



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



In the matter of:)
)
XXXXXXXXXX, XXXXX) ISCR Case No. 14-02074
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstorm, Esq., Department Counsel
For Applicant: *Pro se*

06/15/2015

Decision

TUIDER, Robert J., Administrative Judge:

Applicant failed to mitigate security concerns regarding Guideline F (financial considerations). Clearance is denied.

Statement of the Case

On September 11, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On July 16, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 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 alleged security concerns under Guideline F (financial considerations). The SOR detailed reasons why DOD was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and it

recommended that her case be submitted to an administrative judge for a determination whether her clearance should be granted, continued or revoked.

Applicant answered the SOR on July 31, 2014 and elected to have her case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM), dated February 23, 2015, was provided to her by letter dated March 4, 2015. Applicant received the FORM on March 25, 2014. She was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant timely submitted additional information within the allotted period of 30 days after receipt of a copy of the FORM. Department Counsel subsequently indicated that he had no objection to Applicant's additional information. On May 5, 2015, the case was assigned to me.

Findings of Fact

Applicant admitted all of the SOR allegations. She did, however, take exception to the total loan balance of \$4,254 alleged in SOR ¶ 1.b, but agreed that she was more than 120 past-due in the amount of \$410. After a thorough review of the record, I make the following findings of fact.

Background Information¹

Applicant is a 29-year-old security assistant employed by a defense contractor since October 2010. She seeks a security clearance in conjunction with her current employment. (Item 4)

Applicant graduated from high school in June 2003. She attended college level courses from 2003 to 2005, in 2006, in 2007, and in 2009, and has not yet earned a degree. Applicant is unmarried and has no dependents. (Items 4, 8) She did not serve in the armed forces. (Item 4)

Financial Considerations

Applicant's SOR contains 13 allegations under this concern alleging one judgment, two past-due accounts, and ten collection accounts. Applicant provided little information regarding the status of these debts and Department Counsel prepared a FORM taking into account an SOR response with little or no mitigating evidence. In Applicant's FORM response, she provided mitigating evidence that supported recent and partial efforts to address some, but not all of her long standing debts.

SOR ¶ 1.a – Judgment filed in 2012 in favor of an insurance company for \$3,782. As of April 2015, Applicant made a \$600 payment in September 2013 and claimed she made a \$600 payment in August 2014, and a \$100 payment in March 2015, and would make a \$100 payment in April 2015. She stated her balance as of March 2015 was

¹The FORM contains limited facts regarding Applicant, precluding the development of a more comprehensive Background Information section.

\$2,230. Documentation provided by Applicant supported the August 2014 \$600 payment and the remaining payment information was noted by handwritten notes on a February 25, 2015 debt collection letter from the creditor. **DEBT BEING RESOLVED.** (FORM response)

SOR ¶ 1.b – Past-due amount of \$410 on student loan balance of \$4,254. Applicant's October 2014 credit report shows this account has been delinquent since January 2013. Applicant submitted a creditor letter dated March 16, 2015 showing an amount of \$572 past-due. The letter summarized an agreement between the creditor and Applicant that she would make \$66 payments for six months and after the 6th payment, the creditor would contact her to discuss payment of the remaining balance due. The first \$66 payment was to be made by April 17, 2015. No documentation of payment in the FORM. **DEBT BEING RESOLVED.** (Item 5, FORM response)

SOR ¶ 1.c – Collection account for a student loan account for \$3,125. Account paid in full as of January 2015. **DEBT RESOLVED.** (FORM response)

SOR ¶ 1.d – Collection account owed to a state government for \$1,869. Applicant's September 2013 credit report lists this account as having been placed in collections. Applicant did not provide any documentation regarding this debt. **DEBT NOT RESOLVED.** (FORM response)

SOR ¶ 1.e – Past-due amount of \$500 on student loan balance of \$658. Applicant's October 2014 credit report lists this account as having been placed in collections with a balance of \$708. Applicant did not provide any documentation regarding this debt. **DEBT NOT RESOLVED.** (Item 5, FORM response)

SOR ¶ 1.f – Collection account owed to a local government for \$459. Applicant's October 2014 credit report lists this account as having been charged off in the amount of \$502 having been delinquent since July 2010. Applicant did not provide any documentation regarding this debt. **DEBT NOT RESOLVED.** (Item 5, FORM response)

SOR ¶ 1.g – Collection account owed to an insurance company for \$482. Applicant's September 2013 credit report lists this account as having been placed in collections for \$482 in October 2012. Applicant did not provide any documentation regarding this debt. **DEBT NOT RESOLVED.** (Item 6, FORM response)

SOR ¶ 1.h – Collection account owed to an insurance company for \$389. This debt appears to be a duplicate of the debt alleged in SOR ¶ 1.g. **DUPLICATE DEBT.** (Item 6, FORM response)

SOR ¶ 1.i – Collection account owed to third party creditor for a checking account for \$383. Applicant's September 2013 credit report lists this account as having been placed in collections for \$383 in August 2010. Applicant provided documentation that she made two \$20 payments in February 2015 and March 2015 with a balance of \$228. She stated her next payment was due on April 25, 2015. **DEBT BEING RESOLVED.** (Item 6; FORM response)

SOR ¶ 1.j – Collection account owed to a local government for \$250. Applicant's September 2013 credit report lists this account as having been placed in collections in July 2012 for \$250. Applicant did not provide any documentation regarding this debt. **DEBT NOT RESOLVED.** (Item 6, FORM response)

