



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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ISCR Case No. 15-00621

Applicant for Security Clearance

Appearances

For Government: Charles C. Hale, Esq., Department Counsel
For Applicant: *Pro se*

09/16/2016

Decision

RIVERA, Juan J., Administrative Judge:

Applicant's finances were adversely affected, to some extent, by circumstances beyond her control. She recently resolved 2 of the 12 statement of reasons (SOR) debts, and she has 10 SOR debts left to resolve. She failed to establish a track record of debt payment and resolution. She does not understand that she is required to demonstrate financial responsibility to be eligible for a clearance. Financial considerations security concerns are not mitigated. Access to classified information is denied.

History of the Case

Applicant submitted a security clearance application (SCA) on March 28, 2012. 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 23, 2015, the DOD issued Applicant a SOR alleging security concerns under Guideline F (financial considerations).¹ Applicant

¹ The 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.

answered the SOR on September 18, 2015 (Answer), and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

The case was assigned to another administrative judge on March 3, 2016, and reassigned to me on April 21, 2016. DOHA issued a notice of hearing on March 18, 2016, scheduling the hearing for April 25, 2016. Applicant's hearing was held as scheduled. Government exhibits (GE) 1 through 5 and Applicant's exhibits (AE) 1 and 2 were submitted at hearing. AE 3 was submitted post-hearing. All proffered exhibits were admitted into evidence without objection. On May 4, 2016, DOHA received the transcript of the hearing.

Findings of Fact

Applicant admitted all the factual allegations in the SOR, except for SOR ¶ 1.a, which she denied and claimed it was resolved. Concerning the admitted delinquent accounts, Applicant promised she would make payments on them as necessary. Her SOR and hearing admissions are incorporated herein as findings of fact. After a thorough review of the record evidence, and having observed Applicant's demeanor while testifying, I make the following additional findings of fact:

Applicant is a 50-year-old employee of a federal contractor. She graduated from high school and then attended a technology vocational school in 1984. She was married in July 1996, and has been separated since around 2007. She has four adult children, ages 34, 33, 27, and 22.

Between April 1996 and April 1998, Applicant was employed as a food service worker. She then was unemployed for about four months. She was hired as a teacher's aid between July 1998 and October 1999, and she was unemployed the rest of 1999. Applicant worked with a Government agency from December 1999 to May 2002. After a two-month unemployment period, Applicant was hired by her current employer, a federal contractor, in July 2002. During her periods of unemployment, Applicant received welfare and took care of her children and her mother.

In her 2012 SCA, Applicant disclosed no prior security clearance applications or having been granted access to classified information. However, during an August 2012 background interview, and at her hearing, she stated that she first applied for a clearance in 2008, and that she was granted access to classified information at the top secret level. Her continued employment is not contingent on her eligibility to possess a security clearance. There are no allegations or evidence of any rule or security violations. (Tr. 7)

Applicant disclosed in her 2012 SCA that she took a one-week Caribbean vacation in May 2008. She testified that a friend paid for her trip expenses, except for her airfare. (Tr. 44) She spent her time at the beach, shopping, sightseeing, and at a casino. In June 2016, Applicant took a vacation cruise to a Central-American country. She claimed that her friend paid for most of her expenses, except for her air fare. (Tr. 68)

Section 26 (Financial Record) of the 2012 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; whether she was currently over 120 days delinquent on any debt, or had been over 120 days delinquent on any debts; and whether she had filed for bankruptcy protection during the preceding seven years.

Applicant answered “no” to all the financial questions and disclosed no prior or ongoing financial problems. The subsequent background investigation revealed the 12 debts alleged in the SOR, totaling less than \$6,000, and that she filed for Chapter 7 bankruptcy protection in June 2009, and was discharged of her dischargeable debts in October 2009. Applicant’s credit reports and her SOR and hearing admissions established all the debts alleged in the SOR.

The status of her SOR debts is as follows:

SOR ¶ 1.a (\$1,310). This is a credit card debt in collection. Applicant claimed she disputed the debt over the telephone and was told she did not have to pay it. In her May 12, 2016 statement, Applicant implied she was disputing the debt as fraudulent. (AE 3) She presented no documentary evidence to support any of her claims.

SOR ¶¶ 1.b through 1.i and 1.k concern delinquent medical charges for services Applicant incurred after she stopped paying her medical insurance in 2012. (Tr. 48) SOR ¶ 1.j (\$79) concerned a debt to a telephone service provider that Applicant paid after her hearing. Applicant testified that in April 2016, she called the collection agency for the debt alleged in SOR ¶ 1.k and consolidated all of her SOR delinquent medical debts with that collection agency. She averred the collection agency told her she owes a total of \$8,000 for all of her delinquent medical debts. She also claimed she established a \$40 monthly payment plan. (Tr. 49, 54) Applicant presented no documentary evidence to establish the consolidation of the medical debts alleged in the SOR, that she established a payment plan, or that she has made payments toward any of her medical debts since she incurred them.

SOR ¶ 1.l (\$790). This is a tuition debt to a private high school. At her hearing, Applicant admitted knowing about this debt since 2012. She claimed she owed only \$100 because her daughter had a scholarship at the high school. In her May 2016 statement, Applicant claimed she talked to someone at the school and established a \$25 monthly payment arrangement. She presented no documentary evidence to support her claims of contacts with the creditor or of any payments made.

