



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 11-13730

Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

09/30/2013

Decision

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) lists eight delinquent or charged-off debts, totaling \$78,484. She did not provide any documentation showing attempts to establish payment plans or to resolve her delinquent debts. She did not make any payments to address any of her SOR debts. She failed to make sufficient progress resolving her financial problems. Financial considerations concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On July 5, 2011, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of security clearance application (SF 86). (Item 3) On May 22, 2013, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued an 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) promulgated by the President on December 29, 2005.

The SOR alleged security concerns under Guideline F (financial considerations). (Item 1) The SOR detailed reasons why DOD could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether Applicant's clearance should be granted, continued, denied, or revoked. (Item 1)

On June 6, 2013, Applicant responded to the SOR allegations and waived her right to a hearing. (Item 2) A complete copy of the file of relevant material (FORM), dated June 17, 2013, was provided to her on August 5, 2013. She was afforded an opportunity to file objections and to submit material in refutation, extenuation, or mitigation.¹ Applicant did not respond to the FORM. The case was assigned to me on September 26, 2013.

Findings of Fact²

In Applicant's response to the SOR, she admitted the allegations in SOR ¶¶ 1.a-1.h; however, she wrote the amount owed in SOR ¶ 1.g may be less than the amount indicated in SOR ¶ 1.g (\$68,859). (Item 2) Her admissions are accepted as findings of fact.

Applicant is a 50-year-old custodial lead worker, who has worked for the same employer since March 2011.³ She married in 1983, and she has an adult son living with her. From May 1994 to February 2010, she worked as a property manager for an apartment complex. She was unemployed from February 2010 to March 2011. There is no evidence of arrests or convictions. There is no evidence of use of illegal drugs or alcohol abuse.

Financial considerations

Applicant's SOR lists eight delinquent or charged-off debts, totaling \$78,484, as follows: ¶ 1.a is a medical debt for \$232; ¶ 1.b is a clothing store debt for \$859; ¶ 1.c is a clothing store debt for \$1,660; ¶ 1.d is a bank debt for \$1,571; ¶ 1.e is a bank debt for \$7,409; ¶ 1.f is a collection debt for \$1,620; ¶ 1.g is a bank debt for \$64,859 resulting from a trailer that was repossessed in 2007; and ¶ 1.h is a collection debt for \$274. Her credit reports indicate several debts became delinquent from 2007 to 2009.

¹The DOHA transmittal letter is dated July 30, 2013, and Applicant's receipt is dated August 5, 2013. The DOHA transmittal letter informed Applicant that she had 30 days after her receipt to submit information.

²Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

³Unless stated otherwise, Applicant's August 4, 2011 SF 86 is the basis for the facts in this paragraph. (Item 5)

Applicant's SF 86, credit reports, July 26, 2011 Office of Personnel Management (OPM) personal subject interview (PSI), and SOR response, consistently describe her financial problems and delinquent debts. In late 2009, Applicant's husband's employment hours were reduced, and they were unable to make payments on some of their debts. (OPM PSI, Item 4) As additional causes of her financial plight, Applicant cited her unemployment, inability to obtain full-time employment, and "bad household budgeting of the family income and spending on items not really needed such as camera, TVs, etc." (OPM PSI at 4, Item 4 at 4)

Applicant's personal financial statement shows her monthly gross salary is \$2,940; her family's monthly gross salary is \$4,172; and her family's monthly net remainder is \$489. (Item 4)

The FORM repeatedly emphasized that Applicant had an opportunity to describe or explain what she had done to resolve her delinquent debts and suggested that she provide supporting documentation from her creditors. There is no evidence of financial counseling. There is no documentary evidence of any payments to SOR creditors, correspondence to or from creditors, or debt disputes. There is no evidence of progress resolving her SOR debts.

The July 30, 2013 DOHA letter conveying the FORM to Applicant invited her to "submit any material you wish the Administrative Judge to consider or to make any objections you may have as to the information in the file." Applicant did not provide any response to the FORM.

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 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.” 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, OPM PSI, and SOR response. The record establishes Applicant has eight delinquent or charged-off debts, totaling \$78,484; however, one debt may be of a lower amount. 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;⁴ and

⁴The 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].

(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 the Applicant's responsibility for proving the applicability of mitigating conditions as follows:

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).

Applicant's conduct in resolving her delinquent debt does not warrant full application of any mitigating conditions. Applicant's unemployment, lack of full-time employment, and the reduction in her husband's income are all financial conditions largely beyond Applicant's control; however, she did act responsibly under the circumstances. Her largest debt, which resulted from the repossession of her trailer in 2007, occurred prior to her unemployment. Her personal financial statement shows a monthly family remainder of \$489 per month, and she had sufficient financial resources to have at least settled and paid her smaller debts (SOR ¶¶ 1.a (\$232) and 1.h (\$274)).

Applicant deserves substantial positive credit for honestly admitting responsibility for her delinquent debts. She receives additional credit for candidly citing her bad household budgeting of the family income and unnecessary spending as one of several causes of her financial problems.

Applicant did not describe any payments to any SOR creditors in the last two years. She did not provide any documentation, such as a checking account statement, photocopies of checks, or a letter from the creditor proving that she paid or made any payments to any SOR creditors. There is no evidence of financial counseling, correspondence to or from creditors, or debt disputes. There is no documented evidence of progress resolving her SOR debts. She did not provide documentation proving that she maintained contact with her SOR creditors, and she did not provide any documentation showing her attempts to negotiate payment plans with her SOR

(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)).

creditors.⁵ There is insufficient evidence that her financial problems are being resolved and are under control.

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.

There is some evidence supporting approval of Applicant's clearance. Applicant's finances were adversely affected when her husband's income declined, she became unemployed, and she was unable to obtain full-time employment. These were circumstances beyond her control. She has been employed by the same defense contractor since 2011, and previously she had stable employment from May 1994 to February 2010 as a property manager. There is no evidence of criminal conduct or abuse of alcohol or drugs. She supports her company and the Department of Defense. There is no evidence of disloyalty or that she would intentionally violate national security.

The financial evidence against approval of Applicant's clearance is more substantial at this time. Applicant has a long history of financial problems. She failed to mitigate all eight of her delinquent or charged-off debts, totaling \$78,484. She could have made greater progress resolving and documenting resolution of her delinquent SOR debts. She could have settled and paid the two debts that are less than \$300

⁵“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.

each. She did not provide documentary proof that she made any payments to any of her SOR creditors. Her failure to establish her financial responsibility shows lack of judgment and raises unmitigated questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 15. Documented financial progress is necessary to fully mitigate security concerns.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Financial considerations concerns are not mitigated. For the reasons stated, I conclude Applicant is not eligible for access to classified information at this time.

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
Subparagraphs 1.a to 1.h:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Mark Harvey
Administrative Judge