



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



In the matter of:

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ISCR Case No. 15-02957

Applicant for Security Clearance

Appearances

For Government: Alison O'Connell, Esq., Department Counsel

For Applicant: *Pro se*

09/12/2016

Decision

HARVEY, Mark, Administrative Judge:

Applicant did not provide enough evidence of her payment history on her student loans. She paid one \$498 debt that was alleged on her statement of reasons (SOR). She said she disputed other debts; however, she did not provide documentary evidence of those disputes. Her financial records do not establish her financial responsibility. Financial considerations security concerns are not mitigated. Access to classified information is denied.

History of the Case

On May 3, 2013, Applicant completed and signed her Questionnaire for National Security Positions or security clearance application (SCA). (Government Exhibit (GE) 1) On November 16, 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 (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 her, 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 December 15, 2015, Applicant responded to the SOR. (HE 3) On March 31, 2016, Department Counsel was ready to proceed. On May 24, 2016, the case was assigned to me. On June 6, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for June 22, 2016. (HE 1) Applicant waived her right under the Directive to 15 days of notice of the date, time, and location of her hearing. (Tr. 13-14) Her hearing was held as scheduled.

During the hearing, Department Counsel offered six exhibits, which were admitted without objection, and Applicant did not offer any exhibits. (Tr. 17; Government Exhibit (GE) 1-6) On June 30, 2016, DOHA received a copy of the transcript of the hearing. The record was held open for additional evidence until July 26, 2016. (Tr. 74-75, 77) On July 26, 2016, five post-hearing documents were received and admitted without objection. (AE A-E) The record was held open until September 6, 2016 to permit Applicant to submit additional documentation. (HE 4) No documentation was submitted after July 26, 2016.

Findings of Fact¹

In Applicant's SOR response, she disputed the debt in SOR ¶ 1.a; she claimed that she paid the debts in SOR ¶¶ 1.b, 1.f, and 1.h, and she averred that she was working on arranging payments to the other SOR creditors. She also provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact.

Applicant is a 35-year-old executive assistant, who has worked for various federal contractors since 2008. (Tr. 5, 8; GE 1) In 1999, she graduated from high school. (Tr. 5) In 2003, she received a bachelor's degree. (Tr. 6, 18-19) She has not served in the military. (Tr. 6; GE 1) She has not married, and she has a three-year-old daughter. (Tr. 6)

Financial Considerations

Student Loans

Applicant's SOR alleges three student loans in SOR ¶¶ 1.c, 1.d, and 1.f totaling \$42,729. Applicant acknowledged that she was delinquent on her student loans from 2004 to 2008, and during those years, her annual income was \$35,000 to \$45,000. (Tr. 20-21) From 2008 to 2013, her salary increased from \$65,000 to \$80,000. (Tr. 21-22) During the 2008 to 2013 timeframe, Applicant said she completed the student loan rehabilitation program, and she was caught up on her student loans. (Tr. 22) In 2012,

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

when her daughter was born with medical problems, she went on seven months of unpaid leave, and her student loans again became delinquent. (Tr. 23-24) In February 2013, she returned to employment at an annual salary of \$85,000. (Tr. 25-26) Her current annual salary is \$90,000. (Tr. 26) Applicant's monthly daycare bill is \$1,100, and she gives her mother \$800 monthly. (Tr. 44)

Applicant believed she borrowed about \$20,000 in student loans. (Tr. 26) Applicant's October 13, 2015 Equifax credit report shows the two student loan debts in SOR ¶ 1.c for \$10,949 and SOR ¶ 1.d for \$8,192 as transfers from another student loan creditor (GE 2). The student loan in SOR ¶ 1.f for \$26,341 is not shown in her October 13, 2015 Equifax credit report. (GE 2)

Applicant's March 6, 2015 Equifax credit report shows one past-due student loan account with a past due balance of \$10,784, and the comments indicate the debt is being assigned to the government. (GE 3) The other student loan debts show a zero balance, zero past due amount, and the comments indicate the debts were assigned to the government. (GE 3) Other student loan debts are shown as paid. (GE 3)

Applicant's July 22, 2014 Experian, TransUnion, and Equifax combined credit report shows two student loans: one under Experian was past due in the amount of \$22,846; one under Equifax was past due in the amount of \$22,853; and they were both owed to the same creditor. This credit report supports the student loan debt in SOR ¶ 1.f for \$23,651. The July 22, 2014 combined credit report shows a variety of other student loan accounts, including the accounts in SOR ¶¶ 1.c and 1.d.