SOR ¶ 1.m. Concerning her 2009 bankruptcy, Applicant explained that she had to file because she was financially overwhelmed by the increased expenses resulting from her marital separation, her husband’s failure to pay child support, the end of her daughter’s child support entitlement, and providing financial support for her ailing mother who needed personal care while Applicant was working. She was discharged of credit card debts and a personal loan totaling about \$20,000. As of June 2015, Applicant’s husband owed \$82,500 in past-due child support. (AE 2)

Applicant testified that she had to stop paying health insurance (over \$400 monthly) and a debt consolidation plan (\$400 monthly) that she had established in 2007-2008 while she was trying to avoid having to file for bankruptcy protection. Applicant claimed she had documentary evidence showing her debt consolidation plan and of payments she made pursuant to the plan. (Tr. 21-22) She was granted additional time after the hearing to provide the documentary evidence, but she failed to do so. (Tr. 44)

Applicant expressed remorse for her financial problems and indicated her intent to pay her delinquent debts. Applicant testified she has a 401K retirement account with about \$20,000. She was considering taking funds out of her 401K retirement plan to pay her debts. Applicant believes that her current financial situation is improving and that she is getting back on track doing the things that she needs to do. Applicant started providing support for her mother in 2014. Her mother passed away in 2015, and she no longer has that financial responsibility. She claimed she was using some of her surplus money to pay her delinquent debts.

Applicant's take-home pay (about \$2,400 monthly) is divided between two checking accounts. As of the hearing date, she had no money in her savings account. The checking accounts have about \$700 together.

Applicant presented evidence that in May 2016 she made a partial payment of \$205 toward a \$411 medical debt. She claimed she made another payment "the other day" before the hearing, but failed to present documentary evidence of any additional payments beyond the May 2016 \$205 payment. (AE 1) Except for the payment evidenced in AE 1, at her hearing, Applicant failed to present any evidence of any payments made or attempts to otherwise resolve the debts alleged in the SOR, or of any contacts with creditors.

After the hearing, Applicant submitted evidence of a payment made to the creditor alleged in SOR ¶ 1.j. The creditor indicated she would receive credit after the payment cleared. Applicant also submitted evidence of a \$160 payment to the creditor alleged in SOR ¶ 1.k. (AE 3) Applicant presented no evidence to show she has participated in financial counseling since her 2009 bankruptcy filing, or that she currently follows a budget.

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. 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.

Applicant was released of all her dischargeable debts in 2009. Since then, she acquired 12 delinquent accounts that are in collection. Her financial problems are frequent, recent, and ongoing. AG ¶ 20(a) is not applicable.

Applicant's finances were adversely affected by circumstances beyond her control, including her marital separation, her husband's failure to comply with his child support obligations, and providing financial support to her ill mother. Notwithstanding, Applicant's documentary evidence failed to establish that Applicant has a track record of financial responsibility.

Applicant submitted her SCA in 2012, and she was questioned about her financial problems during an August 2012 interview with a government investigator. Applicant learned about the Government's financial concerns as a result of that interview. Notwithstanding, Applicant failed to submit documentary evidence of her efforts to contact creditors, establish payment plan, make payments, or to otherwise resolve her delinquent obligations. Applicant received the SOR stating the Government's financial security concerns in August 2015. Notwithstanding, at her hearing Applicant only submitted evidence of contact with, and payment of two of the SOR creditors - SOR ¶¶ 1.j (\$79) and 1.k (\$160). She promised to resolve the remaining SOR debts in the near future.

Applicant's 2008 Caribbean vacation (just before filing for bankruptcy) and her 2016 cruise vacation show frivolous spending or spending beyond her financial means in light of her failure to address her delinquent debts. Considering Applicant's past financial problems and her failure to address her debts, I have given less weight to her promises to pay her debts in the near future. She failed to establish that future delinquent debt is unlikely to recur. Applicant's current financial problems cast doubt on her current reliability, trustworthiness, and judgment. There are no clear indications that her financial problem is being resolved and is under control. Her payments of two of her debts do not show good faith. Her efforts are insufficient to mitigate financial considerations security concerns.

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 50-year-old employee of a federal contractor. She has worked for her current employer since 2002. She testified she has held a security clearance since 2008. There are no allegations of rule or security violations.

Applicant was discharged of her dischargeable debts pursuant to a Chapter 7 bankruptcy proceeding in 2009. Since then, she acquired 12 delinquent debts. She paid two of the alleged delinquent debts in April 2016. Ten delinquent debts remain outstanding. Applicant failed to show financial responsibility by neglecting her creditors and by not making payments to resolve her delinquent debts. Although Applicant's finances were adversely affected by circumstances beyond her control, she failed to demonstrate a track record of financial responsibility. Financial considerations security concerns are not 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:	AGAINST APPLICANT
Subparagraphs 1.a - 1.i:	Against Applicant
Subparagraphs 1.j, 1.k:	For Applicant
Subparagraphs 1.l, 1.m:	Against Applicant

Conclusion

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

JUAN J. RIVERA
Administrative Judge