



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



In the matter of:

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ISCR Case No. 15-03584

Applicant for Security Clearance

Appearances

For Government: David F. Hayes, Esq., Department Counsel

For Applicant: *Pro se*

07/26/2016

Decision

HARVEY, Mark, Administrative Judge:

Applicant's statement of reasons (SOR) alleges five delinquent debts totaling \$39,018. After accounting for duplications, her records indicate she is responsible for two student loans in deferment totaling \$13,178 and one charged-off credit card for \$7,964. Divorce, inconsistent receipt of child support payments from her former spouse, and the decline in real estate values damaged her finances. Her overall financial records establish her financial responsibility. Financial considerations security concerns are mitigated. Access to classified information is granted.

History of the Case

On August 27, 2014, Applicant completed and signed her Questionnaire for National Security Positions or security clearance application (SCA). (Government Exhibit (GE) 1) On December 13, 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 January 19, 2016, Applicant responded to the SOR. On March 30, 2016, Department Counsel was ready to proceed. On April 20, 2016, the case was assigned to me. On May 17, 2016, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for June 8, 2016. (HE 1) Her hearing was held as scheduled.

During the hearing, Department Counsel offered four exhibits, and Applicant did not provide any documents. (Tr. 11-12, 15-16; Government Exhibit (GE) 1-4) Department Counsel's exhibits were admitted without objection. (Tr. 16; GE 1-4) On June 15, 2016, DOHA received a copy of the transcript of the hearing. The record was held open for additional evidence until July 7, 2016. (Tr. 53) Eight post-hearing exhibits were received on July 7, 2016. (AE A-H)

Findings of Fact¹

In Applicant's SOR response, she admitted the allegations in SOR ¶¶ 1.a through 1.e, and explained that the debts were either marital debts or student loans that she was attempting to resolve. She also provided additional extenuating and mitigating information. Applicant's admissions are accepted as findings of fact.

Applicant is a 43-year-old deputy program manager, who has worked for her employer for 18 years. (Tr. 6-7, 18; GE 1) She received several promotions from her employer. (Tr. 23-24) In 1990, she graduated from high school. In 2010, she received a bachelor's degree, and she has three courses to complete to receive her master's degree in business administration (MBA). (Tr. 6) She has not served in the military. (GE 1) In 2002, she married, and in 2010, she divorced. (Tr. 7-8) Her children are ages 14, 21, and 26. (Tr. 8, 18) Two of her children live in her home. (Tr. 8, 18) She has never held a security clearance. (Tr. 25)

Financial Considerations

Applicant's divorce was acrimonious. (Tr. 19-20) The divorce process encompassed from 2008 to 2010, and she used a restraining order against her husband for assaulting her. (Tr. 20) Her divorce cost Applicant \$6,900 in litigation fees. (Tr. 38) Applicant's divorce decree indicates her husband is required to pay \$200 weekly child support through the state child support agency, and her divorce decree does not specify allocation of debts. (Tr. 39; AE E) Her husband made infrequent, insufficient child

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

support payments to her. (Tr. 21) Her husband is an electrician, and his income is less than Applicant's income. (Tr. 27)

The SOR does not allege delinquent mortgage accounts; however, her mortgage debts are pertinent to her overall financial situation. The value of her home declined in value when the real estate market suffered a precipitous decline about ten years ago. Applicant and her husband were unable to sell the property during their divorce. Applicant could not afford her mortgage without her husband's contribution, and her home was foreclosed in 2010. (Tr. 28, 48; AE F) Her 2012 credit report shows bank mortgage accounts for \$518,835 and \$143,760 and a home equity account for \$76,740. (GE 2 at 16-17) All three debts were owed to the same bank. Applicant's 2015 credit report indicates a real-estate debt for \$179,937 was paid as an "equity transfer." (GE 4 at 1) She received a cancellation of indebtedness from her mortgage company. (Tr. 33-34, 48) Her 2010 federal tax return shows the sale of residential real estate in May 2010 for \$400,000. (AE F) She filed an Internal Revenue Service (IRS) Form 982 which indicates discharge of an indebtedness and exclusion from her gross income of \$114,057 due to being insolvent. (Tr. 49; AE F)

Applicant's August 27, 2014, SCA listed eight delinquent debts. (GE 1) Applicant's SOR alleges five delinquent debts totaling \$39,018, and their status is as follows:

SOR ¶ 1.a alleges a charged-off bank debt in the amount of \$7,964. Applicant indicated she is working with her former spouse with the intention of having him pay one-half of this credit card debt. (SOR response) The last action on her account was in 2011. (GE 4 at 2) She has contacted the creditor about the debt.

