



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 11-14226
)
Applicant for Security Clearance)

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel
For Applicant: *Pro se*

10/25/2013

Decision

HARVEY, Mark, Administrative Judge:

Applicant’s statement of reasons (SOR) lists 38 delinquent or charged-off debts, totaling \$27,440. Twenty-seven of her debts were mitigated as 19 were disputed medical debts, and 8 non-medical disputed debts were removed from her credit report. She did not provide any documentation showing attempts to establish payment plans or to resolve her 11 remaining delinquent debts, totaling \$19,115. 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 8, 2011, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of security clearance application (SF 86). (Item 4) On April 19, 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 May 29 and June 10, 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 August 2, 2013, was provided to her on August 15, 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 October 21, 2013.

Findings of Fact²

SOR Response³

Applicant admitted the 23 medical debts originated with her that were listed in SOR ¶¶ 1.b (\$267), 1.c (\$883), 1.d (\$114), 1.e (\$115), 1.f (\$114), 1.g (\$406), 1.h (\$378), 1.i (\$184), 1.l (\$111), 1.m (\$534), 1.n (\$59), 1.o (\$81), 1.p (\$564), 1.q (\$224), 1.r (\$179), 1.t (\$75), 1.u (\$325), 1.w (\$606), 1.aa (\$92), 1.cc (\$130), 1.dd (\$688), 1.ee (\$98), and 1.hh (\$82); however, she said those debts are the responsibility of worker's compensation, were sent to her attorney, and are being removed from her credit report.⁴ Her April 16, 2013 credit report shows 14 unpaid medical debts in the amounts of: \$267, \$883, \$114, \$115, \$114, \$406, \$378, \$184, \$111, \$534, \$59, \$81, \$564, and \$224, which match the amounts in SOR ¶¶ 1.b to 1.i, 1.l to 1.p and 1.q. The other medical debts listed in the SOR are not in her April 16, 2013 credit report.

Applicant denied responsibility for seven debts and included the following explanations: (1) The debt in SOR ¶ 1.j (\$486) has been removed from her credit

¹The DOHA transmittal letter is dated August 12, 2013, and Applicant's receipt is dated August 15, 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.

³The source for all of the facts in this paragraph is Applicant's May 29 and June 10, 2013 SOR response. (Item 2) There were no enclosures or supporting documentation to support the assertions made in Applicant's SOR response.

⁴In some instances the SOR listed the collection agent and not the identity of the original creditor. Department Counsel provided the identity of the original creditor for the debts in SOR ¶ 1.w (\$606), 1.cc (\$130), 1.dd (\$688), and 1.hh (\$82) and explained they were not medical creditors. (FORM at 8-9) Applicant did not respond to the FORM. Applicant and Department Counsel agree that Applicant has 19 SOR medical debts listed in SOR ¶¶ 1.b-1.i, 1.l-1.r, 1.t, 1.u, 1.aa, and 1.ee. Those 19 SOR medical debts total \$4,803.

reports; (2) For the debt in SOR ¶ 1.k (\$475), she returned the equipment received from a telecommunications company, and the debt was removed from her credit report; (3)–(6) She attempted to find out more information about the debts in SOR ¶¶ 1.s (\$72), 1.v (\$107), 1.x (\$1,175), and 1.gg (\$797); however, she was unable to establish her responsibility for any of these debts; and (7) She requested removal of the debt in SOR ¶ 1.ii (\$353) from her credit reports without describing why it should be removed. Applicant admitted responsibility for two debts and explained why they were mitigated: (1) The insurance debt in SOR ¶ 1.a (\$210) “was taken care of” and removed from her credit report; and (2) She requested removal of the bank debt in SOR ¶ 1.jj (\$323) from her credit report without explaining why it should be removed from her credit report. Applicant did not provide any credit reports. Applicant’s April 16, 2013 credit report included the delinquent debt in SOR ¶ 1.j (\$486); however, it did not include the other eight debts.

Applicant admitted responsibility for five debts and included the following information: (1)–(2) Two bank debts in SOR ¶¶ 1.y (\$3,285) and 1.z (\$4,754) are owed to the same creditor, and she is working with the creditor to establish a payment plan; (3) She is attempting to contact the creditor in SOR ¶ 1.bb (\$186); and (4) She contacted the creditor for the debt in SOR ¶ 1.ff (\$135) for more information. Her admissions in her SOR response are accepted as findings of fact.

SOR Amendment

In the FORM, Department Counsel requested amendment of the SOR as follows: (1) reduction of the amount of the medical debt in SOR ¶ 1.d from \$11,400 to \$114; (2) increase of the amount of the insurance debt in SOR ¶ 1.ii from “35.003” to \$353; (3) addition of a student loan debt delinquent 120 days or more in SOR ¶ 1.kk (\$5,182); and (4) addition of a student loan debt delinquent 120 days or more in SOR ¶ 1.ll (\$3,581). (FORM at 2-3) Applicant did not object to the four amendments, and I approved the four amendments of the SOR.

Applicant is 35 years old, and she was employed as an alarm dispatcher from April 2011 to completion of her SF 86 in July 2011.⁵ She has never been married, and she does not have any children. She graduated from high school in 1995. She attended several colleges, and she received a diploma or certificate rather than a degree. She has never served in the military. There is no evidence of criminal arrests or convictions. There is no evidence of use of illegal drugs or alcohol abuse.

Applicant was unemployed four times in the last eight years: (1) October 2005 to December 2005; (2) March 2006 to August 2006; (3) September 2008 to May 2010; and (4) January to April 2011.

