



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-03544

Appearances

For Government: Erin Thompson, Esq., Department Counsel
For Applicant: *Pro se*

03/19/2018

Decision

RIVERA, Juan J., Administrative Judge:

Applicant's financial problems were caused or aggravated by circumstances beyond her control. Nevertheless, her evidence is insufficient to establish a track record of financial responsibility, or that her financial problems are resolved or are under control. Financial consideration security concerns are not mitigated. Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 12, 2013. She was interviewed by a government investigator on March 22, 2013. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued a statement of reasons (SOR) on November 4, 2016, alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on November 30, 2016, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

DOHA assigned the case to me on June 13, 2017, and issued a notice of hearing on June 26, 2017, setting the hearing for July 12, 2017. At the hearing, the Government offered nine exhibits (GE 1 through 9), which were admitted as evidence without

objections. Applicant testified on her own behalf and submitted no exhibits. DOHA received the hearing transcript (Tr.) on July 20, 2017.

Findings of Fact

Applicant admitted the SOR financial considerations allegations ¶¶ 1.a and 1.d through 1.f. She denied the SOR allegations in ¶¶ 1.b, 1.c, 1.g, and 1.h. She failed to admit or deny the allegations in SOR ¶¶ 1.i through 1.ff. I have considered all of those allegations denied. Her admissions to the SOR allegations and at her hearing 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 42-year-old employee of a federal contractor. After graduating from high school, she attended college and earned an associate's degree in 1998. Applicant married in 1995 and divorced in 1998. She married her husband in April 2000. She has four children, ages 16, 15, 10, and 5. One of her daughters suffers from significant health issues and requires frequent medical attention. Applicant had another child that passed away shortly after birth in 2004.

Applicant started working for federal contractors in 1999, and shortly thereafter she was issued a security clearance. She has held her clearance for most of the 18 years she has worked for federal contractors. Applicant's work history revealed numerous periods of unemployment. She worked full time between February 2002 and July 2004; was unemployed between July 2004 and April 2005 (maternity leave, her daughter passing, and losing her job); employed between April 2005 and March 2007; and unemployed between March 2007 and May 2007. (GE 1)

Applicant was employed between May 2007 and March 2010; unemployed between March 2010 and July 2010; employed between July 2010 and May 2011; unemployed between May 2011 and July 2011; employed between July 2011 and January 2012; unemployed between January 2012 and April 2012; and employed between April 2012 and July 2015. Applicant was unemployed between July 2015 and January 2016 (could not find a job); employed between January 2016 and January 2017; and unemployed between January 2017 and May 2017. Her current employer, a federal contractor, hired Applicant in May 2017. (GE 1, Tr. 23-32)

Applicant disclosed on Section 26 (Financial Record) of her 2013 SCA that she had financial problems, which included: delinquent judgments, delinquent or in collection accounts, and garnishment of wages. The background investigation revealed that Applicant filed for Chapter 7 bankruptcy protection in 2004 and was discharged of all dischargeable financial obligations. Following the bankruptcy discharge, Applicant accumulated the 31 delinquent or in collection accounts alleged in the SOR. They include seven judgments, 22 delinquent medical services accounts (ranging from \$100 to \$1,140), and two utility delinquent accounts, all of which total approximately \$35,000. The accounts alleged in the SOR are established by Applicant's admissions and the credit reports in evidence.

A government investigator confronted Applicant about her financial problems during a March 2013 interview. She indicated that the 2004 bankruptcy filing was a result of her periods of unemployment and the loss of her daughter. During the interview, Applicant acknowledged and agreed with substantially the same debts alleged in the SOR. At the time of the interview, she was confronted with 10 judgments, five delinquent medical accounts, and 55 delinquent or in collection accounts, ranging from \$42 to \$8,116. Applicant told the investigator she was trying to save enough money to start paying her delinquent accounts.

At hearing, and during her 2013 interview, Applicant explained that most of her delinquent accounts resulted from circumstances beyond her control, which included: she being the sole family provider, extensive periods of unemployment, her and her family's medical problems, her spouse's medical disability and inability to work, and the death of a child. Because of her lack of income, she did not have the financial resources to pay the family's living expenses and her delinquent debts. She noted that her husband had two surgeries in 2016, and was in the hospital twice during 2017. Her daughter was in the hospital three times in 2017.

Applicant testified that whenever she was employed she held medical insurance. She believes that many of her medical debts should have been paid by her insurance companies. Because her husband was constantly in and out of the hospital, and she had to work and take care of him and the children, she was disorganized and many of the medical bills were not submitted to the insurance companies. Applicant averred she was in the process of reviewing her credit reports to determine which medical bills needed to be referred to the insurance companies for payment. She received the SOR in November 2016. As of her hearing in July 2017, she presented no evidence of any contacts with insurance companies, payment of any medical debts, disputes, or of other resolution of any of the medical delinquent accounts.

At her hearing, Applicant noted that she was behind on paying some of her utilities bills. She testified that she just started to get steady paychecks the month before her hearing and was working on getting caught up first, and then she was planning to address her delinquent accounts. She repeatedly testified that it has always been her intention to repay her delinquent accounts. Applicant also clearly noted that to her, it was a matter of priorities, and feeding and taking care of her children is always a priority before any other financial obligations.

