, but she failed to furnish the documentation to support her claims. Moreover, she failed to offer a reasonable basis for her claimed dispute regarding one particular delinquent account.

A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." (ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016))). Although Applicant claimed that she had been making some payments to two of her creditors and paid them off, and she had a payment plan with another creditor, she offered no verifiable evidence of a good-faith effort to support any of those claims. Applicant was interviewed by the OPM investigator in September 2019, but between that interview and the date her response to the FORM was expected in February 3, 2022, she made no verifiable efforts to address any of her delinquent debts. Based on the evidence, it appears that Applicant actually ignored her delinquent accounts for a substantial multi-year period. Because of her failure to furnish documentation regarding any of the accounts, the overwhelming evidence leads to the conclusion that her financial problems are not under control. She has not acted responsibly by failing to address her delinquent accounts while employed and by failing to make limited, if any,

verifiable efforts of working with her creditors. The Appeal Board has previously commented on such a situation:

Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties. ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

An applicant who begins to resolve his or her financial problems only after being placed on notice that his or her security clearance is in jeopardy may be lacking in the judgment and self-discipline to follow rules and regulations over time or when there is no immediate threat to his or her own interests. (See, e.g., ISCR Case No. 17-01213 at 5 (App. Bd. Jun. 29, 2018); ISCR Case No. 17-00569 at 3-4 (App. Bd. Sept. 18, 2018) In this instance, Applicant has failed to offer any documentary evidence that she has even begun making such efforts even after the SOR was issued in November 2020 – nearly one year and one-half ago.

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. Mere promises to pay debts in the future, without further confirmed action, are insufficient. In this instance, Applicant offered no specifics regarding any repayment efforts; submitted no documentary evidence to reflect any payments made; and only made promises of proposed actions. Not one delinquent debt has been resolved since the SOR was issued.

The SOR did not allege that Applicant had intentionally falsified her response to the financial section of the SF 86 in July 2019, or intentionally initially lied to the OPM investigator regarding her financial history in September 2019 – both actions considered to be unacceptable personal conduct. Unalleged conduct can be considered for certain purposes, as discussed by the DOHA Appeal Board. (Conduct not alleged in an SOR may be considered: (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole-person analysis under Directive § 6.3.). See ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006); (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No.



00-0633 at 3 (App. Bd. Oct. 24, 2003)). See also ISCR Case No. 12-09719 at 3 (App. Bd. April 6, 2016) (citing ISCR Case No. 14-00151 at 3, n. 1 (App. Bd. Sept. 12, 2014); ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006)). Applicant's unalleged personal conduct actions will be considered only for the five purposes listed above.

There is no evidence of financial counseling, a budget, or current financial information. Applicant's inaction under the circumstances casts doubt on her current reliability, trustworthiness, and good judgment. See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

### **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 SEAD 4, App. A, ¶ 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 SEAD 4, App. A, ¶ 2(c), the 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. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis. See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); see also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

There is some evidence in favor of mitigating Applicant's financial considerations. Applicant is a 55-year-old employee of a defense contractor. She has been serving as an administrative specialist with her current employer since January 2009. She received an associate's degree in 1985. She was granted a secret clearance in 2011.

The disqualifying evidence under the whole-person concept is simply more substantial and compelling. Applicant has 13 still-delinquent accounts totaling approximately \$27,338. She attributed her inability to maintain those accounts in a current status, in part to three back surgeries in 2016, 2017, and 2018 that purportedly kept her out of work for two months after each surgery; her inability to pay anything other than her medical bills after her surgeries; and her acknowledgement that she had had bad spending habits in the past and was very financially irresponsible. Despite being employed since January 2009, between her OPM investigator in September 2019 and the date her response to the FORM was expected in February 3, 2022, she made no

