



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



In the matter of:

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ISCR Case No. 15-05861

Applicant for Security Clearance

Appearances

For Government: Pamela Benson, Esq., Department Counsel

For Applicant: *Pro se*

08/16/2017

Decision

HARVEY, Mark, Administrative Judge:

Applicant provided insufficient evidence of resolution of her financial issues, and financial considerations security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On October 21, 2014, Applicant completed and signed her Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On March 25, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective on September 1, 2006 (Sept. 1, 2006 AGs).

The SOR detailed reasons why the DOD CAF did not find under the Directive that it is clearly consistent with the interests of national security 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. Specifically, the SOR set forth security concerns arising under the financial considerations guideline.

On April 29, 2016, Applicant responded to the SOR. (HE 3) On June 23, 2016, Department Counsel was ready to proceed. On June 30, 2016, the case was assigned to an administrative judge, and on April 24, 2017, the case was reassigned to me. On April 24, 2017, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for May 4, 2017. (HE 1) Applicant waived her right to 15 days of notice of the date, time, and location of her hearing. (Tr. 10-11) Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered five exhibits; Applicant presented seven exhibits; there were no objections; and all proffered exhibits were admitted into evidence. (Tr. 14-18; GE 1-5; Applicant Exhibits (AE) A-F) On May 15, 2017, DOHA received a copy of the hearing transcript. On July 20, 2017, Applicant provided one exhibit, which was admitted without objection. (AE G)

While this case was pending a decision, the Director of National Intelligence (DNI) issued Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), which he made applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the Sept. 1, 2006 AGs and are effective "for all covered individuals" on or after June 8, 2017. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs.¹

Findings of Fact²

In Applicant's SOR response, she admitted the SOR allegations in ¶¶ 1.a through 1.r. She provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact. Additional findings of fact follow.

Applicant is 34 years old, and she has been employed as a computer programmer for DOD contractors since 2014. (Tr. 5, 8, 18-19; GE 1) In 2001, she graduated from high school. (Tr. 7) In 2012, she received a bachelor's degree in computer networking. (Tr. 8) She served in the Navy from 2005 to 2008; she held a security clearance while she was in the Navy; when she left active service, she was a petty officer third class; and she received an honorable discharge. (Tr. 7, 22) In 2007, Applicant married, and she has an eight-year-old child. (Tr. 6) There is no evidence of security violations.

Financial Considerations

Applicant attributed her delinquent debts to her irresponsibility, immaturity, her unemployment, and her spouse's injury. (Tr. 22-26, 41) Applicant was unemployed from

¹ Application of the AGs that were in effect as of the issuance of the SOR would not change my decision in this case. The new AGs are available at http://ogc.osd.mil/doha/5220-6_R20170608.pdf.

² Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

October 2016 to January 2017. (Tr. 20; AE A) She earned \$70,000 annually at her previous employment with a DOD contractor. (Tr. 21) Her current annual salary is \$93,000. (Tr. 20) In November 2015, her husband was seriously injured at work. (Tr. 22-23; AE E) He received worker's compensation until October 2016. (Tr. 23) His compensation ended because he had reached his point of maximum improvement. (Tr. 23) Applicant's husband is suing his employer for wrongful termination and for negligence. (Tr. 24-25) They expect to receive a settlement of about \$100,000 for each of the lawsuits by the end of the summer of 2017, and she plans to use the funds to resolve her debts. (Tr. 25, 48) The receipt of the SOR was a shock, and she began taking her finances more seriously. (Tr. 26) Applicant's SOR alleges 18 delinquent debts totaling \$57,532, and their status is as follows:

SOR ¶ 1.a alleges a utility debt for \$1,234. Applicant said she paid this debt "little by little" over the years; however, she did not have documentation showing resolution. (Tr. 28-29) She said it was not on her current credit report. (Tr. 29)

SOR ¶¶ 1.b and 1.d allege two telecommunications debts owed to the same company for \$228 and \$208. Applicant said she paid it about two months before her hearing. (Tr. 30) She said she had documentation showing payment at home, and she would provide it. (Tr. 30-31) The \$228 debt is shown as paid on her May 2, 2017 credit report. (Tr. 49; GE 4) It is reasonable that these debts are duplications of each other, and she is credited with mitigating SOR ¶¶ 1.b and 1.d.

SOR ¶ 1.c alleges an after care school debt for \$253. Applicant said she paid this debt in 2016; however, she did not have documentation showing payment. (Tr. 31)

SOR ¶¶ 1.e and 1.r allege the same Internet debt for \$76. Applicant intended to pay this debt. (Tr. 33, 38; GE 4) She is credited with mitigating the debt in SOR ¶ 1.r as a duplication.

SOR ¶ 1.f alleges an apartment debt for \$4,402. Applicant said she is paying the creditor \$50 monthly with the first payment being made in April 2017. (Tr. 33-34) She said she did not have any documentation showing payment. (Tr. 34)

SOR ¶¶ 1.g through 1.n allege eight federal student loans past due in the following amounts or in collections: \$8,836 for \$346; \$1,266 for \$49; \$8,050 for \$315; \$8,229 for \$322; \$5,991 for \$127; \$1,118 for \$35; \$5,032 for \$131; and \$5,162 for \$167. In 2014, Applicant was in a student loan rehabilitation program; however, when her husband lost his employment, she stopped paying this debt. (Tr. 35-36) On April 27, 2017, the creditor for her eight U.S. Government guaranteed student loan accounts indicated: her principal balance is \$49,017; her fees and costs are \$11,838; her interest is \$4,719; and her current balance owed on the eight accounts is \$60,476. (AE C) The creditor wrote the monthly payment to rehabilitate her student loan debt is \$216. (AE C) She said she is currently paying \$216 monthly, and her first payment was made in April 2016. (Tr. 35)

