



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



In the matter of:

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ISCR Case No. 15-01493

Applicant for Security Clearance

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

08/23/2016

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 May 8, 2014. 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 September 13, 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 October 8 and on November 17, 2015, and requested a decision based on the written record.

A copy of the Government's file of relevant material (FORM), dated December 28, 2015, was provided to Applicant by transmittal letter dated December 29, 2015. Applicant received the FORM on January 4, 2016. She was allowed 30 days to submit any objections to the FORM and to provide material to refute, extenuate, and mitigate the

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.

concerns. Applicant timely submitted additional evidence with her response to the FORM. The case was assigned to me on August 3, 2016.

Findings of Fact

In Applicant's response, she admitted all the SOR factual allegations, but challenged the total owed on the accounts alleged in SOR ¶¶ 1.g and 1.h. She also provided extenuating and mitigating information. Applicant's SOR and FORM 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 50-year-old program analyst employed by a federal contractor. She graduated from high school in 1985, and has completed some college work-related training courses. Applicant has never been married, but she has been living with a cohabitant since January 2012. She has twins (a boy and a girl) born in 2012.

During a June 2014 interview with a Government investigator, Applicant stated that she has held security clearances from different Government agencies since 1988. Applicant's 2014 SCA shows that she has worked for federal contractors since 2000 to present. She was hired by her current employer, a federal contractor, in November 2011. Her continued employment is contingent on her retaining her clearance eligibility. There are no allegations or evidence of any rule or security violations.

Section 26 (Financial Record) of Applicant's May 2014 SCA asked her to disclose whether in the past seven years she had: filed a bankruptcy petition; failed to file or pay her federal and state taxes; any financial problems, including delinquent or in-collection debts; loan defaults; credit cards or accounts suspended, charged off, or cancelled; had judgments filed against her; and whether she was currently over 120 days delinquent on any debt, or had been over 120 days delinquent on any debts during the last seven years. Applicant answered "no" and failed to disclose the debts alleged in the SOR.

The subsequent security clearance background investigation revealed the 13 delinquent accounts alleged in the SOR. Applicant's admissions to the SOR allegations, her FORM response, and the credit reports establish all the debts in the SOR.

In August 2003, Applicant was interviewed by a Government investigator concerning her financial problems and her 2000 Chapter 7 bankruptcy discharge. Applicant explained that she did not handle investments properly. Additionally, she was laid off from her job during a period of four months and she was not able to meet her financial obligations and pay her living expenses. Her accounts became delinquent and she was forced to file for Chapter 7 bankruptcy protection. In her 2003 sworn statement Applicant indicated: "As of today, I have established a good credit history and will continue to do so. I have learned a very valuable lesson from my previous financial mistakes and it is a lesson well learned and will not be repeated."

During Applicant's June 2014 interview, she "volunteered" that she had a judgment and numerous delinquent accounts that she had failed to disclose in her May 2014 SCA.

Applicant was confronted with the delinquent accounts alleged in the SOR. She explained that many of the accounts became delinquent because she developed financial problems as a result of her pregnancy during 2011 to 2012.

In her answer to the SOR, Applicant implied that she had to file for Chapter 7 bankruptcy protection in 2000, because of a relationship breakup. Concerning her current financial problems, Applicant explained that between April 2007 and November 2011, her annual salary was \$98,000. In August 2011, her employer lost the contract and she was hired by the new contractor at an annual salary of \$83,000, with a resulting cut in pay of \$15,000. Applicant further explained that she was going through a very difficult time trying to make her monthly payments. Applicant claimed that she was making some payments to her creditors and had reduced her debt. She stated that she was fully aware of her financial responsibilities, and promised to continue paying her debt to the best of her ability.

In her FORM response, Applicant claimed that she had made some payments and reduced her debt in SOR ¶ 1.g (alleging a past-due consumer charge account in the approximate amount of \$230, and owing a total of \$415) and SOR ¶ 1.h (alleging a past-due consumer charge account in the approximate amount of \$184, and owing a total of \$402). Applicant's documentary evidence shows that the account alleged in SOR ¶ 1.g has a balance of \$225, which is past due. And, the account alleged in SOR ¶ 1.h has a balance of \$97, which is past due.

Applicant presented little evidence to show that she has been in contact with her creditors, or that she has attempted to settle, pay, or otherwise resolve her delinquent debts since they became delinquent. I note, however, that the FORM credit reports (submitted by the Government) show that Applicant has paid some accounts and has other accounts in good standing not alleged in the SOR.

