



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



In the matter of:)
)
) ISCR Case No. 15-01091
)
Applicant for Security Clearance)

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

01/23/2017

Decision

HARVEY, Mark, Administrative Judge:

Applicant made sufficient progress resolving the 23 delinquent debts totaling \$37,524 alleged in her statement of reasons (SOR). She paid four SOR debts; two SOR debts are duplications; and three SOR debts were removed from her credit report after she challenged them. She promised to continue payments on her remaining SOR debts, which total \$8,568. Financial considerations security concerns are mitigated. Eligibility for access to classified information is granted.

Statement of the Case

On July 11, 2012, Applicant signed her Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On December 4, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to Applicant pursuant to Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry*; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), which became effective on September 1, 2006.

The SOR detailed reasons why the DOD CAF did not find 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

a clearance should be granted, continued, denied, or revoked. (Hearing Exhibit (HE) 2) Specifically, the SOR set forth security concerns arising under Guideline F (financial considerations).

On March 7, 2016, Applicant responded to the SOR and requested a hearing. On June 27, 2016, Department Counsel was ready to proceed. On August 15, 2016, the case was assigned to me. On September 12, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for October 7, 2016. (HE 1) The hearing was held as scheduled.

During the hearing, Department Counsel offered 5 exhibits; Applicant offered 11 exhibits; and all proffered exhibits were admitted without objection. (Tr. 17-23, 36-38, 66-67; GE 1-5; Applicant Exhibits (AE) A-K) On October 18, 2016, DOHA received a copy of the transcript of the hearing. On November 14, 2016, Applicant offered four additional exhibits, which were admitted without objection. (AE L-AE O) The record closed on November 14, 2016. (Tr. 86)

Findings of Fact¹

In Applicant's SOR response, she admitted to, at some point, owing the debts in SOR ¶¶ 1.a through 1.c and 1.e through 1.w. She also provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact.

Applicant is a 31-year-old security specialist, who has worked for her employer since April 2014. (Tr. 6, 29; GE 1) In 2012, she received her General Educational Development (GED) certificate. (Tr. 7) She has not attended college. (Tr. 7) She has not served in the U.S. Armed Forces. (Tr. 7) She has never married, and her three children are ages four months, six years, and 12 years. (Tr. 7-8) Applicant has custody of all of her children.

Financial Considerations

Several years ago, Applicant had some debts she was unable to pay while she was unemployed. (Tr. 27) Applicant's medical debts resulted from obtaining medical care when she did not have medical insurance, or the health care provider did not accept her medical insurance. (Tr. 25) She had a payment plan to address her medical debts. (Tr. 25) She has difficulty supporting herself and her three children on her income. (Tr. 31) From July 2015 to September 2016, she employed a law firm to seek verifying information for the debts on her credit reports. (Tr. 47-48, 72) She paid the law firm \$100 monthly. (Tr. 48) Applicant is receiving financial counseling and assistance from her brother-in-law who has expertise in financial matters. (Tr. 65-66) He helped her establish a budget. (Tr. 66)

¹Some details have been excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

Applicant's history of delinquent debt is documented in her credit reports, SOR response, and hearing record. The status of her SOR debts is as follows:

SOR ¶ 1.a alleges a collection debt owed to a credit union for \$21,270. In 2006, Applicant purchased a vehicle; in 2009, she was unable to continue making the required monthly payments; and the creditor repossessed her vehicle. (Tr. 68-69) On September 15, 2016, the collection agent offered to settle this debt for \$2,000. (AE A) The creditor disclosed the debt was not collectible due to the passage of the statute of limitations. (AE A) On September 19, 2016, the creditor acknowledged receipt of \$2,000 and wrote that the debt was settled. (AE A)

SOR ¶¶ 1.b through 1.h, 1.j through 1.o, 1.t, and 1.u alleges 15 delinquent medical debts totaling \$10,713 for \$1,145, \$592, \$546, \$540, \$540, \$500, \$442, \$366, \$340, \$102, \$85, \$53, \$50, \$1,864, and \$3,548. On June 27, 2016, Applicant settled and paid a medical debt for \$200. (Tr. 23; AE B; AE D) She asked for verification of the debts in SOR ¶¶ 1.d (\$546) and 1.h (\$442), and the creditor elected to delete them from her credit reports. (Tr. 33-35; AE B) In July 2016, Applicant made her first \$50 payment to address a \$450 medical debt. (Tr. 35; AE C) She has made additional \$50 payments to her medical creditors, and she plans to continue making \$50 payments. (Tr. 39; AE O) She is going to get a new credit report to assist in identifying some of the medical creditors. (Tr. 47, 55-57) The debts in SOR ¶¶ 1.t (\$1,864) and 1.u (\$3,548) are the same debt. (Tr. 60-63)

