



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



In the matter of:)
)
) ISCR Case No. 14-01531
)
Applicant for Security Clearance)

Appearances

For Government: Stephanie C. Hess, Esq., Department Counsel
For Applicant: *Pro se*

03/10/2016

Decision

RIVERA, Juan J., Administrative Judge:

Applicant’s finances were adversely affected by circumstances beyond her control. She settled or paid nine SOR debts totaling \$13,390. She has five debts totaling \$7,068 to resolve. While additional sustained financial effort is necessary to resolve all her debts, she has 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

Applicant submitted a security clearance application (SCA) on March 11, 2013. After reviewing it and the information gathered during a background investigation, the Department of Defense (DOD) was unable to make an affirmative decision to grant Applicant’s eligibility for a clearance. On August 12, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations).¹ Applicant submitted four answers to the SOR, the last one dated

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

September 19, 2014, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

Department Counsel was ready to proceed on September 18, 2015. The case was assigned to me on October 7, 2015. That same day, the DOHA issued a notice of hearing, setting the hearing for October 13, 2015. Applicant was advised that she has a right under the Directive to 15 days' notice of the date, time, and location of her hearing. Applicant testified that she requested an expedited hearing, had sufficient time to prepare, and was ready to proceed. She affirmatively waived the advance notice requirement. (Tr. 15-16) Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered 5 exhibits (GE 1-4); and Applicant offered 17 exhibits (AE 1-17). All exhibits were admitted into evidence without objection. On October 21, 2015, DOHA received a copy of the transcript of the hearing. Applicant provided two additional documents after her hearing, and they were admitted without objection. (AE 18, 19) The record closed on October 30, 2015.

Findings of Fact

In Applicant's SOR response, she admitted the factual allegations in SOR ¶¶ 1.b, 1.c, 1.d, and 1.i. She denied the remaining SOR allegations or stated that she paid the alleged debts. She also provided extenuating and mitigating information. Applicant's admissions are incorporated herein as findings of fact.

Applicant is a 57-year-old employee of a defense contractor, who has worked as an evidence control technician since 2011. She received a General Educational Development (GED) diploma in 1985. Applicant received law enforcement and accounting training. When she was working as a contractor for another government agency in 2008, she held a security clearance for one year. She has held a secret clearance in her current employment since 2011. Her continued employment is contingent on her retaining her security clearance.

Applicant married in 1974, and she divorced in 2001. She married her current spouse in 2002. Her three children are 33, 37, and 40. She was a police detective for 22 years. There are no allegations of rule or security violations.

Section 26 (Financial Record) of the 2013 SCA asked Applicant to disclose whether during the last seven years she had any financial problems, including delinquent or in-collection debts; loan defaults; credit cards or accounts suspended, charged off, or cancelled; and whether she was currently over 120 days delinquent on any debt, or had been over 120 days delinquent on any debts. Applicant answered "yes" and disclosed that she had financial problems, including a repossessed vehicle.

The subsequent security clearance background investigation revealed the 15 delinquent accounts alleged in the SOR, totaling about \$23,700. Applicant's credit reports, her SOR response, and the hearing record established the debts in the SOR. The status of her SOR debts is as follows:

SOR ¶¶ 1.a (\$813), 1.m (\$451), and 1.n (\$891) alleged three debts owed to a telecommunications company in collection by a collections agency. Applicant believes that the three debts are the same. SOR ¶ 1.a is a 2008 judgment obtained on behalf of the telecommunications company. I find that SOR ¶¶ 1.a and 1.n alleged the same debt and will be consolidated under SOR ¶ 1.a. (Tr. 46-48, 70-72) On October 22, 2015, the collection agency agreed to settle the \$891 debt for \$356. (AE 18) Applicant plans to address the debt the month after her hearing.

