



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 12-07849

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel
For Applicant: *Pro se*

06/30/2015

Decision

GALES, Robert Robinson, Administrative Judge:

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

Statement of the Case

On February 15, 2012, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.¹ On June 28, 2013, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued her a set of interrogatories. She responded to the interrogatories on August 14, 2014.² On November 18, 2014, the DOD CAF issued a Statement of Reasons (SOR) to her, pursuant to Executive Order 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 the

¹ Item 2 (e-QIP, dated February 15, 2012).

² Item 3 (Applicant's Answers to Interrogatories, dated August 14, 2014).

Adjudicative Guidelines for Determining Eligibility For Access to Classified Information (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline F (Financial Considerations) and detailed reasons why the DOD CAF was unable to make an affirmative finding under the Directive 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.

It is unclear when Applicant received the SOR, as there is no receipt in the case file. In a statement, notarized December 12, 2014, Applicant responded to the SOR allegations and elected to have her case decided on the written record in lieu of a hearing.³ A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant on April 1, 2015, and she was afforded an opportunity, within a period of 30 days 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 Guidelines applicable to her case. Applicant received the FORM on April 15, 2015. A response was due by May 15, 2015. Although the memorandum to me indicated that Applicant had submitted information in response to the FORM,⁴ there is no other documentation from her in the case file. The case was assigned to me on June 9, 2015.

Findings of Fact

In her Answer to the SOR, Applicant admitted all but one of the factual allegations pertaining to financial considerations in the SOR (¶¶ 1.b. through 1.j.). Applicant's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 50-year-old employee of a defense contractor. She had been serving as an administrative assistant with her former employer from December 2011 until an unspecified date, but now is employed by her current employer in an unspecified position.⁵ She was previously unemployed from March 2002 until November 2002, during which time she received unemployment compensation.⁶ It is unclear if Applicant graduated from high school or received a General Educational Development (GED) diploma. She attended classes at a community college from 2005 until 2007, but did not receive a degree.⁷ She has never served in the U.S. military.⁸ She has never

³ Item 1 (Applicant's Answer to the SOR, dated December 12, 2014).

⁴ Memorandum, dated May 27, 2015.

⁵ Item 3 (Personal Subject Interview, dated May 10, 2012), at 1; Item 3 (Applicant's Answers to Interrogatories), *supra* note 2, at 1; Item 2, *supra* note 1, at 10-11.

⁶ Item 2, *supra* note 1, at 13; Item 3 (Personal Subject Interview), *supra* note 5, at 2.

⁷ Item 2, *supra* note 1, at 10.

held a security clearance.⁹ Applicant has never been married.¹⁰ She has one son (born in 1989) and one daughter (born in 2002).¹¹

Financial Considerations

It is unclear when Applicant first experienced financial difficulties, but a review of her February 2012 credit report¹² and her August 2014 credit report¹³ reveal several delinquent accounts as early as 2009. Applicant acknowledged that some financial delinquencies occurred as early as 2005 and 2007, and that there were judgments against her in 1998 and 2004.¹⁴ She also indicated that she opened one credit card account in 2003 to help repair her credit.¹⁵ Based on the above, it is apparent that Applicant has experienced financial difficulties for a substantial period.

It is equally unclear as to how or why Applicant's finances deteriorated to the point where her accounts were not timely addressed by her to prevent them from becoming delinquent, placed for collection, charged off, or going to judgment. Although Applicant stated that she had been involved in an automobile accident which required her to purchase a new car in 2005, that she underwent surgery in 2011, and that her bills exceeded her income, Applicant reported no other significant issues such as a more recent (than in 2002) loss of employment, divorce, or other unexpected incidents that were largely beyond her control.

The SOR identified ten purportedly continuing delinquent accounts, totaling approximately \$19,623, which had been placed for collection, charged off, or which went to judgment. Those debts and their respective current status, according to the credit reports, Applicant's comments to the investigator from the U.S. Office of Personnel Management (OPM),¹⁶ her answers to the interrogatories, and her Answer to the SOR, are described as follows:

SOR ¶ 1.a. - a department store account (for which she was merely an authorized user) that was charged off in the amount of \$938;¹⁷ SOR ¶ 1.b. - a medical

⁸ Item 2, *supra* note 1, at 14.

⁹ Item 2, *supra* note 1, at 27.

¹⁰ Item 2, *supra* note 1, at 16.

¹¹ Item 3 (Personal Subject Interview), *supra* note 5, at 2-3.

