



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



In the matter of:)
)
) ISCR Case No. 22-01460
)
Applicant for Security Clearance)

Appearances

For Government: Brian Farrell, Esquire, Department Counsel
For Applicant: *Pro se*

08/28/2023

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On March 10, 2021, Applicant applied for a security clearance and submitted a Questionnaire for National Security Positions (SF 86). On an unspecified date, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Facility (CAF), formerly known as the Department of Defense (DOD) CAF, issued her a set of interrogatories. She responded to those interrogatories on March 7, 2022. On October 24, 2022, the DCSA CAF, now renamed the DCSA Consolidated Adjudications Services (DOD CAS) 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 DOD CAS 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 March 2, 2023, Applicant responded to the SOR and elected to have her case decided on the written record in lieu of a hearing (Item 1). 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 April 28, 2023, 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 Adjudication Guidelines applicable to her case. Applicant received the FORM on May 8, 2023. Her response was due on June 7, 2023. Applicant chose not to respond to the FORM, for as of June 21, 2023, no response had been received. The case was assigned to me on August 1, 2023, and there was still no response to the FORM.

Findings of Fact

In her response to the SOR, Applicant admitted, with brief comments, both SOR allegations pertaining to financial considerations (SOR ¶ 1.a and 1.b.), and she submitted an eviction letter from a law firm representing one of her creditors.

Background

Applicant is a 39-year-old employee of a defense contractor. She has been serving as a final inspector since November 2014. She was previously employed by other employers as an operator (October 2013 – November 2014); in assembly (September 2012 – October 2013); and inspector (September 2011 – March 2012). She was unemployed from March 2012 until September 2012. She is a 2002 high school graduate. She has never served with the U.S. military. She has never held a security clearance. She was married in 1998 and divorced in 2011. She has six children, born in 1999, 2002, 2006, 2009, 2014, and 2019.

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 January 4, 2023, with attachments); Item 3 (SF 86, dated March 10, 2021); Item 4 (Responses to Interrogatories, dated March 7, 2022); Item 5 (Equifax Credit Report, dated April 26, 2023); Item 6 (Equifax Credit Report, dated September 20, 2022); and Item 7 (Verato Credit Report, dated June 7, 2022).

In her SF 86, Applicant acknowledged having some financial issues associated with a delinquent "bank card," in the amount of \$1,183, but denied having any other issues involving routine accounts such as evictions for non-payment in the last seven years.

(Item 3 at 43-44) With respect to the delinquent bank card account, she acknowledged that as of the submission of the SF 86 in March 2021, she had not taken any action, and has to call the creditor to make arrangements for payment. (Item 3 at 44)

The SOR alleged two still-delinquent accounts, including the bank card, as set forth below:

SOR ¶ 1.a. refers to a bank card account with an \$800 credit limit that was delinquent in the amount of \$1,183 and charged off. Applicant's last payment was made in April 2019. (Item 7 at 2; Item 6 at 3; Item 5 at 3) In her March 2022 Response to the Interrogatories, she admitted that she had made no payment arrangements and was not making payments. (Item 4 at 2) In her January 2023 Answer to the SOR, she indicated that the account "will be paid off after February" after she files her income tax and receives her tax refund. (Item 2 at 5) She offered no explanations as to how the financial situation occurred or deteriorated, why she failed to address the situation since 2019, and submitted no documentation to indicate that the account has been paid as promised. As of the date of this decision, she has furnished no evidence to indicate that any positive actions have been taken by her. The account has not been resolved.