SOR ¶ 1.k – Collection account owed to a local government for \$250. Applicant's September 2013 credit report lists this account as having been placed in collections in June 2012 for \$250. Applicant did not provide any documentation regarding this debt. **DEBT NOT RESOLVED.** (Item 6, FORM response)

SOR ¶ 1.l – Collection account owed to a local government for \$205. Applicant's September 2013 credit report lists this account as having been placed in collections in September 2013 for \$205. Applicant did not provide any documentation regarding this debt. **DEBT NOT RESOLVED.** (Item 6, FORM response)

SOR ¶ 1.m – Collection account owed to an insurance company for \$177. Applicant's September 2013 credit report lists this account as having been placed in collections in January 2013 for \$177. Applicant did not provide any documentation regarding this debt. **DEBT NOT RESOLVED.** (Item 6, FORM response)

Department Counsel noted in his FORM that Applicant's October 2014 credit report identified three new collection accounts. One account is for a cell phone company in the amount of \$648, which she disputes; a second account is for a student loan for \$5,056, which she recently began making payments on; and a third account is for another cell phone company in the amount of \$1,050. Applicant did not provide any documentation showing that she successfully disputed the \$648 cell phone bill nor did she provide any documentation that she had resolved the \$1,050 cell phone bill. (Item 5, FORM response)

The FORM contains limited information regarding the circumstances that led to Applicant's financial difficulties. During her December 2013 Office of Personnel Management Personal Subject Interview (OPM PSI), Applicant stated that she experienced three brief periods of unemployment in 2010, 2008, and 2007. She received unemployment insurance in 2010 and was supported by her parents in 2008 and 2007. (Item 8) The FORM does not contain information about the effect her unemployment had on her ability to pay her bills or what steps she took to remain in contact with her creditors. I note that Applicant has been working full time since October 2010.

During her OPM PSI, Applicant stated that was seeking credit counseling in December 2013 to restore her credit and initiate a debt payment plan. (Item 8) The FORM does not contain any further information regarding financial counseling. She further stated in her OPM PSI that she planned to obtain her credit report, contact her creditors, and set up payment plans. Applicant added that she had a change of attitude about debt because she is getting older, wants to own a home, and her debt is affecting

her employment. She did not previously address her debt because she was financially irresponsible. (Item 8) The FORM does not contain any character evidence.

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 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. See also Executive Order 12968 (Aug. 2, 1995), § 3.1. 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 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 for 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.” In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). Applicant’s history of delinquent debt is documented in her credit reports.

The evidence establishes 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.

Considering the record evidence as a whole,² I conclude none of the five financial considerations mitigating conditions above are applicable or partially applicable to explain, extenuate, or mitigate the security concern except for AG ¶ 20(d) as it pertains to SOR ¶ 1.c. The available information shows that Applicant has taken little affirmative action to resolve her delinquent debts until recently and well after she was made aware that her financial situation posed a security concern.

With that said, a security clearance case is not aimed at collecting debts.³ Rather the purpose is to evaluate an applicant's judgment, reliability, and trustworthiness consistent with the security guidelines in the Directive. In evaluating Guideline F cases, the Appeal Board has established the following standard:

The Board has previously noted that the concept of a 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 [she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that [she] has established a plan to resolve [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 actions in evaluating the extent to which that applicant's plan for the reduction of [her] outstanding indebtedness is credible and realistic. There is no requirement that a plan provide for payments on all outstanding debts simultaneously.

² See ISCR Case No. 03-02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When making a recency analysis for AG ¶ 20(a), all debts are considered as a whole.

³ ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010).

Rather, a reasonable plan (and concomitant conduct) may provide for the payments 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.⁴

Applicant is to be commended for her recent effort to regain financial responsibility at least with regard to some of her debts. Unfortunately, this recent effort does not establish a track record especially with a number of debts that have been neglected throughout the years. In requesting a decision without a hearing, Applicant chose to rely on the written record. In so doing, however, she failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding her circumstances, articulate her position, and mitigate the financial security concerns. She failed to offer evidence of financial counseling or provide documentation regarding her past efforts to address a majority of her delinquent debt. By failing to provide such information, and in relying on a limited explanation without sufficient corroborating evidence, financial considerations security concerns remain.

One additional comment is worthy of note. Applicant's loyalty and patriotism are not at issue in these proceedings. Section 7 of the Executive Order 10865 specifically provides that industrial security decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." Security clearance decisions cover many characteristics of an applicant other than loyalty and patriotism. Nothing in this decision should be considered to suggest that I have based this decision, in whole or in part, on any express or implied decision as to an applicant's loyalty or patriotism.

After weighing the relevant disqualifying and mitigating conditions and evaluating the evidence in light of the whole-person concept,⁵ I conclude Applicant did not present sufficient evidence to explain, extenuate, and mitigate the Guideline F security concern. Accordingly, Applicant has not met her ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

Formal Findings

The formal findings on the SOR are as follows:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant

⁴ ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (citations and quotation marks omitted).

⁵ AG ¶ 2(a) (1)-(9).

Subparagraphs 1.d - 1.g: Against Applicant

Subparagraph 1.h: Duplicate

Subparagraphs 1.i – 1.m: Against Applicant

Conclusion

In light of all of the record as a whole, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance is denied.

ROBERT J. TUIDER
Administrative Judge