



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



In the matter of:)
)
-----) ISCR Case No. 12-09757
)
Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: Jacob T. Ranish, Esq.

12/30/2015

Decision

HARVEY, Mark, Administrative Judge:

Applicant's credit reports and statement of reasons (SOR) alleged three unpaid judgments and 15 collection or charged-off accounts totaling \$32,016. All of her SOR debts are resolved, except for four debts totaling \$6,418. She is diligently endeavoring to resolve the last four SOR debts. She established a track record of debt payment and resolution. Financial considerations security concerns are mitigated. Access to classified information is granted.

History of the Case

On March 23, 2012, Applicant completed and signed an Electronic Questionnaires for Investigations Processing (e-QIP) (SF 86) (Government Exhibit (GE) 1) On January 20, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant pursuant to Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG), which became effective on September 1, 2006.

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for her, and recommended referral to an administrative judge to determine whether a

clearance should be granted, continued, denied, or revoked. (HE 2) Specifically, the SOR set forth security concerns arising under the financial considerations guideline.

On February 23, 2015, Applicant responded to the SOR, and she requested a hearing. On August 20, 2015, Department Counsel was ready to proceed. On September 14, 2015, the case was assigned to me. On September 25, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for October 19, 2015. (HE 1) The hearing was held as scheduled.

During the hearing, Department Counsel offered 7 exhibits, and Applicant offered 11 exhibits, which were admitted into evidence without objection. (Transcript (Tr.) 11-16; Government Exhibit (GE) 1-7; Applicant Exhibit (AE) A-K) On October 27, 2015, DOHA received a copy of the transcript of the hearing. On November 19, 2015, Applicant offered 10 additional exhibits, which were admitted without objection. (AE L-U) On November 19, 2015, the record closed.

Findings of Fact

In Applicant's SOR response, she admitted the SOR allegations in ¶¶ 1.a, 1.c, 1.e, 1.i, 1.j, and 1.l through 1.r. (HE 3) She denied the remaining SOR allegations, and she also provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact.

Applicant is a 37-year-old employee of a defense contractor, who is an engineer assisting with information technology (IT) certifications. (Tr. 17, 61) She earned a bachelor's degree in management information systems. (Tr. 19) She used student loans to fund her college education. (Tr. 19-20) In 2003, she experienced unemployment and underemployment after college. (Tr. 20, 22) She has had steady employment since 2004. (Tr. 40) In 2005, her roommate moved out, and payment of rent became problematic. (Tr. 22-23) She had expensive car repairs. (Tr. 24) In 2010, she had to move abruptly because of a burglary of her apartment. (Tr. 26-27, 56-57) She lost about \$1,500 after receipt of restitution after the burglary. (Tr. 41) She provided family members about \$15,000 over the last ten years. (Tr. 41-43, 57) In 2004, she received a security clearance, and there are no allegations of security violations or abuse of alcohol or illegal drugs. (Tr. 21; GE 1)

Financial Considerations

Applicant's monthly gross income is \$8,462. (Tr. 28; AE H) She has a remainder of about \$2,000 at the end of each month. (Tr. 29) She has investments totaling about \$30,000. (AE H) Over the last six years, her raises have averaged about two percent annually. (Tr. 44)

Applicant's credit reports and SOR showed three judgments and 15 collection or charged-off accounts totaling \$32,016, and their status is as follows:

SOR ¶ 1.a is a collection account originating from a bank for \$7,922. On February 6, 2015, Applicant paid \$4,000 resolving this debt. (Tr. 29-30, 45-46; AE A)

SOR ¶ 1.b is a collection account originating from a bank for \$7,355. She believed the debts in SOR ¶¶ 1.a and 1.b were duplications of each other. (Tr. 58) On March 2, 2015, the creditor wrote that the debt was transferred to a collection company. (AE B) On October 22, 2015, the collection company wrote that the account has a zero balance. (Tr. 30, 47; AE U)

SOR ¶ 1.c is a charged-off bank debt for \$2,722. On February 7, 2015, March 9, 2015, and April 7, 2015, Applicant made \$454 payments to the creditor. (Tr. 30-31, 47; AE D) Applicant said the debt was paid. (Tr. 30-31)

SOR ¶ 1.d is a collection account originating from a bank for \$929. On October 13, 2015, the collection company wrote thanking Applicant for her payment and stating the account had a zero balance. (AE D) The status of the account is "satisfied." (Tr. 31-32, 48; AE D)

SOR ¶ 1.e is a collection account originating from a bank for \$606. On February 9, 2015, the bank wrote that the debt was paid, and the account had a zero balance. (Tr. 32, 48; AE E)

SOR ¶¶ 1.f through 1.h are three judgments filed in 2009, which are owed to a corporation and total \$4,356 for rent in 2008-2009. (Tr. 32-35, 48-49, 59-60) The creditor has gone out of active business. (AE S) A county attorney told Applicant to file a motion with the court along with three checks in the judgment amounts and to ask the court to vacate the judgments. (AE S) Applicant filed the three checks with the court. (AE Q, R) Applicant has sufficient funds in her account to cover the checks. (AE S) Her court date is November 25, 2015. (AE L)

SOR ¶ 1.i is a collection account originating from a bank for \$4,147. (Tr. 35-37, 49-51) On November 13, 2015, the creditor offered to settle the debt for \$2,448; and on November 17, 2015, Applicant paid the settlement amount. (AE I; AE M; AE N)

