



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



In the matter of:

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ISCR Case No. 15-03057

Applicant for Security Clearance

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

12/02/2016

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 July 22, 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 November 11, 2015, the DOD issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations).¹ Applicant answered the SOR on February 16, 2016, and requested a decision based on the written record.

A copy of the Government's file of relevant material (FORM), dated March 22, 2016, was provided to Applicant by transmittal letter dated March 24, 2016. Applicant received the FORM on March 30, 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 and submitted no additional evidence,

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.

objections, or material to refute, extenuate, or mitigate the security concerns. The case was assigned to me on November 29, 2016.

Findings of Fact

SOR ¶ 1.a. alleged a charged-off bank account in the amount of \$79,352. In her answer to the SOR, Applicant admitted the allegation and stated: "Charged off. Not seeking collection." SOR ¶ 1.b. alleged a bank account in collection for about \$11,027. Applicant admitted the allegation and stated: "Husband was making payments. Creditor stopped collecting for unknown reason." SOR ¶ 1.c. alleged a bank account in collection for about \$11,283. Applicant admitted the allegation. SOR ¶ 1.d. alleged a delinquent account to a telephone service provider for about \$37. Applicant denied the allegation and claimed it was recently paid. She submitted no documentary evidence to support her claim. SOR ¶ 1.e. alleged a foreclosed mortgage. Applicant admitted this allegation and stated: "Mortgage foreclosed years ago."

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 49-year-old electronics technician working for a federal contractor. She graduated from high school in 1987, and disclosed no further education or training. Applicant married her spouse in 2000, and they have a 15-year-old daughter. This is her first SCA.

Applicant disclosed in her 2014 SCA that she worked full-time for two federal contractors from June 1998 to July 2012, when she was laid off due to a reduction on the workforce. She was unemployed from July 2012 until October 2013 (15 months), when she was hired by a private company. She worked for the private company from October 2013 to June 2014, when she was hired by her current employer, a federal contractor.

Section 26 (Financial Record) of Applicant's 2014 SCA asked her to disclose whether in the past seven years she had financial problems. She disclosed that in 2008 she had her home mortgage foreclosed (\$380,000). She indicated that the bank repossessed the home and sold it. Applicant also disclosed that in about 2012, she and her husband returned a 2005 Mercedes to the dealership because the car was too expensive to maintain. She claimed the car payments were made from her husband's bank account, and they continued making payments after the car was returned to the dealer. Applicant failed to disclose any other delinquent debts.

The subsequent security clearance background investigation revealed the five delinquent accounts alleged in the SOR. Applicant's admissions to the SOR allegations and the three credit reports in evidence establish all the debts in the SOR.

Applicant provided no evidence about her circumstances when she acquired the accounts alleged in the SOR, or about what efforts she took to stay in contact with her creditors and resolve her delinquent accounts. I note that the 2014 SCA indicated Applicant was laid off from her job during a period of 15 months. However, she has been

employed since October 2013, and she provided no information concerning her efforts to resolve or pay her SOR debts since.

In her SOR response, Applicant claimed that she had paid one account and that her husband was making some payments on the car loan after it was returned. Applicant presented no documentary evidence to support her claims.

Applicant presented no 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 not alleged in the SOR and has other accounts in good standing.

Applicant provided no information about her current financial position. She did not provide any information about her salary, monthly expenses, and whether her current 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 and her SOR response. The evidence establishes the five delinquent accounts alleged in the SOR, totaling over \$100,000.

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 fully apply. Applicant's financial problems are recent 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 may have been adversely affected by circumstances beyond her control – her 15-month period of unemployment. Notwithstanding, she presented little evidence to show what efforts she took since October 2013 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. Applicant 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 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.

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 49-year-old employee of a federal contractor. She has worked for federal contractors since 1998 to present, except for a 15-month period of unemployment. Her financial problems could have been caused, in part, by circumstances beyond her control.

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 granting 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 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 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:

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| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a-1.e: | 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 grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

JUAN J. RIVERA
Administrative Judge