In 2000, Applicant injured her ankle, and she was living on worker’s compensation from September 2000 to March 2005. From March 2005 to October

⁵Unless stated otherwise, Applicant’s July 8, 2011 SF 86 is the basis for the facts in this paragraph and the next two paragraphs. (Item 4)

2005, she was a claims examiner for a medical company. From December 2005 to March 2006, she was a medical biller in a medical billing office. From August 2006 to September 2008, she worked in collections in a medical area. From May 2010 to January 2011, she was a billing manager.

On October 13, 2011, an Office of Personnel Management (OPM) investigator interviewed Applicant about her finances and discussed numerous delinquent debts with her. (Item 6) Some of her debts became delinquent due to moving, loss of employment, medical problems, and insufficient income. She was injured at work in 2000, and she underwent two ankle surgeries over a two or three year period. For five weeks in 2010, Applicant received two thirds of her pay, while on disability due to pneumonia. In the last five years, she had a lap band procedure, suffered some complications, and had the lap band removed. She has never received financial counseling.

Applicant's credit reports, October 13, 2011 OPM personal subject interview (PSI), response to interrogatories from the Defense Office of Hearings and Appeals (DOHA), and SOR response, consistently describe her financial problems and delinquent debts.

Applicant's personal financial statement shows her monthly gross salary is \$2,584; her monthly net salary is \$1,946; and her monthly net remainder after subtracting expenses is \$25.⁶ The only debt payment is a \$150 monthly payment to her fitness center, resulting in a negative monthly remainder of \$125. She explained that she works "overtime to make up the difference."

The FORM advised Applicant of her opportunity to address the facts in the FORM, and notes the absence of documentary evidence such as payments to SOR creditors, correspondence to or from creditors, or debt disputes. There is no documentary evidence of progress resolving her SOR debts.

The August 12, 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.*

⁶Applicant's February 12, 2013 personal financial statement is the source for the facts in this paragraph. (Item 5 at 4)

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, DOHA interrogatories, and SOR response. The record establishes Applicant's SOR lists 38 delinquent or charged-off debts, totaling \$27,440. 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;⁷ 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:

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 to all SOR debts. Applicant's unemployment, underemployment, low income, and medical problems are all financial conditions largely beyond her control; however, she did not act responsibly under the circumstances. She did not describe any unemployment or changes in her income after April 2011, when she received her current employment. She did not describe any payments to her SOR creditors in those two years.

Applicant denied responsibility for seven debts and admitted responsibility for two debts. She said they were removed from her credit reports. Eight of the nine debts were

⁷The 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)).

not listed as delinquent accounts in her April 16, 2013 credit report. I have credited Applicant with mitigating the six debts in SOR ¶¶ 1.a, 1.k, 1.s, 1.v, 1.x, 1.gg, 1.ii, and 1.jj that were not included in her most recent credit report.

Applicant and Department Counsel agree that Applicant has 19 SOR medical debts listed in SOR ¶¶ 1.b-1.i, 1.l-1.r, 1.t, 1.u, 1.aa, and 1.ee. Those 19 SOR medical debts total \$4,803. Applicant described surgeries for her ankle, lap band surgery, removal of the lap band, and a lengthy period where she lived on workman's compensation. Her April 16, 2013 credit report shows 13 unpaid medical debts. Applicant acted reasonably by utilizing an attorney to assess her own and her employer's workman's compensation liability before paying these debts. I have credited Applicant with mitigating the 19 SOR debts that are clearly attributed to her medical problems.

Applicant's personal financial statement shows a negative monthly remainder and no payments to any of her SOR creditors. She did not establish that over the previous two years she could not have reduced her expenses enough to have at least settled and paid some of her smaller debts (SOR ¶¶ 1.bb (\$186), 1.cc (\$130), 1. ff (\$135) and 1.hh (\$82)).

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 documentation showing 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 creditors.⁸ 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

⁸“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.

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 she became unemployed, she was under employed, and she had medical problems. These were circumstances beyond her control. She has been employed by the same defense contractor since April 2011, and for the last two years she had stable employment. There is no evidence of criminal conduct or abuse of alcohol or drugs. She contributes to 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 history of financial problems. She failed to mitigate 11 delinquent debts, totaling \$19,115. She could have made greater progress resolving and documenting resolution of her delinquent SOR debts. She could have settled and paid some of her smaller debts (SOR ¶¶ 1.bb (\$186), 1.cc (\$130), 1.ff (\$135) and 1.hh (\$82)). She did not provide documentary proof that she made any payments to any of her SOR creditors or that she attempted to settle any of her delinquent debts. She did not provide a plan explaining how she intended to pay any of her delinquent SOR debts. 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. More 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.i:	For Applicant
Subparagraph 1.j:	Against Applicant
Subparagraphs 1.k to 1.v:	For Applicant
Subparagraph 1.w:	Against Applicant
Subparagraph 1.x:	For Applicant
Subparagraphs 1.y and 1.z:	Against Applicant
Subparagraph 1.aa:	For Applicant
Subparagraphs 1.bb to 1.dd:	Against Applicant
Subparagraph 1.ee:	For Applicant
Subparagraph 1.ff:	Against Applicant
Subparagraph 1.gg:	For Applicant
Subparagraph 1.hh:	Against Applicant
Subparagraphs 1.ii and 1.jj:	For Applicant
Subparagraphs 1.kk and 1.ll:	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