Applicant testified she was in the process of analyzing her credit reports to determine what accounts were her legal obligation to pay. After making that assessment, she was planning on contacting the creditors to make payment arrangements. She repeatedly stated her belief that she not being financially irresponsible. She believes that she was overwhelmed by the circumstances. She noted that in 2014, her spouse's medical problems were so bad that he could no longer work. He applied for disability payments, but the state denied him disability because they believe his injuries are service related and the Army should pay the disability. The Veterans Administration denied him disability payments because they believe his

injuries are not service connected. Applicant believes that she did everything she could to keep her financial situation under control.

Concerning the 2004 Chapter 7 bankruptcy discharge, Applicant explained that she had pregnancy complications and went on unpaid maternity leave for a long period before and after the child's birth. Her spouse was trying to support the family while she was on unpaid maternity leave. The child died shortly after she was born, and Applicant had to bear the funeral expenses. She lost her job shortly after the bankruptcy discharge. (Tr. 33)

Applicant's judgments were filed against her between 2008 and 2015, and they are still outstanding. She averred that she is planning on contesting the judgments in court for a number of fairness and legal reasons. As of her hearing, she had taken no action to contest any of the judgments. She presented no documentary evidence of any contacts with the judgment creditors or of any payments made on any of the SOR accounts since she opened them.

Applicant submitted no documentary evidence to show that she has paid or made payments arrangements on any of the debts alleged in the SOR. Applicant explained that her low earnings have prevented her from paying her debts. Applicant anticipated that by August 2017, she would be current on her living expenses and recent debts. At that point, she was planning to start addressing her delinquent debts. (Tr. 59) Applicant's current salary is \$68,000 yearly. Her take-home pay bi-weekly is about \$2,000. At the end of the month, she has about \$300 left over.

Applicant and her spouse signed up for financial counseling, but they never finished the counseling. Her husband is preparing a budget with the assistance of his aunt who is a financial consultant, and she provides them with financial advice.

Applicant understands the security concerns raised by her financial situation. She believes that she is completely trustworthy, as demonstrated by her 18 years of service working for federal contractors. Applicant would like to continue working for federal contractors. She believes that her financial situation is currently improving as a result of her better-paying jobs. She noted that her earnings are meeting the family needs and anticipated starting to pay her creditors in the near future.

Policies

The SOR was issued 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.

While the case was pending a decision, the Director of National Intelligence implemented Security Executive Agent Directive (SEAD) 4, *National Security*

Adjudicative Guidelines (AG), effective June 8, 2017, which replaced the 2006 AG, and are applicable to all adjudicative decisions issued on or after June 8, 2017. I decided this case under the current AGs implemented by SEAD 4.

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 SEAD 4, App. A ¶¶ 2(d) and 2(f). 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; SEAD 4, ¶ E(4); SEAD 4, App. A, ¶¶ 1(d) and 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

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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds

Applicant's history of failure to satisfy her debt and to meet her financial obligations is documented in the record. Applicant's dischargeable financial obligations were discharged in 2004, pursuant to a Chapter 7 bankruptcy filing. Between 2004 and 2016, Applicant accumulated the 31 delinquent or in collection accounts alleged in the SOR. They include 7 judgments, 22 delinquent medical services accounts, and 2 utility delinquent accounts, all of which total approximately \$35,000, and are currently delinquent. AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts" and "(c) a history of not meeting financial obligations." The record established the above disqualifying conditions, 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;¹ and

¹ The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

(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. Sep. 24, 2013).

None of the financial considerations mitigating conditions are fully raised by the facts in this case, and they do not mitigate the security concerns. Applicant's delinquent debts are multiple, recurrent, and ongoing. Applicant established that her financial problems were caused or aggravated by circumstances beyond her control. Notwithstanding, she failed to submit any documentary evidence of any efforts to resolve her debts. She failed to prove her income was insufficient to address any of her debts, including three that are \$100 or less. She presented no evidence of contacts with creditors, payment plans, disputes, or that she made any payments on any of the SOR debts. The evidence suggests that Applicant was overwhelmed by her circumstances and was unable to repay the debts. Nevertheless, Applicant failed to present any evidence showing that she attempted to be financially responsible under the circumstances.

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. Jun. 4, 2001)).

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. SEAD 4, App. A, ¶¶ 2(a) and 2(d). I have incorporated my comments under Guideline F in my whole-person analysis. Some of these factors were addressed under that guideline, but some warrant additional comment.

Applicant, 42, failed to demonstrate financial responsibility. It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the granting a security clearance. Unmitigated financial considerations security concerns lead me to conclude that grant of a security clearance to Applicant is not warranted at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards documented resolution of her past-due debts, and a track record of behavior consistent with her obligations, she may well be able to demonstrate persuasive evidence of her security clearance worthiness.

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
Subparagraphs 1.a -1.ff:	Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national security interests of the United States to grant eligibility for a security clearance to Applicant. Clearance is denied.

JUAN J. RIVERA
Administrative Judge