



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 16-00283

Appearances

For Government: Carol Connelley, Esq., Department Counsel
For Applicant: Greg F. Greiner, Esq.

12/22/2017

Decision

RIVERA, Juan J., Administrative Judge:

Applicant established that circumstances beyond her control contributed to her financial problems and that she was financially responsible under the circumstances. Her current income is sufficient to pay for her living expenses and current debts. Her financial problems are being resolved and are under control. She understands that her failure to continue addressing her delinquent debts responsibly would create financial and personal conduct security concerns. Clearance granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on September 8, 2015. After reviewing it and the information gathered during a background investigation, the Department of Defense (DOD) issued her a Statement of Reasons (SOR) on June 17, 2016, alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on July 14, 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 January 10, 2017. DOHA issued a notice of hearing on January 10, 2017, setting the hearing for January 25, 2017. At the hearing, the Government offered four exhibits (GE 1 through 4). Applicant testified and submitted

one exhibit (AE 1), comprised of Tabs A through P. I received AEs O - P post-hearing. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on February 3, 2017.

Procedural Issue

Applicant waived her right to 15 days advanced notice of her hearing. She indicated she was prepared and ready to proceed. (Tr. 7)

Findings of Fact

Applicant admitted the four SOR allegations (§§ 1.a through 1.d), with comments. Her admissions to the SOR and at her hearing are incorporated herein as findings of fact. After a thorough review of the record evidence, including her testimony, I make the following additional findings of fact:

Applicant is a 42-year-old employee of a federal contractor. She graduated from high school in 1993, and completed her bachelor's degree in 1999. She married her spouse in 2003 and divorced in 2016.

Applicant's employment history shows that she was employed with federal contractors between 2002 and November 2010. She was unemployed between November 2010 and January 2011. She worked as an independent contractor (self-employed) between January 2011 and August 2014. She established a consulting business in 2007, that failed and she dissolved in 2013. She was unemployed between August 2014 and July 2015. Applicant was granted a secret clearance in 2002 which she retained until it lapsed in 2013. Apparently, there were no security issues or concerns while she held the clearance.

A federal contractor hired Applicant in July 2015, and she has been working with the federal contractor since. Her 2016 salary was \$117,607 a year. As of February 2017, she had \$1,500 in her checking account, and about \$2,100 in her savings account.

Applicant submitted her most recent SCA in September 2015. In her responses to Section 26 (Financial Record), she disclosed that she had some delinquent accounts, and that she had established or was in the process of establishing payment plans to resolve the debts. During her November 2015 background interview, Applicant was confronted with the delinquent debts and judgment alleged in the SOR.

Applicant explained that her delinquent debts were the result of several circumstances: her divorce, a failed business, a one-year period of unemployment and underemployment during 2013 through 2015, and the increased expenses associated with moving to her current state seeking a better paying job. These circumstances limited her earnings and she was unable to start addressing her debts until she found a full-time job in 2016.

SOR ¶ 1.a (\$103,078) alleges a delinquent line of credit that Applicant opened to support her business. The account became delinquent in about 2012, and the bank obtained a judgment against Applicant in 2013. During her 2015 interview, Applicant claimed she was in the process of disputing the judgment. At hearing, Applicant testified the account was unpaid. She explained that she was first paying other delinquent debts and trying to secure her financial stability to then start paying the judgment. She expressed her intent to pay the account in the near future.

SOR ¶ 1.b (\$2,775) alleges a delinquent credit account. Applicant explained that after dissolving her business in 2013, she did not have sufficient earnings to pay the debt. Applicant's documentary evidence shows she paid the debt for less than owed (\$2,000) in February 2017. (AE 1, Tabs A and J; Tr. 28)

SOR ¶ 1.c (\$1,249) alleges a charged-off credit card debt. Applicant's documentary evidence shows she paid the account for less than owed (\$750) in January 2017. (AE 1, Tab J)

SOR ¶¶ 1.d (\$7,154) alleged a past-due mortgage with a total balance of \$307,923. Applicant claimed in the answer to the SOR that the mortgage note had been paid in full and the account was closed. Applicant presented no documentary evidence to show that she paid the mortgage, or that she was released of financial responsibility. Her documentary evidence fails to corroborate her claims. It appears that the mortgage went into foreclosure for lack of payments. The mortgage holder acquired the property in March 2016, and issued Applicant a Form 1099-A (Acquisition or Abandonment of Secured Property), indicating that the loan principal balance was \$307,923, and the fair market value of the property was \$195,434. Thus, it appears Applicant would have an unpaid deficiency balance of \$112,489. (AE L)

Applicant averred she did not pay her delinquent accounts because she did not have the money. She believes she was doing the best she could based on her circumstances: divorce, unemployment, underemployment, and reduced earnings. She noted that her and her spouse's combined adjusted gross income in 2013 was about \$60,000, and in 2014 it was \$40,000. In 2015, she separated from her spouse and moved to another state seeking a better paying job. Her sole adjusted gross income in 2015 was \$43,413, and she incurred additional moving and living expenses resulting from her move to a higher cost of living area.

