



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-03974

Appearances

For Government: Tovah Minster, Esquire, Department Counsel

For Applicant: *Pro se*

11/17/2016

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding financial considerations. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On August 26, 2014, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.¹ On December 13, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued an SOR to her, under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline F (Financial Considerations), and detailed reasons why the DOD

¹ Item 2 (e-QIP, dated August 26, 2014).

adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

It is unclear when Applicant received the SOR as there is no receipt in the case file. In a sworn statement, dated January 14, 2016, Applicant responded to the SOR and elected to have her case decided on the written record in lieu of a hearing.² A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant on February 29, 2016, and she was afforded an opportunity, within a period of 30 days after receipt of the FORM, to file objections and submit materials in refutation, extenuation, or mitigation. In addition to the FORM, Applicant was furnished a copy of the Directive, as well as the Guidelines applicable to her case. Applicant received the FORM on March 8, 2016. The response was due on April 7, 2016. As of this date, Applicant had not submitted any response to the FORM. The case was assigned to me on November 4, 2016.

Findings of Fact

In her Answer to the SOR, Applicant admitted all (§§ 1.a. through 1.g.) of the factual allegations pertaining to financial considerations. Applicant's admissions and comments are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 27-year-old employee of a defense contractor. She has been an administrative assistant with the company since January 2014. She previously held a variety of positions with other commercial entities as a part-time health club tennis instructor and office assistant, and as a full-time restaurant dishwasher, hostess, waitress, and eventually, shift manager. She was unemployed from October 2012 until December 2012. A 2007 high school graduate, Applicant received a bachelor's degree in English in 2012. She has never served with the U.S. military. She has never held a security clearance. Applicant has never been married, although she has been cohabiting since March 2014.

Financial Considerations³

There was nothing unusual about Applicant's finances until she moved away from home in November 2012 due to "detrimental home life" right after graduation. It should be noted that her step-brother is in prison for unspecified charges, and her father is in prison for armed robbery. Applicant moved in with an unspecified family member and tried to

² Item 1 (Applicant's Answer to the SOR, dated January 14, 2016).

³ General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 5 (Combined Experian, TransUnion, and Equifax Credit Report, dated September 4, 2014); Item 4 (Equifax Credit Report, dated November 24, 2015); Item 3 (Personal Subject Interview, dated October 13, 2014); Item 2, *supra* note 1; Item 1, *supra* note 2. More recent information can be found in the exhibits furnished and individually identified.

find employment. Unfortunately for her, Applicant forgot to share her mailing address or phone number with any of her creditors, including those dealing with her student loans. Applicant conceded that she made poor judgment calls when she acquired a credit card when she was 18 years old, and she was “guided” in the wrong direction by a guardian. When creditors were unable to contact her, and she failed to maintain her accounts in a current status, those account became delinquent. Student loans went into a default status. A number of accounts were placed for collection. When she first learned of the delinquencies, she was only working part-time, and had insufficient funds to commence making payments.

With added maturity at the age of 24, and improved employment status, Applicant eventually reached out to her creditors and established repayment arrangements. As a result of her efforts, well before the SOR was issued, she resolved a number of non-SOR accounts. Prioritizing her remaining accounts, some are in the process of being resolved, and still others are scheduled to be attended to as soon as others are satisfied. Applicant’s newer accounts are all current.

The SOR identified seven purportedly delinquent debts that had been placed for collection, as reflected by the September 2014 or the November 2015 credit reports. Those debts, totaling approximately \$11,472, and their respective current status, according to the credit reports, other evidence submitted by the Government and Applicant, and Applicant’s comments regarding same, are described below:

(SOR ¶¶ 1.a. and 1.b.): These are two student loans with unpaid balances of \$6,031 and \$3,940 that fell into a default status and were placed for collection.⁴ Applicant entered into a repayment plan with the creditor one month before the SOR was issued. She is making monthly payments of \$150 towards the outstanding balances.⁵ Both loans have been rehabilitated, and neither loan has a past-due balance.⁶ While there are still balances on the loans, the accounts have been resolved.

