



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



In the matter of:)
)
) ISCR Case No. 21-01172
)
Applicant for Security Clearance)

Appearances

For Government: Brittany White, Esquire, Department Counsel
For Applicant: *Pro se*

02/28/2022

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 7, 2016, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On June 9, 2021, 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 August 13, 2021, Applicant responded to the SOR and elected to have her case decided on the written record in lieu of a hearing. (Item 2) 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 October 27, 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 his case. Applicant received the FORM on November 11, 2021. Her response was due on December 15, 2021. Applicant chose not to respond to the FORM, for as of January 12, 2022, no response had been received. The case was assigned to me on February 8, 2022. The record closed on December 15, 2021.

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.f., and 1.h.). 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 31-year-old employee of a defense contractor. She has been serving as a passport support supervisor with her current employer since December 2016. She was previously employed by other employers as a part-time supervisor (February 2014 – December 2016); a full-time driver coordinator (September 2010 – February 2014); and a full-time administrative assistant (September 2009 – September 2010). She is a 2008 high school graduate. She received college credits during the periods 2009 - 2011, and in 2015, but no degree. In 2020, she reenrolled in college. She has never served with the U.S. military. She has never held a security clearance. She has never been married.

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 August 13, 2021); Item 3 (SF 86, dated July 7, 2016); Item 4 (Equifax Credit Report, dated October 5, 2021); Item 5 (Combined Experian, TransUnion, and Equifax Credit Report, dated April 21, 2020); Item 6 (Equifax Credit Report, dated February 7, 2020); and Item 7 (Enhanced Subject Interview, dated May 7, 2020).

In her SF 86, Applicant denied having any financial issues. (Item 3 at 28-29) However, a review of her credit reports from 2020 – 2021 indicates that there are several such issues. On May 7, 2020, she was interviewed by an investigator with the U.S. Office of Personnel Management (OPM). During that interview, she acknowledged that she had

several accounts, especially student-loan accounts, that had been delinquent, but that she was now enrolled in a payment plan – originally calling for an \$86 monthly payment, that was subsequently reduced to a \$60 monthly payment. (Item 7 at 3) The investigator asked her on several occasions to furnish supporting financial documentation, and she promised to do so, but eventually his requests were ignored by her. (Item 7 at 3-6) In her Answer to the SOR, she acknowledged her delinquent student-loan accounts and stated that they had been attached to her debit card for direct monthly payments, but she had lost the card during travel outside the country. (Item 2 at 1) She failed to offer any explanations as to when she resolved the issues of the lost debit card. Furthermore, she failed to submit any verifiable documentary evidence to support her comments regarding payment plans, payments, or the lost debit card.

Applicant attributed her financial issues to four factors: (1) she was just getting out on her own and was still learning how to manage her debts; (2) when the student loans were opened, the process was done by her parents, and nobody ever informed her that she would have to repay the loans; (3) she had a general lack of sufficient income; and (4) she was prioritizing other bills before making student-loan payments. She never identified which other bills took priority over her student-loan accounts. Nevertheless, now that she was made aware of the issues, she intends to pay all of her debts. (Item 7 at 5) Despite having insufficient funds to pay her delinquent debts, in December 2019, Applicant took a five-day vacation to France. (Item 7 at 3)

The SOR alleged nine still-delinquent accounts totaling approximately \$39,665, as set forth below:

SOR ¶¶ 1.a. through 1.f., and 1.h. are student-loan accounts with unpaid balances of \$11,270; \$7,779; \$5,065; \$4,943; \$3,905; \$2,309; and \$1,794 that were placed for collection and transferred between the lender, servicing agent, and eventually with the U.S. Department of Education. (Item 4 at 3-5; Item 5 at 9-13; Item 6 at 2; and Item 7 at 3-5) Despite Applicant's contentions that a repayment plan covering all of the accounts was previously established, "placed on pause" for non-payment, and modified, and that payments were now being made, she failed to submit any documents to support such contentions. The account is not yet being resolved.

