



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



In the matter of:

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ISCR Case No. 15-00624

Applicant for Security Clearance

Appearances

For Government: Douglas Velvel, Esq., Department Counsel

For Applicant: *Pro se*

12/09/2016

RIVERA, Juan J., Administrative Judge:

Applicant's evidence is insufficient to show that she has a track record of financial responsibility, and that her financial problems are under control. She failed to mitigate the Guideline F (financial considerations) security concerns. Clearance is denied.

History of the Case

Applicant submitted a security clearance application (SCA) on June 4, 2012. On July 27, 2015, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations).¹ Applicant answered the SOR on December 12, 2015, and January 14, 2016, and requested a decision based on the written record.

A copy of the Government's file of relevant material (FORM), dated February 8, 2016, was provided to Applicant by transmittal letter dated February 9, 2016. Applicant received the FORM on February 15, 2016. She was allowed 30 days to submit any objections to the FORM and to provide material to refute, extenuate, and mitigate the concerns. Applicant did not respond to the FORM or submit any additional evidence. The case was assigned to me on October 19, 2016.

¹ 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.

Procedural Issue

In the FORM, Department Counsel advised Applicant the FORM included her unauthenticated summary of interviews from July 11 and 20 of 2012. Applicant was informed she could object to the documents and they would not be admitted, or that she could make corrections, additions, deletions, and update the document to make them accurate. Applicant was informed that her failure to respond to the FORM or raise any objections could be construed as a waiver, and the evidence would be considered by me. Applicant failed to respond to the FORM and raised no objections. I considered all the FORM evidence.

Findings of Fact

In Applicant's response, she admitted the SOR factual allegations consisting of nine delinquent accounts totaling about \$22,000. Applicant's SOR admissions are incorporated herein as findings of fact. After a thorough review of the record evidence, I make the following additional findings of fact:

Applicant is a 41-year-old employee of a defense contractor. She attended a community college and earned an associate's degree in 2011. She married in 2000 and divorced in 2002. As of her 2012 SCA, she indicated she was living with a cohabitant. Applicant has two children, ages 16 and 10.

Applicant worked for private companies between 1999 and 2003. She worked for a federal contractor from 2003 to 2006. She was unemployed while attending college from 2006 to 2011. She has worked for her current employer, a federal contractor, since April 2011. This is her first SCA.

In response to Section 26 (Financial Record) of Applicant's 2012 SCA, she disclosed financial problems in the past seven years, mostly concerning credit loans, credit cards, and routine accounts. Applicant explained in her 2012 SCA that she had been unemployed and had a hard time paying her debts. She also stated that as of June 2012, she had taken no action to satisfy her debts because "(she) was trying to get (her) finances together to take care of this problem."

During a background interview with a government investigator in 2012, Applicant acknowledged her financial problems. She attributed them to her period of unemployment and not having sufficient income to pay her debts and living expenses. She stated she was trying to get her finances together and take care of her delinquent debts.

Applicant indicated that her financial problems started in 2005 because she was irresponsible and not paying her bills on time. She used credit to pay for living expenses, gifts, and shopping. Applicant explained that her cohabitant was laid off at least twice between 2005 and 2012, and her ex-husband did not pay his child support obligation. After her ex-husband died in 2005, she started to receive about \$2,000 a month in Social Security benefits. According to her 2012 statement, Applicant's annual gross salary was

\$37,000, with a net monthly income of \$2,100, plus the \$2,000 from the Social Security benefit.

In April 2012, Applicant realized she needed to be more financially responsible. She told the investigator that she had matured and now understood the importance of financial responsibility and paying her bills on time. As of her interview, she had not sought financial counseling. During a second interview in July 2012, Applicant told the investigator she had contacted her creditors and requested final bills to establish what she owed and establish a payment plan. Applicant also claimed she had made some payments, settled some accounts, and paid other debts. She presented no documentary evidence to support her claims.

The subsequent security clearance background investigation confirmed the nine delinquent accounts alleged in the SOR. Applicant's admissions to the SOR allegations, her June 2012 statement, and the record credit reports establish the nine debts alleged in the SOR, totaling about \$22,000.

Applicant presented no documentary evidence to show that she has been in contact with her creditors, or that she attempted to settle, pay, or otherwise resolve her delinquent debts. I note, however, that the FORM credit reports (submitted by the Government) show that Applicant had numerous other accounts, all of which were in good standing (paid or "as agreed").

Applicant provided no information about her current financial position. She did not provide any information about her current income, monthly expenses, and whether her income is sufficient to pay her living expenses and debts. There is no information to indicate whether she recently participated in financial counseling or whether she 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 2012 statements. The evidence establishes the delinquent accounts alleged in the SOR, totaling over \$22,000. 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.

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).

None of the financial considerations mitigating conditions apply. Applicant's financial problems are recent and ongoing. She presented no evidence to show that her financial problems are under control, and that her debts were incurred under circumstances unlikely to recur. Applicant presented no evidence of efforts taken to remain in contact with her creditors, or of efforts she has taken to pay or resolve her delinquent debts.

Applicant submitted her SCA in 2012, and disclosed her financial problems. In 2012, she participated in a government interview where she was asked about her financial problems. At that time, she acknowledged her financial irresponsibility and promised to

address her delinquent debts and work toward resolving her debts. She clearly was aware of the Government's financial considerations security concerns. Applicant was allowed a period of 30 days after receipt of the FORM to produce evidence in extenuation and mitigation. She failed to provide any documentary evidence to show she has been in contact with her creditors, or that she attempted to settle, pay, or otherwise resolve her delinquent debts since she acquired them.

Applicant also failed to establish that she has sufficient income to keep her debts in current status and to continue making progress paying her delinquent debts. In sum, Applicant did not submit sufficient evidence to show financial responsibility.

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 submitted no evidence of payments to the SOR creditors or of efforts to resolve her debts. There is insufficient evidence of progress addressing her financial problems. The available information is insufficient to establish clear indications that she does not have a current financial problem, or that her financial problems are being resolved, or are under control. Applicant failed to establish that she has a track record of financial responsibility.

Unmitigated financial considerations concerns lead me to conclude that grant or reinstatement of a security clearance to Applicant is not warranted at this time. The 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

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