(SOR ¶ 1.c.): This is a bank credit card account with a \$300 credit limit and a past-due and unpaid balance of \$497 that was placed for collection and sold to a debt purchaser.⁷ Although Applicant contended that a repayment plan had been established, effective January 15, 2016, and she submitted documentation reflecting payments to the same debt purchaser for two accounts, and the resolution of those accounts, neither of those accounts was the one alleged in the SOR. She failed to submit documentation to

⁴ Item 5, *supra* note 3, at 5-6, 8. The September 2014 credit report appears to list eight student loans, each with a different account number, different amount, and different creditor. The creditors are identified as state loans and two loans for which claims had been made to the Government as secured guaranteed loans (actually two versions of the same two loans identified in the SOR), a particular school loan, and three U.S. Department of Education loans. All of her other student loans have been rehabilitated, and they have either been resolved or are in the process of being resolved.

⁵ Item 1 (Payment Activity, undated), attached to Applicant’s Answer to the SOR.

⁶ Item 4, *supra* note 3, at 2-3.

⁷ Item 5, *supra* note 3, at 6; Item 4, *supra* note 3, at 3.

support her contention that this particular account had been placed into a repayment plan. The account has not been resolved.

(SOR ¶ 1.d.): This is a medical account with an unpaid balance of \$448 that was placed for collection.⁸ Applicant set up a repayment arrangement with the collection agent in February 2015 – ten months before the SOR was issued – and authorized automatic payments were made, totaling \$461.74, with the final payment being made in April 2015.⁹ The account has been resolved.

(SOR ¶ 1.e.): This is a medical account with an unpaid balance of \$384 that was placed for collection.¹⁰ At the time Applicant answered the SOR, she stated an intention to contact the collection agent, the same one handling her other medical account, to set up a repayment plan for either one full payment or several payments made over the period of a month.¹¹ She did not submit any more recent documentation to reflect her subsequent actions. The account has not been resolved.

(SOR ¶¶ 1.f. and 1.g.): These are two unspecified accounts related to an insurance lapse with unpaid balances of \$124 and \$48 that were placed for collection.¹² At the time Applicant answered the SOR, she stated an intention to contact the collection agent for both accounts to set up a repayment plan to pay them off in February 2016.¹³ She did not submit any more recent documentation to reflect her subsequent actions. The accounts have not been resolved.

As noted above, in addition to the SOR-related accounts, Applicant had a number of other delinquent accounts to which she directed her attention, well before the SOR was issued. All of those accounts have been either resolved or are in the process of being resolved. Other than the accounts explored above, her most recent credit report does not list any other delinquencies. As Applicant noted in her Answer to the SOR, at the age of 24, and with improved employment status, she started addressing her debts, and by the age of 26, she was almost finished doing so. Applicant failed to submit a personal financial statement to reflect her net monthly income; monthly expenses; and if she has a monthly remainder available for discretionary saving or spending. The absence of such information makes an assessment of her financial situation more difficult. Nevertheless, Applicant has made substantial progress in resolving her delinquent accounts, including

⁸ Item 5, *supra* note 3, at 10.

⁹ Item 1 (Letter, dated February 18, 2015), attached the Applicant's Answer to the SOR; Item 1 (Transaction History, various dates), attached to Applicant's Answer to the SOR.

¹⁰ Item 5, *supra* note 3, at 10.

¹¹ Item 1, *supra* note 2, at 4.

¹² Item 5, *supra* note 3, at 10; Item 4, *supra* note 3, at 1.

¹³ Item 1, *supra* note 2, at 4.

those that were not alleged in the SOR. It appears that Applicant's financial status has improved significantly, and that her financial problems are finally under control.

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."¹⁴ 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. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."¹⁵

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."¹⁶ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.¹⁷

¹⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹⁵ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

¹⁶ "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "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).