SOR ¶ 1.g. is a charge account with a furniture store with an unpaid balance of \$2,268 that was placed for collection. (Item 5 at 12; Item 6 at 2; and Item 7 at 4) During her OPM interview, Applicant claimed that she has been making periodic payments of between \$80 and \$100 without a formal repayment plan, and that she intended to enter into a formal repayment plan. (Item 7 at 4). However, in her Answer to the SOR, she claimed to be unaware of the collection, but indicated that she would investigate it in order to resolve it. (Item 2 at 1) The combination of Applicant's inconsistent statements and the absence of any documentation to support the contentions that payments were being made leads to the conclusion that the account is not yet being resolved.

SOR ¶ 1.i. is a credit-card account with an unpaid balance of \$332 that was placed for collection and \$475 was charged off in March 2020. (Item 4 at 3; Item 5 at 12-13; Item 6 at 2; and Item 7 at 4) Applicant claimed she paid off the bill, but while she failed to

furnish proof of such payment, one of the Government exhibits does, in fact, support her contention, stating that the individual paid the charge off. (Item 5 at 13) Since that particular credit report was issued in April 2020, I have concluded that the payment was made over one year before the SOR was issued. The account has 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 May 2020, the OPM investigator asked her to provide a financial statement detailing her income, assets, and expenses, but she failed to do so. 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 (4th 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 nine still-delinquent accounts totaling approximately \$39,665. Applicant attributed her inability to maintain those accounts in a current status, in part to a general lack of sufficient income, and she was prioritizing other bills before making student-loan payments. 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 charge account or student-loan accounts, none of the conditions apply. As noted above, Applicant identified four factors for the reasons she was not proactive or successful in addressing her accounts: (1) she was just getting out on her own and was still learning how to manage her debts; (2) when the student loans were opened, the process was done by her parents, and nobody ever informed her that she would have to repay the loans; (3) she had a general lack of sufficient income; and (4) she was prioritizing other bills before making student-loan payments. Although she was employed without interruption since 2009, and took college classes from 2009 through 2011, and again in 2015 – supported by student loans – to this day, she has not earned her degree. Instead, she has made claims of positive resolution action, but when repeatedly requested to furnish the documentation to support her claims, she avoided doing so.

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 a variety of payments to her creditors, she offered no verifiable evidence of a good-faith effort to support any of those claims. It is noted that she paid off one charged-off account – the one for \$475 (and alleged as only \$332) – before she was interviewed by the OPM investigator in early May 2020, but between that interview and the date her response to the FORM was expected in December 2021, she made no verifiable efforts to address any other delinquent debts, including her student loans.

Based on the evidence, it appears that Applicant actually ignored her delinquent accounts for a substantial multi-year period. Because of her failure to confirm any student-loan payments and 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, 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 June 2021.

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 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."

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).

There is no evidence of financial counseling, a budget, or current financial information. Applicant's in-action 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 31-year-old employee of a defense contractor. She has been serving as a passport support supervisor with her current employer since December 2016. She was previously employed by other employers as a part-time supervisor; a full-time driver coordinator; and a full-time administrative assistant. She is a 2008 high school graduate. She received college credits during the periods 2009 - 2011, and in 2015, but no degree. In 2020, she reenrolled in college.

The disqualifying evidence under the whole-person concept is simply more substantial and compelling. Applicant had nine still-delinquent accounts totaling approximately \$39,665. She identified four factors for the reasons she was not proactive or successful in addressing her accounts: (1) she was just getting out on her own and was still learning how to manage her debts; (2) when the student loans were opened, the process was done by her parents, and nobody ever informed her that she would have to repay the loans; (3) she had a general lack of sufficient income; and (4) she was prioritizing other bills before making student-loan payments. Although she was employed without interruption since 2009, and took college classes from 2009 through 2011, and again in 2015 – supported by student loans – to this day, she has not earned her degree. Instead, she has made claims of positive resolution action, but when repeatedly requested to furnish the documentation to support her claims, she avoided doing so. Despite having insufficient funds to pay her delinquent debts, in December 2019, Applicant took a five-day vacation to France.

There are lingering questions if Applicant is currently in a better position financially than she had been. Overall, the evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. Her repeated refusal to furnish requested financial documentation merely adds to those questions and doubts. For all of these reasons, I conclude Applicant has failed to mitigate the security concerns arising from her financial considerations. See SEAD 4, App. A, ¶¶ 2(d) (1) through AG 2(d) (9).

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. through 1.h.:	Against Applicant
Subparagraph 1.i.:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ROBERT ROBINSON GALES
Administrative Judge