¹² Item 5 (Combined Experian, TransUnion, and Equifax Credit Report, dated February 23, 2012).

¹³ Item 4 (Equifax Credit Report, dated August 21, 2014).

¹⁴ Item 2, *supra* note 1, at 28-30; Item 5, *supra* note 12, at 5, 8; Item 4, *supra* note 13, at 2-3; Item 3 (Personal Subject Interview), *supra* note 5, at 3.

¹⁵ Item 3 (Personal Subject Interview), *supra* note 5, at 3.

¹⁶ Item 3 (Personal Subject Interview), *supra* note 5.

¹⁷ Item 4, *supra* note 13, at 1; Item 5, *supra* note 12, at 5.

account with a balance of \$308;¹⁸ SOR ¶ 1.c. – a medical account with a balance of \$250;¹⁹ SOR ¶ 1.d. – a medical account with a balance of \$82;²⁰ SOR ¶ 1.e. - a medical account that went to judgment in 2012 in the amount of \$13,513 (about which Applicant professed no knowledge);²¹ SOR ¶ 1.f. - a medical account with a balance of \$223;²² SOR ¶ 1.g. – an unspecified account with a balance of \$500 that was over 180 days past due when it was purchased by another lender;²³ SOR ¶ 1.h. – a credit card account with a balance of \$649;²⁴ SOR ¶ 1.i. – an unspecified account that went to judgment in 2004 in the amount of \$192 (about which Applicant professed no knowledge);²⁵ and SOR ¶ 1.j. – an unspecified account that went to judgment in 1998 in the amount of \$2,968 (about which Applicant professed no knowledge).²⁶

Applicant denied any knowledge of the three judgments against her. She contended that she had been working with a credit repair company since December 2011 in an effort to resolve three of her accounts, and has been sending them \$246 each month so that monthly payments of \$82 could be sent to each of the three creditors.²⁷ In May 2012, Applicant was initially interviewed about her delinquent accounts. By December 2014, she still had not taken any positive action to resolve any of her SOR-related debts. Upon receipt of the SOR, Applicant indicated that her mother agreed to assist her in paying off most of her debts, and that she established a proposed repayment plan. That plan calls for paying off three accounts (SOR ¶¶ 1.b. through 1.d.) in January 2015; two accounts (SOR ¶¶ 1.f. and 1.g.) in February 2015; two accounts (SOR ¶¶ 1.h. and 1.i.) in March 2015; and making future plans to make payment arrangements with two other accounts (SOR ¶¶ 1.e. and 1.j.).²⁸ She denied any liability or responsibility for the account for which she was merely an authorized

¹⁸ Item 4, *supra* note 13, at 2; Item 5, *supra* note 12, at 6; Item 3 (Applicant's Answers to Interrogatories), *supra* note 2, at 3.

¹⁹ Item 4, *supra* note 13, at 2; Item 5, *supra* note 12, at 6; Item 3 (Applicant's Answers to Interrogatories), *supra* note 2, at 2.

²⁰ Item 4, *supra* note 13, at 2; Item 3 (Applicant's Answers to Interrogatories), *supra* note 2, at 3.

²¹ Item 4, *supra* note 13, at 3; Item 3 (Applicant's Answers to Interrogatories), *supra* note 2, at 2; Item 3 (Personal Subject Interview), *supra* note 5, at 6.

²² Item 3 (Applicant's Answers to Interrogatories), *supra* note 2, at 3.

²³ Item 5, *supra* note 12, at 8; Item 3 (Applicant's Answers to Interrogatories), *supra* note 2, at 4.

²⁴ Item 5, *supra* note 12, at 8; Item 3 (Applicant's Answers to Interrogatories), *supra* note 2, at 4; Item 3 (Personal Subject Interview), *supra* note 5, at 3.

²⁵ Item 3 (Applicant's Answers to Interrogatories), *supra* note 2, at 5; Item 3 (Personal Subject Interview), *supra* note 5, at 5.

²⁶ Item 3 (Applicant's Answers to Interrogatories), *supra* note 2, at 5; Item 3 (Personal Subject Interview), *supra* note 5, at 5.

²⁷ Item 3 (Personal Subject Interview), *supra* note 5, at 3.

²⁸ Item 1, *supra* note 3.

user. Although Applicant received the FORM in April 2015, she failed to submit any documentation to support her contentions that she had made any of the projected payments to the creditors under her plan.