SOR ¶¶ 1.i and 1.w allege a collection debt for \$436. They are the same debt. (Tr. 53) Applicant contacted the creditor, and she received a settlement offer from the creditor. (Tr. 54) She plans to pay \$357 to settle the debt. (Tr. 54)

SOR ¶ 1.p alleges a judgment filed in 2010 for \$1,742. The debt resulted when Applicant's mother left the apartment before the lease was completed. (Tr. 41) The creditor filed a satisfaction with the court on February 11, 2015. (AE E) On September 26, 2016, the creditor wrote that the debt was paid and her account is in good standing. (AE D)

SOR ¶ 1.q alleges a judgment for \$1,842. Applicant's son was in the custody of his grandparents for a time, and Applicant was required to pay child support to them. (Tr. 45) Applicant provided a receipt indicating on February 11, 2015, she paid \$332 to the creditor. (Tr. 42-44; AE F) In February 2015, she arranged a direct payment from her salary to address this debt. (AE F) She currently has custody of her son. (Tr. 44-45) The account has a zero balance. (Tr. 46)

SOR ¶¶ 1.r and 1.s allege telecommunications debts for \$706 and \$271. Applicant contacted the creditors; the creditor in SOR ¶ 1.r agreed she did not owe the debt; and the creditor promised to contact the credit reporting companies to have the negative entry removed from her credit report. (Tr. 58-59) Applicant received verification of the debt in SOR ¶ 1.s, and she intends to pay the debt in SOR ¶ 1.s. (Tr. 59-60; AE N)

SOR ¶ 1.v alleges a bank collection debt for \$96. Applicant said she paid this debt. (Tr. 63-64)

After her hearing, Applicant provided a personal financial statement. (AE M) Her monthly gross income is \$1,866, and her net monthly remainder is negative \$763. (AE M) Her son's father passed away in August 2016, and he previously provided financial support to Applicant's son. (AE M) She did not include an explanation about how she will continue to address her delinquent debts without additional income.

Character Evidence

Two managing security personnel and Applicant's supervisors described her as honest, diligent, enthusiastic, detail oriented, trustworthy, responsible, reliable, and dedicated. (Tr. 76-84) Applicant's brother-in-law, two friends of many years, and a consultant described her as an honest, diligent, trustworthy, intelligent, and dedicated. (AE H-AE K) Applicant is serious about repairing her credit and caring for her family. (AE H-AE K) Their statements support her access to classified information.

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. Thus, nothing in this decision should be construed to suggest that it is based, 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 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 for 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.

The Appeal Board explained the scope and rationale for the financial considerations security concern as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant’s financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant’s self-control,

judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted).

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." Applicant's history of delinquent debt is documented in her credit reports, SOR response, and hearing record. 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;² and

²The 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)).

(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).

AG ¶¶ 20(a), 20(b), 20(c), and 20(d) apply. AG 20(e) does not apply. Applicant paid the debts in SOR ¶¶ 1.a (\$21,270), 1.p (\$1,742), 1.q (\$1,842), and 1.v (\$96). The debts in SOR ¶¶ 1.t (\$1,864) and 1.w (\$436) are duplications of other SOR debts. The debts in SOR ¶¶ 1.d (\$546), 1.h (\$442), and 1.r (\$706) were removed from her credit reports after she challenged them.

Two recent Appeal Board decisions illustrate the analysis for applying AG ¶¶ 20(a) and 20(b). In ISCR Case No. 09-08533, the applicant had \$41,000 in delinquent credit card debt and defaulted on a home loan generating a \$162,000 delinquent debt. *Id.* at 2. That applicant filed for bankruptcy the same month the Administrative Judge issued her decision. *Id.* at 1-2. The applicant in ISCR Case No. 09-08533 was recently divorced, had been unemployed for 10 months, and had childcare responsibilities. Her former husband was inconsistent in his child support payments to her. The Appeal Board determined that AG ¶ 20(a) was "clearly applicable (debt occurred under such circumstances that it is unlikely to recur and [the debt] does not cast doubt on the individual's current reliability, trustworthiness, or good judgment)" even though that applicant's debts were unresolved at the time the Administrative Judge's decision was issued. The Appeal Board also decided that the record evidence raised the applicability of AG ¶ 20(b) because of the absence of evidence³ of irresponsible behavior, poor judgment, unreliability, or lack of trustworthiness. *Id.* at 4.