Applicant said she fell behind on her student loans because she could not afford the payments and she conceded she was "being immature and not being responsible." (Tr. 29) She said she was placed into another student loan rehabilitation program in October 2015. (Tr. 27-29) She believed she completed the student loan rehabilitation program in May 2016. (Tr. 30) She said she wanted the payments to be made automatically from her pay. (Tr. 30)

Applicant provided a November 10, 2015 U.S. Government Wage Garnishment Order (SF-329B), which was submitted to her employer from the collection agent for the U.S. Department of Education seeking payment of a debt for \$23,861. The garnishment order indicates her pay is scheduled to be debited \$393 every two weeks, which is the maximum amount that may be garnished (15 percent of disposable pay). (Tr. 31; AE E) Applicant said all of her student loans were now current. (Tr. 32) In November 2015, her student loan balance was \$23,861. (AE E) She believes that after six months of payments under the garnishment order her student loan accounts will be rehabilitated, and the garnishment will be lifted. (AE A)

Other SOR Debts

Applicant's non-student loan SOR debts total less than \$3,000. The debt alleged in SOR ¶ 1.a for \$1,366 resulted from her termination of a telecommunications contract.

(Tr. 32) She said she faxed the termination notice for her contract to the creditor on several occasions, and she contended that the telecommunications company did not service the area where her relative, who was receiving the benefit of the telecommunications contract lived. (Tr. 32-33) She said she faxed a dispute to the creditor; however, she did not provide a copy of the letter disputing her responsibility for this debt. (Tr. 33) Applicant's October 13, 2015 Equifax credit report does not show the telecommunications debt in SOR ¶ 1.a. (GE 2) Applicant's March 6, 2015 Equifax credit report shows the telecommunications account as a collection account for \$1,458. (GE 3)

The medical debt in SOR ¶ 1.b for \$66 resulted from a copay from the treatment of her daughter. (Tr. 33-34) Applicant's March 6, 2015 Equifax credit report shows the medical debt for \$66. (GE 3) Applicant said she paid this debt, and it does not appear on her October 13, 2015 Equifax credit report. (GE 2) A fair inference is that Applicant's dispute was successful and caused the negative entry about the minor medical debt to be removed from her credit report.

The credit card debt in SOR ¶ 1.e for \$498 is shown as delinquent in Applicant's October 13, 2015 Equifax credit report. (GE 2) She made a \$150 payment in January 2016. (Tr. 37) On July 25, 2016, she paid the creditor \$400, and the debt is resolved. (AE D)

SOR ¶¶ 1.g, 1.h, and 1.i allege Applicant received three tickets, which are owed to a government entity for \$55 each. In her SOR response, Applicant said she paid the debts in SOR ¶¶ 1.f and 1.h, and the debt in SOR ¶ 1.g will be paid by January 6, 2015. (HE 3) At her hearing, Applicant said in 2013, her vehicle was stolen, and it accrued three tickets in 2013. (Tr. 37-38; GE 4) Applicant said she disputes her responsibility for these three debts. (Tr. 37-40) Applicant claimed that she checked with the government entity, and the three tickets are not associated with her vehicle. (Tr. 39-40; SOR response) The three debts do not appear on her March 6, 2015 and October 13, 2015 Equifax credit reports. (GE 2)

On August 4, 2016, I emailed Applicant and asked her to provide: (1) an account statement showing her student loan payments; (2) correspondence showing she disputed the debts in SOR ¶¶ 1.a, 1.g, 1.h, and 1.i and the basis for her disputes; (3) an updated credit report from all three major credit reporting companies (Experian, Equifax, and TransUnion); and (4) performance evaluations. (HE 4) She asked for a delay until August 12, 2016. (HE 4) On August 28, 2016, I emailed Applicant and advised her that I had not received any documentation after July 26, 2016 from her, and I gave her an additional delay until September 6, 2016 to present her documentation. (HE 4) No documentation was received after July 26, 2016.

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 revised 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 [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 three 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. Applicant’s SOR alleges nine allegations of delinquent debts totaling \$45,019. After deducting two duplicated student loan debts, her SOR alleges seven delinquent debts totaling \$25,746. 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

(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 presented some important mitigating information. Several circumstances beyond her control adversely affected her finances: Applicant's daughter had medical problems and Applicant needed to take off from work to care for her daughter; her daughter had medical bills; and early in her career, Applicant was underemployed. However, she did not provide enough specifics about how these circumstances adversely affected her

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)).

finances, and she did not establish that she acted responsibly to address her delinquent debts after she returned to full employment in 2013.

