



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 12-00423

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro se*

01/23/2014

Decision

HARVEY, Mark, Administrative Judge:

Applicant’s statement of reasons (SOR) alleges nine delinquent, collection, or charged-off debts, totaling \$253,108. She failed to provide sufficient documentation of progress resolving her financial problems. Financial considerations concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On October 24, 2011, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of her security clearance application (SF 86). (Item 5) On August 13, 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 September 12, 2013, Applicant responded to the SOR allegations and waived her right to a hearing. (Item 4) A complete copy of the file of relevant material (FORM), dated October 28, 2013, was provided to her on November 5, 2013.¹ Applicant did not respond to the FORM. The case was assigned to me on January 16, 2014.

Findings of Fact²

In Applicant's SOR response, she admitted all of the SOR allegations. (Item 4) She did not provide any documentation from creditors, disputes, or other evidence of payments as part of her SOR response. Applicant's admissions are accepted as findings of fact.

Applicant is 38 years old, and she has worked as an administrative assistant for a defense contractor since October 2011.³ In 1995, she married, and in 2000, she was divorced. She shared a house with her former spouse after her divorce. Her children were born in 1994 and 1998. She has never served on active duty. In 2004, she was awarded an associate's degree. She attended college from September 2010 to May 2011 as a part-time student. (Item 7)

Applicant was unemployed from April 2009 to September 2010 and from July 2007 to August 2007. (Item 7) She was an administrative assistant from September 2010 to October 2011; she was an administrative sales assistant from October 2006 to March 2009; and she was a floor manager from September 2005 to October 2006. There is no evidence of criminal arrests or convictions or use of illegal drugs or alcohol abuse.

When Applicant completed her October 24, 2011 SF 86, she disclosed ten delinquent debts that became delinquent in 2006. Her three largest debts were two mortgage debts from a foreclosure and a \$24,116 charged-off, vehicle-related debt from 2006. For most of her debts, she indicated, "getting job to pay debt."

¹The DOHA transmittal letter is dated October 29, 2013, and Applicant's receipt is dated November 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. Unless stated otherwise, Applicant's October 24, 2011 SF 86 and/or her November 21, 2011 Office of Personnel Management (OPM) personal subject interview (PSI) are the primary sources for the facts in the Statement of Facts. (Items 5, 7)

³Unless stated otherwise, the facts in this paragraph and the next paragraph are from Applicant's October 24, 2011 SF 86. (Item 5)

Applicant's SOR and credit bureau reports, dated November 1, 2011; February 21, 2013; and July 3, 2013, describe nine delinquent, collection, or charged-off debts, totaling \$253,108 as follows: (1) ¶ 1.a is a mortgage account foreclosed in October 2006 (\$203,620); (2) ¶ 1.b is a telecommunications collection account (\$412); (3) ¶ 1.c is a collection account (\$499); (4) ¶ 1.d is a collection account (\$1,148); (5) ¶ 1.e is a telecommunications collection account (\$482); (6) ¶ 1.f is a vehicle collections account (\$7,584); (7) ¶ 1.g is a mortgage account foreclosed in October 2006 (\$39,042); (8) ¶ 1.h is a telecommunications collection account (\$236); and (9) ¶ 1.i is a book club collection account (\$85).

In September 2005, Applicant and her former husband moved into a home together. (Item 5) Her first mortgage (SOR ¶ 1.a) was for \$204,000, and the second mortgage (SOR ¶ 1.g) was for \$51,000. (Item 10) Her monthly house payment was about \$1,600. (Item 7) In October 2006, Applicant's former husband moved out. (Item 7) He did not assist her with her house payments after moving out, and her home went into foreclosure in September or October 2006. (Item 7)

Applicant said the vehicle collection account (\$7,584) in SOR ¶ 1.f resulted from a vehicle loan that she and her former husband co-signed. (Item 7) The \$7,585 was the amount remaining after the vehicle was repossessed and sold. She believed it was her former spouse's responsibility to pay this debt. (Item 7) The vehicle loan became delinquent in October 2006. (Items 9, 10)

Applicant did not make any payments to any of her SOR creditors. On November 21, 2011, she advised the Office of Personnel Management (OPM) investigator that she was contemplating filing to have her debts discharged under Chapter 7 of the Bankruptcy Code in February 2012. (Item 7) She said she would pay the \$85 book club debt in 2012. (Item 7) On January 10, 2013, Appellant signed a retainer agreement with her bankruptcy attorney. (Item 7) In response to DOHA interrogatories she said that she planned to file for bankruptcy in March 2013. (Item 7) On March 5, 2013, Applicant completed the necessary counseling to file for bankruptcy. (Item 7) On September 30, 2013, DOHA utilized Pacer to check for Applicant's bankruptcy filing and was not able to locate any documentation. (Item 11) Applicant did not provide a personal financial statement (PFS) or detailed income, expense, and budget information.

Applicant's FORM noted the absence of mitigating information and explained that Applicant had 30 days from the receipt of the FORM "in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate." (FORM at 8) She did not respond to the FORM or update the status of her bankruptcy.

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 her 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 [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 personal subject interview (PSI), responses to DOHA interrogatories, and SOR response. Applicant's file documents nine delinquent, collection, or charged-off debts, totaling \$253,108. 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

(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 of her SOR debts; however, she provided some mitigating information. Applicant and her former spouse were living in a house together, and he moved out and stopped paying a share of the mortgages. A vehicle was repossessed. She was unemployed from April 2009 to September 2010 and July 2007 to August 2007. These are financial conditions largely beyond her control; however, she did not act responsibly under the circumstances. She did not provide sufficient information about her unemployment or changes in her income over the last five years to mitigate financial concerns. She did not establish her inability to make greater progress paying her creditors. She failed to explain the failure to provide

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 she 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)).

corroborating documentation of such efforts to DOHA. Applicant received financial counseling in connection with her Chapter 7 bankruptcy, however, she did not establish that there are clear indications that the problem is being resolved or is under control.

In sum, Applicant did not provide any documentation, such as checking account statements, photocopies of checks, or a letter from the creditor proving that she paid or made any payments to any of the nine SOR creditors. There is no financial documentation relating to these nine SOR creditors showing: maintenance of contact with creditors;⁵ correspondence to or from the SOR creditors; credible debt disputes; attempts to negotiate payment plans; or other evidence of progress or resolution of these nine SOR debts. There is insufficient evidence that her financial problems are being resolved, are under control, and will not occur in the future.

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 she was unemployed and when her former spouse failed to take greater responsibility for their debts. These two occurrences resulted in negative financial conditions largely beyond her control. There is no evidence of criminal conduct or abuse of alcohol or drugs. She contributes to her

⁵Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside her [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 she or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

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. Several debts on her SOR became delinquent more than six years ago. She was well aware of her financial problems, as she disclosed them on her October 24, 2011 SF 86 and on her November 21, 2011 OPM PSI. She did not provide documentary proof that she attempted to settle or make any payments to resolve any of her nine delinquent SOR debts, even though five of her SOR debts were less than \$500, and one was less than \$100. She could have made greater progress resolving and documenting resolution of her delinquent SOR debts. She failed to mitigate nine delinquent, collection, or charged-off debts, totaling \$253,108. Applicant's SOR response admitted responsibility for her SOR debts, and she indicated in response to DOHA interrogatories that she planned to file for bankruptcy in March 2013; however, she did not provide any proof that she had filed for bankruptcy. Not everyone who files for bankruptcy is able to successfully discharge their nonpriority unsecured 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 ¶ 18. More documented financial progress is necessary to 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:

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|---------------------------|-------------------|
| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a to 1.i: | 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