The SOR alleges seven medical debts: ¶ 1.b (\$412); ¶ 1.c (\$402); ¶ 1.d (\$294); ¶ 1.f (\$931); ¶ 1.g (\$108); ¶ 1.j (\$283); and ¶ 1.p (\$3,497). Applicant paid the debts in SOR ¶¶ 1.b, 1.c, 1.d (June 3, 2015), 1.g (October 9, 2015), and 1.j (April 21, 2014). (AE 3, 6-9, 11)

On June 3, 2015, Applicant paid a medical debt for \$363. (AE 8) On October 9, 2015, she paid \$243 to address another medical debt. (AE 12) Applicant believed the medical debt in SOR ¶ 1.f was paid using her credit union account; however, she did not provide documentation showing it was paid or otherwise resolved. Applicant paid \$300 toward the debt in SOR ¶ 1.p, and she is making \$100 monthly payments. (Tr. 64, 80; AE 18)

SOR ¶ 1.e (\$1,298) is a telecommunications collection debt. Applicant's telecommunications equipment was damaged in 2005, during Hurricane Katrina. Her husband returned the equipment to the creditor. She said her husband was working with the creditor on the debt. (Tr. 55, 68)

SOR ¶ 1.h (\$3,319) is a collection account for an apartment complex. Applicant sublet her apartment in 2008 or 2009. The person subletting her apartment (sublessee) was supposed to turn in the key when the lease was completed. The sublessee told Applicant she gave the key to a maintenance person; however, the landlord's representative denied that the landlord received the key. The landlord's representative said Applicant owed \$3,319. Applicant paid an attorney to dispute the debt.

The day before her hearing Applicant talked to the manager of the apartment complex, and he said he would check into her concerns about the apartment debt. Applicant wrote the apartment management and disputed her responsibility for the debt. Applicant wrote the creditor and explained she was disputing the debt because she gave 60 days of notice of the lease termination, and she did not receive return of her deposit. On October 14, 2015, the manager of the apartment complex wrote that he would continue to look for their file on her lease. (AE 18) If the debt is substantiated, Applicant promised to pay it. (Tr. 59)

SOR ¶ 1.i (\$152) is a collection for a utility debt. On April 21, 2014, Applicant paid this debt. (AE 5)

SOR ¶ 1.k (\$347) is a past-due collection debt. On October 30, 2015, the creditor acknowledged that this debt is paid. (AE 19)

SOR ¶ 1.i (\$11,342) is a charged-off debt resulting from the repossession of her vehicle. On April 21, 2014, Applicant paid the creditor \$2,500 and resolved this debt. (Tr. 62; AE 3; AE 4)

SOR ¶ 1.o (\$243) is a bank-collection debt. On April 21, 2014, Applicant paid this debt. (Tr. 63, 80; AE 3; AE 10)

Applicant reorganized her debts under a Chapter 13 bankruptcy proceeding in 2000, and her debts were discharged under Chapter 7 bankruptcy proceeding in 2004. (Tr. 64-65) The first bankruptcy resulted after her first husband left her with the children without any financial support and he got out of the military. (Tr. 81) The second bankruptcy resulted after she developed a serious medical problem, lost her job, and she was unemployed for about 18 months. (Tr. 65)

Applicant testified that she lost all her property during Hurricane Katrina and had difficulty finding a job paying more than minimum wages. She moved to her current state of residence seeking a job that would pay more than minimum wages to be able to pay her debts. In 2012-2013, Applicant sought financial counseling from her credit union. She is following a financial plan with a budget. She is making debt consolidation loans to pay her debts, and then paying the loans back to the credit union. Her credit union loans are current. Applicant was able to pay nine debts under the credit union financial plan. She is working on resolving her remaining debts through her credit union. She paid off her credit cards and currently does not have any credit cards. After paying all expenses, she has a monthly remainder of about \$50. (Tr. 68-70; AE 1, AE 2)

Applicant believed she was doing well resolving her debts, but her finances were adversely affected by the illness and death of her father in 2014. She acquired numerous medical debts to include his hospice and his burial expenses. Additionally, Applicant's divorce, her serious illness when she did not have health insurance, and her periods of underemployment and unemployment contributed to her financial problems.