SOR ¶¶ 1.b through 1.e allege four student loan debts for \$10,500, \$10,798, \$8,626, and \$1,130. According to the most recent credit report, the debt in SOR ¶ 1.b for \$10,500 was transferred or sold in 2009, and the debt in SOR ¶ 1.c for \$10,798 was transferred or sold in 2010. (GE 4 at 2) Her 2012 and 2015 credit reports show the SOR ¶ 1.d account as a student loan account, and the status is indicated as payment deferred. (GE 2 at 18; GE 4 at 3) I conclude the debts in SOR ¶¶ 1.b and 1.c are merged into SOR ¶ 1.d with a current balance of \$10,416. Applicant's student loans are in deferment because she is enrolled in her master's degree program. (Tr. 30) She said she has made some student loan payments. (Tr. 30-31, 39)

On June 28, 2016, the creditor for SOR ¶¶ 1.d and 1.e wrote that she borrowed two student loans for \$8,626 and \$1,874 in 2008; the current balances are \$2,013 and \$10,416; her interest rate on both loans is 6.8 percent; the combined monthly payment for the debts in SOR ¶¶ 1.d and 1.e is \$176; and the past-due amount is zero. (AE D) I accept her statement that her student loans are in deferment status, and her student loan debts are mitigated.

Applicant has not made any payments to address the debt in SOR ¶ 1.a. (Tr. 32) She made payments on numerous non-SOR debts. (Tr. 37-38; GE 2-4) Applicant has communicated with her creditors, and has assured she intends to pay her debts.

In 2011, Applicant's company awarded her \$1,000 in cash and \$2,500 in restricted shares of company stock because of her "exemplary performance" as an employee. (AG G) In 2012, her salary was increased from \$117,921 to \$127,355 because of her outstanding performance and increased responsibilities. (AE H) Applicant's current annual salary is \$130,000. (Tr. 43) Her car is paid off. (Tr. 43) Her net monthly income is \$6,093; her monthly expenses are \$3,900; her monthly debt payments are \$1,775; and her monthly net remainder is \$418. (AE C)

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 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 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, SCA, SOR response, and hearing record.

Applicant’s records indicate she is responsible for two student loans in deferment totaling \$13,178 and one charged-off credit card for \$7,964. The credit card account has been delinquent for more than four years. 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

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)).

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) though 20(d) apply. Three circumstances beyond her control adversely affected her finances: Applicant and her spouse divorced; her former spouse failed to fully and consistently pay his court-ordered child support; and the value of her home declined in value when the real estate market suffered a precipitous decline about ten years ago. Applicant acted responsibly to address her delinquent debts after her divorce became final.

Applicant has communicated with her creditors, and has assured she intends to pay her debts. While she still needs to resolve one credit-card debt, she has established a track record of debt payment and resolution. I am confident that Applicant will conscientiously endeavor to resolve her remaining SOR debt.

Based on Applicant’s credible and sincere promise to timely pay 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 some of her debts showed good faith with respect to the debts she paid. She generated a budget. She has sufficient income to keep her debts in current status and to continue making progress paying her remaining delinquent debt. Her efforts are sufficient to mitigate financial considerations security concerns. Even if Applicant provided insufficient information to mitigate security concerns under AG ¶ 20, she mitigated security concerns under the whole-person concept, *infra*.

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 43-year-old deputy program manager, who has worked for her employer for 18 years. She received several promotions from her employer. In 2011, Applicant's company awarded her \$1,000 in cash and \$2,500 in restricted shares of company stock because of her "exemplary performance" as an employee. In 2012, her salary was increased from \$117,921 to \$127,355 because of her outstanding performance and increased responsibilities. In 2010, she received a bachelor's degree, and she has three courses to complete to receive her MBA. In 2002, she married, and in 2010, she divorced. Her children are ages 14, 21, and 26, and her two youngest children live in her home.

The following circumstances beyond her control adversely affected her finances: divorce; her former husband's failure to fully pay his court-ordered child support; and the decline in real estate values.

Applicant's SOR alleges five delinquent debts totaling \$39,018. After accounting for duplications in the SOR, her records indicate she is responsible for two student loans in deferment totaling \$13,178 and one charged-off credit card for \$7,964. Her home was foreclosed. She paid numerous debts after her divorce. 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 understands what she needs to do to establish and maintain her financial responsibility. Her efforts at debt resolution have established a “meaningful track record” of debt re-payment. I am confident she will maintain her financial responsibility.³

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 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
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Subparagraphs 1.a through 1.e:	For Applicant
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Conclusion

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

MARK HARVEY
Administrative Judge

³The Government has the option of following-up with more questions about Applicant's finances. The Government can re-validate Applicant's financial status at any time through credit reports, investigation, and interrogatories. Approval of a clearance now does not bar the Government from subsequently revoking it, if warranted. “The Government has the right to reconsider the security significance of past conduct or circumstances in light of more recent conduct having negative security significance.” ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012). An administrative judge does not have “authority to grant an interim, conditional, or probationary clearance.” ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012) (citing ISCR Case No. 10-03646 at 2 (App. Bd. Dec. 28, 2011)). *See also* ISCR Case No. 04-03907 at 2 (App. Bd. Sep. 18, 2006) (stating, “The Board has no authority to grant [a]pplicant a conditional or probationary security clearance to allow her the opportunity to have a security clearance while she works on her financial problems.”). This footnote does not imply that this decision to grant Applicant's security clearance is conditional.