SOR ¶ 1.b. refers to a home mortgage account opened in December 2018 in the initial amount of \$178,730 for which no payments were made since July 2021. (Item 7 at 2; Item 6 at 4; Item 5 at 4) A foreclosure sheriff's sale was conducted in May 2022, and the redemption period expired without redemption. On December 15, 2022, attorneys representing the lender gave Applicant a notice of eviction asking that she vacate and remove all her personal possessions from the property, or the sheriff would evict her. (Letter attached to Answer) Although the cited credit reports all indicate the unpaid balance was \$178,730, and the interrogatories state that the account was past due \$17,660 and the total loan was \$193,596, the SOR alleges that the account was past due in the amount of \$30,028, and that there was a total loan balance of \$202,468. Department Counsel's only citation source for the alleged past-due amount is the SOR itself. Regardless of the amounts in dispute, a foreclosure did occur with anticipated eviction. In the absence of any positive evidence by Applicant, I conclude that the account has not been resolved.

As of March 7, 2022, according to a Personal Financial Statement, Applicant reported a monthly net income of \$2,155.36; monthly expenses of \$3,500; and an unpaid mortgage of \$27,000. Considering those numbers and her negative balance, she had no monthly remainder available for savings or spending. (Personal Financial Statement attached to Response to Interrogatories)

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. Sep. 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 two delinquent debts: a bank card and a mortgage foreclosure. Applicant acknowledged the delinquent bank card in her SF 86; acknowledged that she had taken no positive resolution actions regarding the accounts in her Responses to the Interrogatories; and subsequently admitted both allegations. Based on those facts, as well as the information in her Personal Financial Statement, it is clear that AG ¶¶ 19(a) and (c) have been established. There is no evidence to indicate an unwillingness to satisfy debts regardless of an ability to do so, and AG ¶ 19(b) is not 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.

None of the mitigating conditions apply. Applicant offered no explanations regarding the cause of her financial difficulties; did not dispute the legitimacy of the debts; did not indicate any ongoing contacts with her creditors or any efforts to resolve the delinquent accounts; clearly stated that she had made no payments on the accounts; and merely indicated that she would resolve the smaller account after February after her income taxes would be filed. The record is silent regarding that promised action.

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))).

Based on the evidence, it appears that Applicant ignored her delinquent accounts for a substantial multi-year period. Because of her failure to furnish any explanations regarding her delinquent debts, the overwhelming evidence leads to the conclusion that her financial problems are not under control or that she is not truly interested in resolving them. Her inaction indicates that she has not acted responsibly. 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 furnish any verifiable evidence that she began making such efforts before the SOR was issued in October 2022, or even since that period.

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 a generalized statement regarding a future payment for only one account but failed to offer any documentation to verify the promised action.

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. There is clear evidence that Applicant has no monthly remainder available for savings or spending. Applicant's relative 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 39-year-old employee of a defense contractor. She has been serving as a final inspector since November 2014. She was previously employed by other employers as an operator; in assembly; and inspector. She was unemployed for approximately six months in 2012. She is a 2002 high school graduate.

The disqualifying evidence under the whole-person concept is simply more substantial and compelling. There is a bank card account with an \$800 credit limit that was delinquent in the amount of \$1,183 and charged off. Her last payment was made in April 2019. In her March 2022 Response to the Interrogatories, she admitted that she had made no payment arrangements and was not making payments. In her January 2023 Answer to the SOR, she indicated that the account "will be paid off after February" after she files her income tax and receives her tax refund. She subsequently offered no evidence that she had ever made the payment. There is also a home mortgage account opened in December 2018 in the initial amount of \$178,730 for which no payments were made since July 2021. A foreclosure sheriff's sale was conducted in May 2022, and the redemption period expired without redemption. In December 2022, she was issued a notice of eviction asking that she vacate and remove all her personal possessions from the property, or the sheriff would evict her. Applicant offered no explanations as to how

the financial situation occurred or deteriorated, why she failed to address the situation since 2019. As of the date of this decision, she has furnished no evidence to indicate that any positive actions had been taken by her. Applicant's inaction generates lingering questions if she is currently in a better position financially than she had been, as well as continuing doubt about her current reliability, trustworthiness, and good judgment.

In ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008), the Appeal Board addressed a key element in the whole-person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has ". . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his [or her] actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Applicant's track record of zero verifiable efforts to resolve her financial issues is negative and disappointing. Overall, the evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. 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. and 1.b.:	Against 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