



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



In the matter of:)	
)	
)	ISCR Case No. 14-01350
)	
Applicant for Security Clearance)	

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

10/02/2014

Decision

RIVERA, Juan J., Administrative Judge:

Applicant should have been more diligent addressing her delinquent debts and student loans. Notwithstanding, she started her efforts to resolve her debts in 2012, before receipt of the 2014 statement of reasons (SOR). Applicant’s financial situation is stable. Her income is sufficient for her to address her financial problems. I find that her omissions in her security clearance application were not intentional or made with the intent to deceive. Clearance granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on September 23, 2013. The Department of Defense (DOD) issued her a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations) and Guideline E (personal conduct) on May 16, 2014.¹ Applicant answered the SOR on July 9, 2014,

¹ The DOD acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the Adjudicative Guidelines

and requested a hearing before an administrative judge. The case was assigned to me on July 30, 2014. The Defense Office of Hearings and Appeals (DOHA) issued the notice of hearing on August 6, 2014, convening a hearing on August 29, 2014.

At the hearing, the Government offered three exhibits (GE 1 through 3). Applicant testified, and presented exhibits AE 1 through 8. AE 8 was received post-hearing. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on September 9, 2014.

Findings of Fact

In her answer, Applicant admitted all the factual allegations in the SOR, with comments. Her admissions are hereby incorporated as findings of fact. After a thorough review of all the evidence, including her testimony and demeanor while testifying, I make the following additional findings of fact:

Applicant is a 27-year-old project analyst working for a defense contractor. She graduated from high school in June 2005, and received her bachelor's degree in sociology and criminal justice in June 2010. She has never been married, but she has a daughter, age four, and a son, age one.

Applicant financed her college education with student loans (alleged in SOR ¶¶ 1.b through 1.m). During her first two years of college, she attended an out-of-state university. During her last two college years, Applicant returned to her home state and worked part time to help finance her education. While in college, she opened the credit card account alleged in SOR ¶ 1.a, and used it to pay for books and her day-to-day living expenses.

Applicant's daughter was born during her senior year in college in January 2010. As a result, she was not able to work for approximately nine months. Because she was unemployed, she did not have the financial means to pay her debts and her day-to-day living expenses. The father of her first child was in prison, and he never provided any financial support for Applicant or their daughter. Applicant testified that she never was fully aware of the extent of her college debt. Apparently, one of her aunts prepared all her student loan applications, and Applicant just signed them.

Applicant was hired by a private company in March 2011. She started to make payments on her student loans in 2012. Her grandfather paid over \$6,000 to help her bring her student loans current. (AE 8) Applicant's aunt helped her to establish a budget and promised to help her with some of her debt payments. (Tr. 47) Applicant entered into a student loan rehabilitation program in late 2012-early 2013, and was paying \$200 monthly until July 2013. She stopped making payments because she moved into her own apartment, and with the additional expenses she did not have the money to

for Determining Eligibility for Access to Classified Information (AG), implemented by the DOD on September 1, 2006.

continue the loan rehabilitation payments. She started working for her current employer, a government contractor, in April 2013. However, with the medical expenses associated with her second pregnancy and the birth of her son, she was unable to work for a period, and did not have the financial means to address her delinquent debts.

After receipt of the May 2014 SOR, Applicant became concerned about her ability to hold a security clearance and retain her job. She attempted to reinstate her student loan rehabilitation plan, but the creditor required her to pay \$400 a month, and she did not have the financial means to make that payment. On May 2014 and September 2014, Applicant requested forbearance on some of her delinquent student loans. The forbearance was granted until September 2015, on U.S. Department of Education student loans owing close to \$32,000 and Sallie Mae student loans owing close to \$12,000. (AE 1, 2, 8) She testified that she continued to make a \$240 monthly payment for interest accrued on some of the student loans. Applicant also requested a deferment on other student loans. In July 2014, the creditor denied the deferment because her monthly income exceeded the poverty guidelines. (AE 8)