There is no evidence to indicate that Applicant ever received financial counseling. In May 2012, Applicant submitted a personal financial statement indicating her net monthly income and monthly household or debt expenses, but that information was corrected during her interview. Her net monthly income, including \$300 in child support, was \$2,250; her monthly household expenses were \$1,420; and her remaining balance at the end of each month for discretionary use or savings was \$550, but even those numbers do not add up.²⁹ Applicant offered no evidence to indicate that her financial problems are now under control.

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.”³⁰ 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.”³¹

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG 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.

²⁹ Item 3 (Personal Subject Interview), *supra* note 5, at 2-3.

³⁰ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

³¹ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

In the decision-making process, facts must be established by “substantial evidence.”³² 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.³³

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.”³⁴

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.”³⁵ 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:

³² “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).

³³ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

³⁴ *Egan*, 484 U.S. at 531

³⁵ See Exec. Or. 10865 § 7.

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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. . . .

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly, under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Applicant has had a long-standing problem with her finances which started as early as 1998. It is unclear if she found herself with insufficient funds to continue making her routine monthly payments or if she simply chose to stop doing so. Various accounts became delinquent and were placed for collection, charged off, or went to judgment. AG ¶¶ 19(a) and 19(c) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "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." Also, under AG ¶ 20(b), financial security concerns may be mitigated where "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, or a death, divorce or separation), and the individual acted responsibly under the circumstances." Evidence that "the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control" is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."³⁶ In addition, AG ¶ 20(e) may apply if "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."

³⁶ 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.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the "good-faith" mitigating condition].

(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. June 4, 2001)).

AG ¶¶ 20(a), 20(c), 20(d), and 20(e) do not apply. AG ¶ 20(b) minimally applies. The nature, frequency, and recency of Applicant's continuing financial difficulties since about 1998 make it difficult to conclude that it occurred "so long ago" or "was so infrequent." Applicant was previously unemployed from March 2002 until November 2002, during which time she received unemployment compensation, but that period was well after her initial financial problems arose. Applicant attributed her financial difficulties to an automobile accident which required her to purchase a new car in 2005, to her surgery in 2011, and because her bills exceeded her income. She reported no other significant issues or other unexpected incidents that were largely beyond her control.

Applicant offered no evidence of a good-faith effort to resolve any of her debts and essentially ignored them until relatively recently. She failed to submit any documentation such as receipts, cancelled checks, account records, etc., to support her contentions that her non-SOR delinquent accounts were resolved. Likewise, there is the absence of documentation regarding her relationship with the credit repair company in 2011 or any continuing contacts with her creditors. There is no evidence to indicate that Applicant ever received financial counseling.

The only documented evidence attributed to Applicant shows a promise to pay her debts on an established schedule. But even her schedule and the associated promises appear to be unfulfilled.³⁷ It appears that Applicant has funds remaining at the end of each month for discretionary use or savings, but there is no evidence that she has taken any steps to resolve even the smallest of her delinquent accounts with that money. There is no evidence to reflect that Applicant's financial problems are under control. Applicant has not acted responsibly as shown by her failure to address her delinquent accounts and by making little, if any, effort to work with her creditors.³⁸ Applicant's actions under the circumstances cast doubt on her current reliability, trustworthiness, and good judgment.³⁹

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 AG ¶ 2(a):

³⁷ The Appeal Board has indicated that promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sept. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)).

³⁸ "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.

³⁹ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

(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 AG ¶ 2(c), the ultimate determination of whether to grant eligibility for 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.⁴⁰

There is some evidence in favor of mitigating Applicant's conduct. She was previously unemployed from March 2002 until November 2002. She has declared her intention of addressing her creditors and resolving her financial problems.

The disqualifying evidence under the whole-person concept is more substantial. There is no evidence as to Applicant's current reputation for reliability, trustworthiness, and good judgment. Her long-standing failure to repay her creditors, even in the smallest amounts, or to arrange payment plans over a substantial period of years, reflect traits which raise concerns about her fitness to hold a security clearance. Despite her promises to resolve her delinquent accounts, Applicant has essentially taken no positive actions to do so. Applicant's actions under the circumstances cast doubt on her current reliability, trustworthiness, and good judgment. Considering the relative absence of confirmed debt resolution and elimination efforts, Applicant's financial issues are likely to remain.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:⁴¹

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

⁴⁰ 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).

⁴¹ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

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 has demonstrated an essentially negative track record of debt reduction and elimination efforts, generally ignoring her debts. Overall, the evidence leaves me with 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 AG ¶ 2(a)(1) through AG ¶ 2(a)(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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b through 1.j:	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