The credit reports in evidence show Applicant had other delinquent debts not alleged in the SOR that she paid or resolved, some after they were charged off, and numerous debts in good standing. Additionally, Applicant was a cosigner with her ex-husband in several of his delinquent debts. (GEs 3 and 4) Some of those debts were discharged when her ex-husband was discharged of liability under Chapter 7 bankruptcy protection in 2015. (AE J) However, as a co-signer of the accounts she still could be held liable for some of the debts.

Applicant's financial situation continued to be tight until she found her current job. Her current income has allowed her the financial means to support herself and address some of her delinquent debts. Applicant promised to continue paying her legal debts and to resolve her financial problems.

In November 2011, Applicant vacationed to Italy for about 6-10 days. (2015 SCA) She leased a BMW in 2010, with a monthly payment of \$670; a Mercedes Benz in 2012 with a monthly payment of \$762; and another Mercedes Benz in 2014 with a monthly payment of \$762. (GE 4) Her current rent payment is \$2,935. (Tr. 61) Applicant testified she brings home about \$4,000 every two weeks.

Policies

The SOR was issued under Executive Order (Exec. Or.) 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. The SOR alleges four delinquent accounts totaling about \$114,256, some of which have been delinquent since 2012. AG ¶ 19 provides 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.” 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;¹ 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).

¹ 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)).

All of the above financial considerations mitigating conditions are raised by the facts in this case and mitigate the security concerns. Applicant's financial problems are ongoing and recent. However, her financial problems could be attributed to, or were aggravated by, circumstances beyond her control - her separation and divorce, her failed business, and her periods of unemployment and underemployment between 2010 and 2015. Considering the evidence as a whole, it shows that her financial problems occurred under circumstances unlikely to recur.

Applicant credibly explained she did not have the financial means to pay her delinquent accounts until after she obtained her current job in July 2015. There is some evidence showing that Applicant contacted some of her creditors and attempted to establish payment agreements, and initially retained the services of a debt management company to help her resolve some of her debts. I note that Applicant's payment agreements and debt settlements are recent, but they are evidence of Applicant's responsible efforts to resolve her financial situation.

I find that Applicant received or is receiving financial counseling, and that there are clear indications that her financial problem is being resolved or is under control. Her evidence is sufficient to establish that circumstances beyond her control prevented her from paying the debts and that she was financially responsible under the circumstances. She disclosed her financial problems in her 2015 SCA. Her current financial situation is improving. Her current income should be sufficient to pay for her living expenses and current debts.

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), 2(d) and 2(f). 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 is a 42-year-old employee of a federal contractor. She has possessed a clearance for about 10 years while working for federal contractors. Her divorce, business failure, and periods of unemployment and underemployment contributed to or aggravated her financial problems.

I carefully considered Applicant's vacation to Italy, her continued lease of luxury cars, and her expensive lease of an apartment as possible indicators that Applicant may be living beyond her financial means. Thus, the reason she has not been able to fully address her remaining delinquent debts. Nevertheless, the credit reports in evidence show that Applicant paid or resolved other delinquent debts not alleged in the SOR. They also show numerous other debts in good standing. Applicant promised to continue paying her delinquent accounts. She knows that for her to remain eligible for a

clearance and her job, she must demonstrate her financial responsibility. Her failure to continue addressing her delinquent debts responsibly would create financial and personal conduct security concerns that would jeopardize her eligibility for a clearance.

In sum, considering the evidence as a whole, Applicant presented sufficient information to establish that she was financially responsible under the circumstances and that her financial problems are being resolved or are under control. The 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:

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| Paragraph 1, Guideline F: | FOR APPLICANT |
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| Subparagraphs 1.a – 1.d: | For Applicant |
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Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national security interests of the United States to grant eligibility for a security clearance to Applicant. Clearance is granted.

JUAN J. RIVERA
Administrative Judge