¹⁷ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. 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 as to potential, rather than actual, risk of compromise of classified information. Furthermore, “security clearance determinations should err, if they must, on the side of denials.”¹⁸

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.”¹⁹ Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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 guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly, under AG ¶ 19(c), a “history of not meeting financial obligations” may raise security concerns. Applicant’s financial problems initially arose in late 2012. Accounts became delinquent and student loans went into a default status. AG ¶¶ 19(a) and 19(c) apply.

¹⁸ *Egan*, 484 U.S. at 531.

¹⁹ See Exec. Or. 10865 § 7.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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.” Also, under AG ¶ 20(b), financial security concerns may be mitigated where “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.” Evidence that “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” is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”²⁰

AG ¶¶ 20(a), 20(b), 20(c), and 20(d) all apply. Applicant’s financial problems were not caused by her personal frivolous or irresponsible spending, although she acknowledged that she made poor judgment calls when she acquired a credit card when she was 18 years old and was subsequently guided in the wrong direction by a guardian. Also, it does not appear that she spent beyond her means. Instead, her financial problems initially occurred when she graduated from college and moved away from a “detrimental home life” and failed to share her mailing address or phone number with any of her creditors. Unemployment and part-time employment exacerbated her financial difficulties. Upon obtaining a permanent job in January 2014 and improving her financial situation, she contacted most of her creditors and set up repayment arrangements, well before the SOR was issued. Student loans were rehabilitated and either brought current or paid off. Other accounts, including credit cards and medical accounts, were also resolved. To the extent that there may be any remaining delinquencies, those accounts with relatively small balances are of little security significance.

Security clearance adjudications are aimed at evaluating an applicant’s judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The adjudicative guidelines do not require an applicant to establish resolution of each and every debt alleged in the SOR. An applicant need only establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve or make payments on all delinquent debts simultaneously,

²⁰ The 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 [or statute of limitations]) 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)).

nor is there a requirement that the debts alleged in an SOR be paid first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts one at a time. It appears that Applicant's financial status has improved significantly, and that her financial problems are under control. Applicant acted prudently and responsibly. Applicant's actions, under the circumstances confronting her, no longer cast doubt on her current reliability, trustworthiness, and good judgment.²¹

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. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.²²

There is some evidence against mitigating Applicant's conduct. After she relocated her residence, Applicant failed to notify her creditors how to reach her and she failed maintain her normal monthly payments with respect to those accounts. A number of accounts became delinquent and were placed for collection. Student loans went into a default status.

The mitigating evidence under the whole-person concept is more substantial. There is no evidence of misuse of information technology systems, mishandling protected information, substance abuse, or criminal conduct. Applicant graduated from college and left the family residence because of her "detrimental home life." Unemployment and part-time employment left her without the financial resources to maintain her accounts in a current status. However, rather than ignoring her delinquent debts, as she was becoming more financially able, she prioritized her accounts and entered into repayment

²¹ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

²² See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

agreements with most of her creditors. She paid off or has resolved some SOR-related debts as well as some debts that were not alleged in the SOR. In the absence of other delinquencies, there are clear indications that Applicant's financial problems are under control. Applicant stated that she intended to continue to resolve any remaining delinquencies on her priority list.²³

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that 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 [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has ". . . established a plan to resolve his [or her] 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 [or her] 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.²⁴

Applicant has demonstrated a "meaningful track record" of debt reduction and elimination efforts, limited only by her modest earnings, and she started to do so well before the SOR was issued. She is now more financially mature, and she is continuing to follow her debt repayment plans consistent with her list of priorities. Overall, the evidence leaves me without questions or doubts as to Applicant's security worthiness. For all of these reasons, I conclude Applicant has mitigated the security concerns arising from her financial considerations. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

²³ The Appeal Board has indicated that promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sept. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)).

²⁴ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

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.g: For Applicant

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 eligibility for a security clearance. Eligibility for access to classified information is granted.

ROBERT ROBINSON GALES
Administrative Judge