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

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)

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

Applicant's history of financial problems is documented in her credit reports, SOR response, and hearing record. She reorganized her debts under a Chapter 13 bankruptcy proceeding in 1994, and had her debts discharged under a Chapter 7 bankruptcy proceeding in 2004. Applicant's SOR alleges, and the evidence establishes, 15 delinquent debts totaling \$23,700.

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.” 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; 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.

AG ¶¶ 20(a) through 20(d) apply. Applicant’s finances were adversely affected by the following four circumstances beyond her control: (1) illness and death of her father; (2) divorce from her first husband; (3) her serious illness when she did not have health insurance; and (4) unemployment or underemployment.

On April 21, 2014, prior to receipt of the SOR, Applicant paid the five SOR debts in ¶¶ 1.b, 1.i, 1.j, 1.l, and 1.o, and she reduced the SOR debt total by half. She also paid some non-SOR creditors. The medical debt in SOR ¶ 1.p (\$3,497) is in a payment plan.

AG ¶ 20(e) applies to the debt in SOR ¶ 1.h (\$3,319). Applicant wrote the creditor and explained she was disputing the debt because she gave 60 days of notice of the lease termination, and she did not receive return of her deposit. In sum, Applicant has five SOR debts totaling \$7,068 to resolve.

Based on Applicant’s actions addressing and paying her debts, and her credible and sincere promise to timely pay her debts, future delinquent debt is unlikely to recur and does not cast doubt on her current reliability, trustworthiness, or good judgment. I

find there are clear indications that her financial problem is being resolved or is under control. Her payments of some of her debts showed good faith. She has sufficient income to keep her debts in current status and to continue making progress paying her remaining delinquent debts. 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

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). 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 57-year-old employee of a defense contractor, who has worked as an evidence control technician since 2011. She held a security clearance for one year when she was working as a contractor for another government agency in 2008. She has held a secret clearance in her current employment since 2011. She was a police detective for 22 years. There are no allegations of rule or security violations.

Applicant financial problems include bankruptcies in 1994 and 2004. The SOR alleged 15 delinquent debts totaling \$23,700. She paid five SOR debts before the SOR was issued, reducing the SOR debt total by half. Applicant resolved nine SOR debts totaling \$13,390. One \$3,497 debt is in a payment plan; one \$813 debt is a duplicate; and one \$3,319 debt is disputed, leaving her with five debts totaling \$7,068 to resolve.

Applicant's finances were adversely affected by circumstances beyond her control: the illness and death of her father; her divorce; her serious illness when she did not have health insurance; and unemployment. She acted responsibly under the circumstances by diligently working to resolve her debts. She promised to pay or resolve the remaining five unpaid SOR debts. She understands that she needs to pay her debts, and that she is required to demonstrate financial responsibility 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 re-payment, and I am confident she will maintain her financial responsibility.²

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 - 1.q:	For Applicant

²The Government has the option of following-up with more questions about Applicant’s finances. The Government can re-validate Applicant’s financial status at any time through credit reports, investigation, and interrogatories. Approval of a clearance now does not bar the Government from subsequently revoking it, if warranted. “The Government has the right to reconsider the security significance of past conduct or circumstances in light of more recent conduct having negative security significance.” ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012). Violation of a promise made in a security context to pay legitimate debts also raises judgment concerns under Guideline E, and may support future revocation of a security clearance. An administrative judge does not have “authority to grant an interim, conditional, or probationary clearance.” ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012) (citing ISCR Case No. 10-03646 at 2 (App. Bd. Dec. 28, 2011)). See also ISCR Case No. 04-03907 at 2 (App. Bd. Sep. 18, 2006) (stating, “The Board has no authority to grant [a]pplicant a conditional or probationary security clearance to allow [the applicant] the opportunity to have a security clearance while [the applicant] works on [his or] her financial problems.”). This footnote does not imply that this decision to grant Applicant’s security clearance is conditional.

Conclusion

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

JUAN J. RIVERA
Administrative Judge