



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-08829

Appearances

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

03/07/2018

Decision

RIVERA, Juan J., Administrative Judge:

Applicant documentary evidence is insufficient to show a good-faith effort to resolve her financial problems, or that her financial problems are under control. The financial considerations security concerns are not mitigated. Clearance denied.

Statement of the Case

Applicant submitted a Security Clearance Application (SCA) on March 16, 2015. She was interviewed by a government investigator on October 6, 2015. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued a Statement of Reasons (SOR) on June 8, 2016, alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on August 24, 2016, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

The case was assigned to me on June 27, 2017. The DOHA issued a notice of hearing on June 28, 2017, scheduling a hearing for July 12, 2017. At the hearing, the Government offered five exhibits (GE 1 through 5). Applicant testified and submitted two exhibits (AE) 1 and 2. All exhibits were admitted as evidence without objection. DOHA received the hearing transcript (Tr.) on July 20, 2017.

Procedural Issue

Applicant's notice of hearing was issued on June 28, 2017, and her hearing was convened on July 12, 2017. At hearing, she indicated she had sufficient time to prepare and was ready to proceed. She affirmatively waived her right to 15-day notice of hearing. (Tr. 12-13)

Findings of Fact

Applicant denied all of the SOR financial considerations allegations (§§ 1.a through 1.u). After a thorough review of the record evidence, and having considered Applicant's demeanor while testifying, I make the following findings of fact:

Applicant is a 29-year-old employee of a federal contractor. She graduated from high school in 2006. She attended college between 2006 and the fall of 2016, when she received her bachelor's degree. Applicant has never been married, and she has no children.

Applicant has been employed with different employers in diverse positions since June 2007. Between 2007 and 2011, she attended college and worked full time. Her current employer, a federal contractor, hired her for a full-time position in September 2014. She has been working for the same employer and clearance sponsor since then. This is her first SCA.

Section 26 (Financial Record) of Applicant's 2015 SCA asked her to disclose whether: she was currently delinquent on any federal debt (including financial obligations); during the preceding seven years had she defaulted in any type of loan; had bills or debts been turned over to collection agencies; had any account or credit card been suspended, charged off or cancelled for failing to pay as agreed; was she over 120 days delinquent on any debts; and was she currently 120 days delinquent on any debt.

Applicant answered "Yes" and disclosed that she was seeking advice to raise her credit score, and that she had contacted her creditors and set up payment plans to repay her debts. Applicant disclosed only one credit card in collection (SOR § 1.q (same as 1.r)). As explanation for her financial problems, she stated that she was young and immature and did not keep up with her financial responsibilities. She stated she had contacted a collection agency and had established a payment plan to repay her debt. (GE 1)

Applicant was interviewed by a government background investigator in October 2015. Applicant told the investigator that she had made an agreement with the creditor for the account alleged in SOR § 1.q to pay \$120 monthly starting in January 2015. The money was to be withdrawn from her bank account electronically. She anticipated paying off the account by January 2016. Applicant's documentary evidence shows that the creditor obtained a judgment against her in February 2015. Applicant finished

paying the judgment in January 2016. (AE 2) She presented no documentary evidence of any payment agreements made with the creditor or that she made any payments pursuant to that agreement. Apparently, all payments to the creditor were made pursuant to a garnishment of wages enforcing the judgment obtained against Applicant.

The investigator questioned Applicant about 16 student loans (SOR ¶¶ 1.a through 1.p), totaling about \$49,000, that were in collection. Applicant acknowledged the student loans and stated that she had not made any payment on her student loans because she had no money to pay them, and she was just starting to get on her feet. She promised the investigator that she would contact the Department of Education to consolidate her loans and establish a payment plan. She claimed she had contacted the Department of Education in 2014, and was denied a deferment because she was not enrolled in college.

Applicant had another credit account that was in collection (not alleged in the SOR). In 2014, she settled the debt and paid it. She told the investigator that she was going through the process of straightening out her credit because she wanted to purchase a home. She was becoming financially stable as a result of her income with her current employer. Applicant paid the delinquent traffic ticket alleged in SOR ¶ 1.s. She presented no documentary evidence showing the payment, but the account is no longer reflected in recent credit reports.