Concerning the delinquent account alleged in SOR ¶ 1.a, Applicant agreed to start making monthly payments of \$400 in October 2014. Applicant noted that she paid other delinquent accounts not alleged in the SOR. During both of her pregnancies, she did not have medical insurance and incurred numerous medical debts. She paid a delinquent credit card in February 2012 after it was charged off; and she paid another delinquent credit card debt in February 2013. Additionally, Applicant paid three delinquent debts for medical services (\$135, \$100, and \$206) in March 2014. (GE 2, GE 3, Tr. 49)

Applicant has been making lifestyle changes to ensure that she will have the financial means to resolve her financial problems. She no longer uses credit cards and pays for his necessities using cash or a debit card. To save money and be able to pay her delinquent debts, Applicant does not own a car, and she travels via public transportation. She is receiving financial counseling from her aunt and uncle. Her aunt helped her to prepare a budget.

Applicant's budget shows that her gross monthly income is \$3,200. After paying her monthly expenses, her monthly disposable income is around \$400. However, she indicated that her aunt and uncle promised to help her with her debt payments. Applicant acknowledged that she should have been diligent addressing her financial difficulties. She attributed some of her financial problems to her young age, immaturity, and lack of experience handling financial matters.

Applicant promised to be more responsible addressing her financial problems. She believes that with her current income and her aunt's help she will be able to continue addressing her debts. She intends to pay her student loans one at a time. She now understands the Government's financial concerns, and that she is required to maintain financial responsibility to be eligible for a security clearance.

Applicant submitted her first SCA in September 2013. She testified that she received no instruction or help to complete the SCA. She filed the SCA at home and did not call anyone for assistance. Section 26 (Financial Record) of her 2013 SCA asked her to disclose whether in the past seven years she had defaulted in any type of loan; had a credit card suspended, charged off, or cancelled for failing to pay as agreed; and whether she had been, or currently was 120 delinquent on any debt. Applicant answered “no” to the above questions and disclosed no financial problems. The subsequent background investigation disclosed the 13 delinquent debts alleged in the SOR, comprised of one delinquent credit card owing over \$9,500 and 12 student loans totaling over \$64,000.

Applicant claimed that her failure to report her delinquent debts was an innocent mistake, and not with the intent to deceive the Government. She explained that she did not disclose the credit card debt and her student loans because she did not know the exact account balances. She believed she was required to provide accurate balance information in her SCA, and because she did not know her balances, she answered “no.” She also believed that because the student loans were Government guaranteed loans, the Government would have ready access to all the information concerning her student loans.

A government investigator interviewed Applicant shortly after she submitted her 2013 SCA. The investigator did not have Applicant’s credit report available, and Applicant was not confronted with her delinquent student loans. Nevertheless, Applicant discussed her student loans with the investigator. She told the investigator that she had omitted her delinquent student loans because she did not have accurate information concerning the balance of her loans and was afraid of reporting wrong information. She also believed the Government had all the information concerning her student loans, and she did not disclose them on the SCA because she was concerned she would be in trouble if she provided inaccurate balance information. (Tr. 55-57)

Policies

Eligibility for access to classified information may be granted “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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense

consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

Under Guideline F, the security concern is that 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 ¶ 18)

While in college, Applicant acquired a credit card (SOR ¶ 1.a) and 12 student loans that later became delinquent. (SOR ¶¶ 1.b through 1.m) Because of both of her pregnancies and childbirths, she was unable to work full time for two periods of time, and had no medical insurance. She acquired medical debts that later became delinquent, and was unable to repay her credit card and student loans. Neither of her children's fathers provided any financial support. AG ¶ 19(a) "inability or unwillingness to satisfy debts" and AG ¶ 19(c) "a history of not meeting financial obligations," apply.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

(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;

(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; and

(f) the affluence resulted from a legal source of income.

Considering the evidence as a whole, I find that financial considerations mitigating conditions AG ¶¶ 20(a) and (d) partially apply. Applicant's financial problems are recent and ongoing. However, the debts became delinquent under circumstances that are unlikely to recur. Applicant graduated from college and she is currently fully employed. She is now the proud mother of two children, and a more mature person. She is aware that she is required to maintain financial responsibility to be eligible for a security clearance and to retain her job. AG ¶ 20(b) does not apply.