SOR ¶ 1.j is a collection account originating from a bank for \$558. (Tr. 51) On November 17, 2015, Applicant paid the creditor \$558 resolving the debt. (AE P)

SOR ¶ 1.k is a collection account originating from a bank for \$2,062. Applicant did not recognize the account. (Tr. 51) On September 15, 2015, Applicant wrote the creditor asking for information on the account. (Tr. 39, 52; AE I) She did not receive a response to her request for information, and she believed the company might be out of business. (Tr. 52)

SOR ¶¶ 1.l through 1.q are six debts totaling \$735 owed to a local government entity for \$105; \$200; \$205; \$55; \$105; and \$65 for parking tickets. On February 6, 2015, Applicant paid her debt to the local government entity. (Tr. 38, 53; AE G)

SOR ¶ 1.r is a collection account originating from a bank for \$622. On November 18, 2015, the creditor wrote that the credit reporting companies would be notified that the status of the account would be changed to “Charged Off, Paid in Full.” (AE T)

Applicant received financial counseling, and she provided several certificates from an on-line counseling service. (Tr. 38; AE K) She delayed paying some of her debts because she was focused on paying down her student loans and her vehicle loan. (Tr. 54) Applicant’s October 21, 2014 credit report shows several debts that have been paid or are current, including student loans totaling \$53,974. (GE 2) She has paid her student loans down to \$39,000. (AE L) She is current on her taxes, her \$20,000 vehicle loan, and her other debts. (Tr. 56; AE L)

Character Evidence

A friend and character witness, who has known Applicant for seven years, described her as loyal, honest, reliable, trustworthy, and dependable. (Tr. 70-71) She recommended continuation of Applicant’s security clearance. (Tr. 71)

Coworkers, who have known Applicant for from 15 months to 6 years, and a friend, who has known her for 20 years, describe her as professional, reliable, diligent, loyal, helpful, and trustworthy. (AE J) Their letters support continuation of Applicant’s security clearance. (AE J)

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.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s 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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the revised adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information. 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 about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “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 guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). 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). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts;” and “(c) a history of not meeting financial obligations.” Applicant’s history of delinquent debt

is documented in her credit reports, SF 86, SOR response, and hearing record. Applicant's SOR alleges, and the evidence establishes three judgments and 15 collection or charged-off accounts totaling \$32,016. The debts in SOR ¶ 1.a (\$7,922) and ¶ 1.b (\$7,375) are duplications of each other, and the delinquent SOR debt total is \$24,659. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions.

Five mitigating conditions under AG ¶ 20 are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) 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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;¹ 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.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

¹The 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) 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)).

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

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

AG ¶¶ 20(a) through 20(d) apply, and 20(e) applies to the three judgments in SOR ¶¶ 1.f through 1.h (\$4,356) owed to a corporation for rent in 2008-2009 and SOR ¶ 1.k (\$2,062). She denied responsibility for these four debts, and she has taken reasonable actions to resolve or investigate them.

In 2003, Applicant experienced unemployment and underemployment. In 2005, her roommate moved out, and payment of rent became problematic. She had expensive car repairs. In 2010, she had to move abruptly because of a burglary of her apartment. She provided family members about \$15,000 over the last ten years. These are all circumstances beyond her control which adversely affected her finances. She received financial counseling. All of her SOR debts are resolved or disputed.

Based on Applicant's credible and sincere promise to timely pay her debts, future delinquent debt "is unlikely to recur and does not cast doubt on [Applicant's] current reliability, trustworthiness, or good judgment," and "there are clear indications that the problem is being resolved or is under control." Her payments of her debts showed good faith. She has sufficient income to keep her debts in current status. Her efforts are sufficient to fully mitigate financial considerations security concerns. Even if Applicant provided insufficient information to mitigate security concerns under AG ¶ 20, she mitigated security concerns under the whole-person concept, *infra*.

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):

(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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under Guideline F, but some warrant additional comment.

Applicant is a 37-year-old employee of a defense contractor, who is an engineer assisting with IT certifications. She earned a bachelor's degree in management information systems. Her income was adversely affected by unemployment, underemployment, the loss of her roommate's share of the rent, expensive car repairs, the burglary of her apartment, and financial support of her family. Several friends and coworkers described her as loyal, honest, reliable, trustworthy, professional, diligent, and dependable. Their statements support continuation of Applicant's security clearance. There is no evidence of any security or employment rule violations, alcohol abuse, use of illegal drugs, or criminal conduct.

All but four of her SOR debts are resolved. Applicant has filed a motion with the court to vacate or dismiss the three judgments in SOR ¶¶ 1.f through 1.h (\$4,356) owed to a corporation for rent in 2008-2009, and she has proffered the funds to the court to pay the judgments. She has written the creditor in SOR ¶ 1.k (\$2,062) seeking information on the debt.

Applicant acted responsibly under the circumstances by aggressively working to resolve her debts. Her 2014 credit report indicates her two largest debts, her student loan and vehicle loan are current. She understands that she needs to pay her debts, and the conduct required to retain her security clearance. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

. . . 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 has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has . . . established a plan to resolve his 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 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.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted). Applicant has established a “meaningful track record” of debt payment, and I am confident she will maintain her financial responsibility.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Financial considerations security concerns are mitigated.

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: FOR APPLICANT

Subparagraphs 1.a through 1.r: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant or continue Applicant’s eligibility for a security clearance. Eligibility for access to classified information is granted.

MARK HARVEY
Administrative Judge