³ Applicant has the burden of proving the applicability of any mitigating conditions, and the burden to disprove a mitigating condition never shifts to the Government.

Similarly, in ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009) the Appeal Board addressed a situation where an applicant was sporadically unemployed and lacked the ability to pay her creditors. The Appeal Board noted “it will be a long time at best before she has paid” all of her creditors. The applicant was living on unemployment compensation at the time of her hearing. The Appeal Board explained that such a circumstance was not necessarily a bar to having access to classified information stating:

However, the Board has previously noted that an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his [or her] circumstances and develop a reasonable plan for repayment, accompanied by “concomitant conduct,” that is, actions which evidence a serious intent to effectuate the plan. See ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008).

ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009). The applicant in ISCR Case No. 08-06567 used his limited resources to (1) resolve some of his debts; (2) had a repayment plan for the remaining debts; and (3) took “reasonable actions to effectuate that plan.” *Id.* The Appeal Board remanded the Administrative Judge’s decision because it did not “articulate a satisfactory explanation for his conclusions,” emphasizing the Administrative Judge did “not explain[] what he believes that applicant could or should have done under the circumstances that he has not already done to rectify his poor financial condition, or why the approach taken by applicant was not ‘responsible’ in light of his limited circumstances.” *Id.*

Application of AG ¶ 20(c) is warranted. Applicant received financial counseling, and she generated a PFS and budget. Her financial situation was damaged by medical problems, underemployment,⁴ and unemployment. She acted responsibly by paying as many debts as possible and establishing payment plans for several debts. Although there is limited evidence of record that she established and maintained contact with her creditors,⁵ her financial problem is being resolved or is under control.

AG ¶ 20(d) is partially applicable. Applicant paid four SOR debts, including her largest debt for \$21,270, which she settled for \$2,000, even though that debt was collection barred by the statute of limitations. She admitted responsibility for and took reasonable and responsible actions to resolve additional debts, establishing some good

⁴Applicant’s income is below the federal poverty level of \$24,250 for a family of four, and she is eligible for various federal poverty programs, including Medicaid. See Health and Human Services website, <https://aspe.hhs.gov/poverty-guidelines>.

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.

faith.⁶ AG ¶ 20(e) is not applicable. Three SOR debts were removed from her credit reports after she challenged them; however, she did not provide documentation establishing a reasonable dispute for any of her SOR debts.

Based on Applicant's credible and sincere promise to pay her debts and her track record of paying her debts, future new delinquent debt "is unlikely to recur and does not cast doubt on [Applicant's] current reliability, trustworthiness, or good judgment," and "there are clear indications that the problem is being resolved or is under control." Her payments of her debts showed good faith. I am confident that Applicant will conscientiously endeavor to maintain her financial responsibility. Her efforts are sufficient to mitigate financial considerations security concerns.

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 that guideline, but some warrant additional comment.

⁶The 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)).

Applicant is a 31-year-old security specialist, who has worked for her employer since April 2014. In 2012, she received her GED diploma. She has never married, and her children are ages four months, six years, and 12 years. Friends, colleagues, and supervisors described her as honest, diligent, enthusiastic, detail oriented, trustworthy, responsible, reliable, and dedicated. She is serious about repairing her credit and caring for her family. Her character statements support her access to classified information.

Applicant's SOR alleges 23 delinquent debts totaling \$37,524. She paid four SOR debts; two SOR debts are duplications; and three SOR debts were removed from her credit reports after she challenged them. She reduced the delinquent debt total by over 75 percent to \$8,568. She promised to continue her efforts at debt resolution. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

. . . the concept of meaningful track record necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has . . . established a plan to resolve his financial problems and taken significant actions to implement that plan. The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted). Applicant has established a "meaningful track record" of debt re-payment, and I am confident she will maintain her financial responsibility.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. Financial considerations security concerns are 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: FOR APPLICANT

Subparagraphs 1.a through 1.w: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

MARK HARVEY
Administrative Judge