SOR ¶¶ 1.o and 1.p allege two student loans in collections from a bank for \$4,147 and \$3,121. Applicant intends to get the two debts consolidated. (Tr. 36) She plans to

start paying \$50 monthly in May 2017. (Tr. 36, 49) Her \$1,651 federal income tax refund was used to pay these two student loans, and she currently owes about \$7,000 on them. (Tr. 37; AE D)

SOR ¶ 1.q alleges a book club debt for \$103. Applicant did not recognize this debt; she disputed it; and it was removed from her credit report. (Tr. 37-38; GE 4) She is credited with mitigating this debt.

Applicant received financial counseling. (Tr. 27) She provided a budget. (Tr. 32; AE F) When she received the raise to \$93,000, she used some of the money to bring her rent and other bills to current status. (Tr. 27) In November 2016, her vehicle was voluntarily repossessed. (Tr. 45) She does not use any credit cards. (Tr. 47) She said she paid a telecommunications non-SOR creditor \$200, and she scheduled payment of the remainder of that debt for May 15, 2017. (Tr. 28)

In sum, for the first four months of 2017, Applicant may have paid about \$500 total over those four months to the SOR creditors. (Tr. 49-53) After her hearing, she provided a communication from a collection agent indicating a debt was paid; however, she did not show that it was connected to any SOR creditor. (AE G)

Character Evidence

Applicant's landlord indicates she is an excellent tenant. (AE B) She timely pays her rent and is a good neighbor. (AE B)

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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the 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, Secretary of Defense, and DNI 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 for financial problems:

Failure 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 or sensitive information. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. . . .

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant's financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant's self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant's security eligibility.

AG ¶ 19 includes three disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts;" "(b) unwillingness to satisfy debts regardless of the ability to do so;" and "(c) a history of not meeting financial obligations." In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government's obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). The record establishes the disqualifying conditions in AG ¶¶ 19(a), 19(b), and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions.

Six financial considerations mitigating conditions under AG ¶ 20 are potentially applicable in this case:

(a) the behavior happened so long ago,³ 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

³ A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. February 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sep. 13, 2016)).

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;⁴

(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; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

The DOHA 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).

⁴ 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) 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)).

Applicant provided some mitigating information. She and her husband's unemployment and his injury were circumstances beyond her control that harmed her finances. She received financial counseling, and she generated a budget. When she received the raise to \$93,000, she used some of the money to bring her rent and other bills to current status. She is credited with mitigating the debts in SOR ¶¶ 1.b, 1.d, 1.q, and 1.r.

The evidence against mitigating financial considerations security concerns is more substantial. Applicant did not provide enough details with documentary corroboration about what she did to address her SOR debts. She made some uncorroborated claims of payments and payment plans. She was given ample time and guidance that documentation was necessary to support her claims of payment. She did not provide documentation relating to any of the SOR debts in ¶¶ 1.a, 1.c, and 1.e through 1.p such as: (1) proof of payments, such as checking account statements, photocopies of checks, or a letter from the creditor proving that she paid or made any payments to the creditors; (2) correspondence to or from the creditors to establish maintenance of contact; (3) copies of credible debt disputes sent to the creditor and/or credit reporting companies indicating she did not believe she was responsible for the debts and why she held such a belief; (4) evidence of attempts to negotiate payment plans, such as settlement offers or agreements to show that she was attempting to resolve these debts; or (5) other evidence of progress or resolution.

There is insufficient evidence about why Applicant was unable to make greater documented progress resolving 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.

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(d):

- (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), "[t]he ultimate determination" of whether to grant a security clearance "must be an overall commonsense judgment based upon careful consideration of the guidelines" and the whole-person concept. My comments under Guideline F are

incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is 34 years old, and she has been employed as a computer programmer for DOD contractors since 2014. In 2012, she received a bachelor's degree in computer networking. She served in the Navy from 2005 to 2008; she held a security clearance while she was in the Navy; when she left active service, she was a petty officer third class; and she received an honorable discharge. In 2007, Applicant married, and she has an eight-year-old child. She and her husband's unemployment and his injury are circumstances beyond her control that harmed her finances. She received financial counseling, and she generated a budget. She brought her rent and other bills to current status. There is no evidence of security violations.

Applicant admitted responsibility for 18 SOR delinquent debts totaling \$57,532. She is credited with mitigating the debts in SOR ¶¶ 1.b (\$228), 1.d (\$208), 1.q (\$103), and 1.r. (\$76). The total delinquent debt is about \$56,000. She did not make any documented progress addressing her other SOR debts. Her failure to act more aggressively to establish her financial responsibility indicates "poor self-control, lack of judgment, or unwillingness to abide by rules and regulations" and this conduct "raise[s] questions about [her] reliability, trustworthiness, and ability to protect classified or sensitive information." See AG ¶ 18.

It is well settled that once a concern arises regarding an Appellant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990). 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 for award of a security clearance in the future. With 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. Financial considerations security concerns are not mitigated.

Formal Findings

Formal findings For or Against Applicant on the allegations set forth in the SOR, as required by Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e through 1.p:	Against Applicant
Subparagraphs 1.q and 1.r:	For Applicant

Conclusion

In light of all of the circumstances in this case, it is not clearly consistent with the interests of national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Mark Harvey
Administrative Judge