Concerning the accounts alleged in SOR ¶¶ 1.t and 1.u, Applicant explained that she contacted the creditor (same for both accounts) and was told she only had one account outstanding, SOR ¶ 1.u, and she paid it in October 27, 2015. I find SOR ¶¶ 1.t and 1.u alleged the same account. I find both allegations for Applicant.

Applicant testified she contacted her bank and consolidated some of her consumer debts under a bank loan (car note, credit cards, etc.). She said she pays \$85 a month to the bank, and the bank pays her creditors. (Tr. 42-44) Applicant stated she was consulting with a real estate agent who is helping her to increase her credit score. She plans to buy a home in the near future.

Applicant claimed her student loans were not delinquent when she submitted her 2015 SCA because she had already established a rehabilitation and payment plan with a debt collection company. She stated that during the try out period of the student loan rehabilitation plan, she was paying \$11 dollars monthly. (Tr. 46) She had completed the try out period for the rehabilitation plan, and her student loans had been consolidated and transferred back to the Department of Education, to whom she was making monthly payments. (Tr. 30-31)

When asked to produce corroborating documentary evidence of the student loan consolidation agreement and about the monthly payments she had made, Applicant clarified that July 2017 was the first month in which she was going to make a payment to the Department of Education.

The application for consolidation of student loans form that Applicant attached to her SOR Answer is dated June 24, 2016. The date contradicts her hearing statement that the student loans were rehabilitated (not delinquent) in March 2015 when she submitted her SCA. Furthermore, the Financial Disclosure for Reasonable and Affordable Rehabilitation Payments form was not filed properly, it has numerous blank entries, and it was not signed by Applicant.

Applicant attached to her SOR Answer 22 leave and earning statements covering the period from March 25, 2016 to August 19, 2016. The leave and earnings statements show a weekly garnishment of wages apparently secured for the repayment of one of her student loans. (SOR Answer) Applicant testified that after she established the payment plan with the Department of Education, the garnishment of wages stopped and she implied she immediately started making her monthly payments on line.

I asked Applicant several times during her hearing to provide me with documentary evidence of her student loan consolidation agreement, the debt consolidation agreement she established with her bank, and a history of payments made under both agreements. Applicant did not provide any documentary evidence to support her claims.

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, § 2. 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 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 financial problems is documented in the record. Between 2006 and 2012, Applicant opened numerous student loans, totaling about \$49,000, that became delinquent. She also had a number of delinquent consumer accounts that were in collection. 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 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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving 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; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

The Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2 ¶ 2(b).

ISCR Case No. 10-04641 at 4 (App. Bd. Sep. 24, 2013).

Applicant settled and paid some delinquent accounts that were in collection in October 2015 and January 2016. She initially claimed she rehabilitated her student loans in 2015, before she submitted her SCA. She then claimed that the student loan rehabilitation took place in 2016, that after the rehabilitation, her student loans were consolidated, and that she was making payments to the Department of Education in 2017.

Applicant owes a substantial student loan debt, and she has limited income. She failed to submit sufficient documentary evidence to corroborate her claims that she rehabilitated her student loans and was making monthly payments on her student loans. Her documentary evidence is insufficient to show she resolved her student loans.

Applicant acknowledged that her delinquent consumer accounts resulted from her lack of maturity, incurring expenses that she could not afford, and her lack of financial responsibility. I gave Applicant credit for repaying the delinquent consumer accounts alleged in the SOR. Notwithstanding, in light of the record as a whole, Applicant's evidence is insufficient to demonstrate that she is paying her student loans and that her financial problems are being resolved or are under control. She also did not present evidence to show that she received financial counseling, or that she follows a budget.

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 those guidelines, but some warrant additional comment.

Applicant failed to demonstrate financial responsibility and that her financial problems are being resolved and are under control. Her inconsistent testimony and the lack of documentary evidence corroborating her claims of student loans resolution create doubts about her evidence in mitigation and, ultimately, on her eligibility for a clearance. The financial considerations security concerns are not mitigated.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a - 1.p:	Against Applicant
Subparagraphs 1.q - 1.u:	For 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