Applicant's SOR includes three student loans in SOR ¶¶ 1.c (\$10,949), 1.d (\$8,192), and 1.f (\$23,651), and I accept Applicant's statement as credible that SOR ¶¶ 1.c and 1.d have been merged into SOR ¶ 1.f, and she now owes about \$20,000 in student loans. Of course, Applicant loses some mitigating credit because her student loan is apparently being paid through garnishment of her pay.³ She is credited with mitigating SOR ¶¶ 1.c and 1.d as duplications. She is not credited with mitigating SOR ¶ 1.f because she did not provide a current summary of her payments to her student loan account. She did not show a history of her student loan accounts.

Applicant is credited with mitigating the medical debt in SOR ¶ 1.b (\$66) and the medical debt in SOR ¶ 1.e (\$498).

As for SOR debts ¶¶ 1.a, 1.g, 1.h, and 1.i, she said she disputed her responsibility for paying them. However, she cannot be credited with mitigating them because she did not provide "documented proof to substantiate the basis of the dispute" or documentation showing her actions to resolve the issue under AG ¶ 20(e). She did not provide copies of letters to the SOR creditors and credit reporting companies disputing her responsibility for these four debts.

Applicant cannot be credited with mitigating the debts that were dropped from her 2015 Equifax credit report.⁴ More evidence of debt resolution is necessary.

There is insufficient evidence about why she was unable to make greater documented progress resolving more of her SOR debts. There is insufficient assurance that her financial problems are being resolved, are under control, and will not recur in the future. Under all the circumstances, she failed to establish that financial considerations security concerns are mitigated.

³Of course, Applicant loses some mitigating credit because some debt payments were made through garnishment of her salary. Payment of a debt "though garnishment rather than a voluntary effort diminishes its mitigating force." *Compare* ISCR Case No. 08-06058 at 4 (App. Bd. Aug. 26, 2010) *with* ISCR Case No. 04-07360 at 2-3 (App. Bd. Sept. 26, 2006) (payment of two of four debts through garnishment did not bar mitigation of financial considerations concerns). *See also* ISCR Case No. 14-05803 at 3 (App. Bd. July 7, 2016); ISCR Case No. 09-05700 at 4 (App. Bd. Feb. 24, 2011) (garnished payments towards delinquent tax debts is not mitigating information in light of other factors); ISCR Case No. 08-06058 at 6 (App. Bd. Sep. 21, 2009) (remanding the case to the administrative judge and stating when addressing an Internal Revenue Service garnishment, "On its face, satisfaction of a debt through the involuntary establishment of a creditor's garnishment is not the same as, or similar to, a good-faith initiation of repayment by the debtor.").

⁴ ISCR Case No. 14-05803 at 3 (App. Bd. July 7, 2016) (stating "that some debts have dropped off his credit report is not meaningful evidence of debt resolution" and citing ISCR Case No. 14-03612 at 3 (App. Bd. Aug. 25, 2015)).

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.

Applicant is a 35-year-old executive assistant, who has worked for various federal contractors since 2008. In 2003, she received a bachelor's degree. She has a three-year-old daughter. Circumstances beyond her control adversely affected her finances, including illness of her daughter, medical bills, underemployment, and leave without pay to care for her daughter. Over the years, her pay has substantially increased, which is a strong indication that she is a valued employee, who is making important contributions to her employer.

Applicant is credited with mitigating the debts in SOR ¶¶ 1.b, 1.c, 1.d, and 1.e. She is not credited with mitigating her other SOR debts because of the paucity of corroborating evidence that the debts were paid, are in an established payment plan, or are being reasonably disputed. She has not made sufficient progress resolving the SOR debts in ¶¶ 1.a, 1.f, 1.g, 1.h, and 1.i.

Applicant did not provide enough specifics about how circumstances beyond her control adversely affected her finances, and she did not show that she acted responsibly to address her delinquent debts. Her failure to make greater progress resolving her SOR debts shows lack of financial responsibility and 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 financial considerations security concerns.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a

security clearance. See *Dorfmont*, 913 F. 2d at 1401. Unmitigated financial considerations concerns lead me to conclude that grant 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 for award of a security clearance in the future. With more effort towards documented resolution of her past-due debts, and a track record of behavior consistent with her obligations, she may well be able to demonstrate persuasive evidence of her security clearance worthiness.

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. I conclude that financial considerations security concerns are not mitigated. It is not clearly consistent with the national interest to grant or continue Applicant's security clearance eligibility 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:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b through 1.e:	For Applicant
Subparagraphs 1.f through 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 the national interest to grant or reinstate Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

MARK HARVEY
Administrative Judge