AG ¶ 20(c) applies. Applicant is receiving financial counseling and assistance from her aunt and uncle, and a student loan counselor. She is following a budget and there are clear indications that her financial problem is being resolved. I note that Applicant paid three debts in 2012-2013 before being fully employed with her current employer, and attempted to rehabilitate her student loans. Additionally, her grandfather helped her by paying \$6,000 toward her student loans. More recently, Applicant paid three small medical debts, established a payment plan for the debt alleged in SOR ¶ 1.a, and has been in contact with the student loan creditors trying to bring some of her student loans current. She intends to pay her student loans one at a time. Considering the evidence as a whole, I find Applicant made efforts to address her delinquent debts.

Applicant should have been more diligent monitoring and paying her student loans. However, considering her circumstances, it appears she did not have the financial means to fully address her delinquencies. The evidence does not establish that she abandoned or intended to default on her financial obligations. In light of Applicant's

payment history, limited income, and child care responsibilities, and her recent efforts to resolve her financial problems, I find that there are clear indications that her financial problems are being resolved, and she will continue to make progress resolving her delinquent debts. The remaining mitigating conditions are not applicable to the facts in this case.

Guideline E, Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Applicant failed to disclose in her 2013 SCA (Financial Record) that in the last seven years she had defaulted on student loans; had bills turned over to collection agencies; had a credit card charged off or cancelled for failing to pay as agreed; and that she had been, or currently was 120 delinquent on her debts.

Applicant's omissions, if deliberate, would trigger the applicability of the following disqualifying condition under AG ¶ 16:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Considering the evidence as a whole, and having observed Applicant's demeanor while testifying, I find that her omissions were not deliberate or made with the intent to mislead the Government. Applicant was young, immature, and lacked experience completing a security clearance application. It does not appear that she received any instructions or help completing her 2013 SCA.

A government investigator interviewed Applicant shortly after she submitted her 2013 SCA. The investigator did not have Applicant's credit report available, and Applicant was not confronted with her delinquent student loans. Nevertheless, Applicant discussed her student loans with the investigator. She told the investigator that she had omitted her delinquent student loans because she did not have accurate information concerning the balance of her loans and was afraid of reporting wrong information.

AG ¶ 17 lists six conditions that could potentially mitigate the personal conduct security concerns:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(f) the information was unsubstantiated or from a source of questionable reliability.

In light of the record evidence, I find that mitigating condition AG ¶ 17(a) applies and the personal conduct security concerns are mitigated.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. (AG ¶ 2(c))

Applicant acquired the debts alleged in the SOR to finance her college education. She anticipated repaying the debts as soon as she started working after college. Her plans were delayed by the birth of her two children, her inability to work while pregnant or taking care of her children, the lack of financial support from the children's fathers, and her inability to find a good paying job until April 2013, when she was hired by her current employer.

Applicant started her efforts to repay her creditors and to bring her student loans current in 2012-early 2013. She paid three delinquent debts, established a student loan rehabilitation program, and paid \$6,000 toward her student loans to bring them current. This first attempt was unsuccessful. After receipt of the 2014 SOR, Applicant became

fully aware of the Government's financial concerns and stepped up her efforts to repay her creditors and to bring the student loans current. She paid three medical debts, established payment plan for a credit card debt, and obtained deferments and forbearance for some student loans. She intends to pay her student loans one at a time.

Applicant should have been more diligent addressing her delinquent debts and student loans. Notwithstanding, she has been making efforts to resolve her financial problems since 2102. Applicant's financial situation is stable. Her income is sufficient for Applicant to pay her family's day-to-day living expenses and address her debts.

Applicant was young, immature, and lacked experience completing her 2013 SCA. She has learned her lesson by going through the security clearance process. She now understands that her financial responsibility is a security concern. She is aware that her failure to maintain financial responsibility will adversely impact her ability to possess a security clearance in the future. Moreover, she is fully aware that her failure to be truthful and candid during the security clearance process will disqualify her from eligibility for a security clearance.

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 – 1.m:	For Applicant
Paragraph 2, Guideline E:	For APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant eligibility for a security clearance to Applicant. Clearance is granted.

JUAN J. RIVERA
Administrative Judge