Other than her current salary, Applicant provided no information about her current financial position. She did not provide any information about her monthly expenses, and whether her current income is sufficient to pay her current living expenses and debts. There is no information to indicate whether she recently participated in financial counseling or whether she follows a budget.

Applicant is considered to be a valuable employee. Applicant's program manager, a retired Navy commander, lauded her professional and personal integrity, her aggressive work ethic, and her customer loyalty. Applicant made her program manager aware of her financial problems. He confirmed Applicant's salary reduction resulting from the change in employers. Applicant's program manager believes Applicant poses no security risk, and recommends the continuation of her security clearance.

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 her FORM response. The evidence establishes the 13 delinquent accounts alleged in the SOR, totaling about \$10,000, and her 2000 Chapter 7 bankruptcy discharge.

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 fully apply. Applicant’s financial problems were recent, frequent, and she presented insufficient evidence to show that her financial problems are under control, and that her debts were incurred under circumstances unlikely to recur.

Applicant’s finances were adversely affected by circumstances beyond her control – in 1999, the breakup of her relationship and her six-month period of unemployment. In 2011, her annual income was reduced by \$15,000 when her employer lost the contract. Notwithstanding, she presented little evidence to show what efforts she took since 2011 to remain in contact with her creditors, or what efforts she has taken to pay or resolve her delinquent debts. Applicant presented no documentary evidence of payment agreements or payments made on any of the debts alleged in the SOR, except with respect to SOR ¶¶ 1.g and 1.h.

Applicant has possessed a security clearance since 1988. Her financial problems date back to before 2009. She knew about the Government’s concerns about her financial problems because she was questioned in 2003 by Government investigators concerning her 1999-2000 bankruptcy. Additionally, she was fully aware that she was required to be financially responsible to be eligible for a clearance. Her evidence is insufficient to show that she contacted her creditors or made any payments on her delinquent accounts (except for SOR ¶¶ 1.g and 1.h). Applicant’s yearly income was reduced by \$15,000, but she was still making about \$83,000 a year. She presented little evidence of efforts to address her delinquent accounts. Nor did she present evidence of lifestyle changes, a working budget, or that she sought financial counseling.

Applicant submitted her SCA in 2014, and disclosed no financial problems or delinquent debts. She was questioned about her financial problems during a 2014 interview. She was issued the SOR September 2015, and was again made aware of the Government’s security concerns about her financial problems. Applicant was allowed a period of 30 days after receipt of the FORM to produce evidence in extenuation and mitigation; however, she failed to provide a reasonable explanation for her failure to address 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. She also claimed to understand that she is required to maintain financial responsibility to remain

eligible for a security clearance. Based on Applicant's failure to address her debts, her promise to pay her delinquent debts is not credible.

In sum, Applicant did not submit sufficient evidence to show she acted responsibly under the circumstances to warrant applicability of AG ¶ 20(b). She presented insufficient evidence to show that she initiated a good-faith effort to repay overdue creditors or otherwise resolve her debts.

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 program analyst employed with a federal contractor. She has worked for federal contractors since 1988, and has held a security clearance during most of her employment. Applicant is considered to be an honest, trustworthy, responsible, professional, and valuable employee. During her years working with federal contractors she had no security issues or violations.

Applicant's financial problems were caused, in part, by circumstances beyond her control – the breakup of her relationship, a six-month period of unemployment, and a \$15,000 cut in pay in 2011. Applicant promised to pay or resolve the unpaid SOR debts. She understands that she needs to pay her debts, and that she is required to demonstrate financial responsibility to retain her security clearance and her job.

Notwithstanding, Applicant submitted little evidence of payments to the SOR creditors or of efforts to resolve her debts. There is insufficient evidence of progress addressing Applicant's 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.

It is well settled that once a concern arises regarding an Applicant's eligibility for a security clearance, there is a strong presumption against the grant or renewal of a security clearance. Unmitigated financial considerations concerns lead me to conclude that grant or reinstatement of a security clearance to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary to justify the award of a security clearance in the future. With more effort towards resolving his past-due debts, and a track record of behavior consistent with his obligations, she may well be able to demonstrate persuasive evidence of his worthiness for access to classified information.

For the above stated reasons, I find that 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.n: 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