



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



In the matter of:

Applicant for Security Clearance

)
)
)
)
)

ISCR Case No. 16-01065

Appearances

For Government: Benjamin R. Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

11/02/2017

Decision

RIVERA, Juan J., Administrative Judge:

Applicant presented insufficient information to establish that she is financially responsible and that her financial problems have been resolved or are under control. The financial considerations security concerns are not mitigated. Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on March 7, 2013. After reviewing it and the information gathered during a background investigation, the Department of Defense (DOD) issued her a Statement of Reasons (SOR) on July 5, 2016, alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on July 21, 2016, with some comments, and requested a decision based on the written record in lieu of a hearing.

A copy of the Government's file of relevant material (FORM), submitting the evidence prompting the security concerns, was provided to Applicant by letter dated September 1, 2016. Applicant received the FORM on September 20, 2016. She was allowed 30 days to submit any objections to the FORM and to provide material to refute, extenuate, and mitigate the concerns. Applicant did not respond to the FORM. The case was assigned to me on October 1, 2017.

Procedural Issue

In the FORM, Department Counsel advised Applicant that the FORM included her unauthenticated summary of interview with a government background investigator from February 10, 2016. (FORM, Item 4) Applicant was informed she could object to the summary of her interview, and it would not be admitted or considered by me, or that she could make corrections, additions, deletions, and update the document to make it accurate. Applicant was informed that her failure to respond to the FORM or to raise any objections could be construed as a waiver and the proposed FORM evidence would be considered by me. Applicant failed to respond to the FORM and waived any objections. I admitted the FORM's proffered evidence and considered it.

Findings of Fact

Applicant admitted the factual allegations in SOR ¶¶ 1.a through 1.g. She denied SOR ¶ 1.h, claiming that she had paid the account. Her admissions to the SOR allegations 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 37-year-old employee of a federal contractor. She graduated from high school in 1997, and completed some college courses between 2011 and 2012, but did not earn a degree. She has never married, but she lived with a cohabitant between 2005 and 2015. She has four children, ages 21, 17, 11, and 7.

Applicant's employment history shows numerous periods of unemployment, part-time employment, and short periods of full-time employment between 2003 and 2013. A federal contractor hired Applicant in January 2013. She has been working for her current employer and clearance sponsor since then. Her longest prior period of full-time employment was between April 2009 and February 2011. She resigned from that job after testing positive for marijuana in a urinalysis.

In her response to Section 26 (Financial Record) of her March 2013 SCA, Applicant disclosed that she filed for Chapter 7 bankruptcy protection in March 2013. She was discharged of all dischargeable debts in June 2013 (approximately \$43,000).

A government background investigator interviewed Applicant under oath in February 2016. During the interview, Applicant discussed most of the SOR debts. Additionally, she indicated she had federal student loans in deferment, totaling about \$11,679, which she would start to repay in monthly installments of \$125 in December 2016. While discussing her numerous traffic offenses, Applicant volunteered that in an oversight, she forgot to disclose in the 2013 SCA that in 2006 she was charged with issuing two or more bad checks within 90 days, a felony. She appeared in court, repaid the bad checks, and the charge was dismissed.

Applicant also volunteered that in June 2014, her supervisor confronted her for using the company credit card for about 20 personal purchases (SOR ¶ 1.f). She was

told never to do it again, and she has not. Applicant claimed coworkers told her the company did not mind her making personal charges on the company credit card as long as she repaid the bill on time. She further claimed she was never told it would be a violation of the company credit card policies for her to use it for personal charges.

Concerning SOR ¶ 1.b, Applicant explained she had a car involuntarily repossessed in March 2013. This debt was apparently discharged through the Chapter 7 bankruptcy. Applicant volunteered that she then purchased another car. The account became two months delinquent in about January 2015. She unsuccessfully attempted to lower the payments, voluntarily surrendered the car, and acquired the deficiency balance of \$7,070. As of her June 2016 interview, Applicant had made no payments on this account. She stated to the investigator that she intended to repay the debt as soon as possible. She submitted no evidence of any payments made since she purchased the car.

Concerning SOR ¶¶ 1.c and 1.d, Applicant explained to the investigator that she intended to repay these debts as soon as possible. She submitted no evidence of any payments made.

Concerning SOR ¶ 1.e, Applicant told the investigator she believed the debt was discharged through bankruptcy. In fact, the creditor is not listed in the bankruptcy documents, the account was opened after the bankruptcy filing (Item 5), and Applicant admitted the debt. She submitted no evidence of any payments made.

Applicant told the investigator she paid the debt alleged in SOR ¶ 1.g in June 2015; however, she presented no evidence of payment. She claimed she took the loan to improve her credit and was unable to keep up with the payments. She submitted no evidence of any payments made to repay this debt.

In her answer to the SOR, Applicant claimed she paid the debt alleged in SOR ¶ 1.h. In February 2016, she told the investigator that the creditor had obtained a monthly garnishment of wages for \$101, which was supposed to start in the near future. She presented no evidence of any payments made.

During her February 2016 interview, Applicant indicated her financial problems resulted, in part, from her lack of organization and inability to keep up with her bills and payments. She attributed this to the way she was raised and her immaturity. She used multiple credit cards, made minimum payments, and often skipped paying one to pay the others. She also noted her periods of unemployment, underemployment, and short periods of full-time employment, but with low-paying jobs. In 2012-2013, she realized she could no longer make her payments and filed for bankruptcy protection.

In her interview, Applicant was confronted with the delinquent debts she acquired after the bankruptcy discharge. She explained she separated from her long-term cohabitant in 2015, and went from a two-person family income to a one-person income. Thus, she had difficulty meeting her family living expenses and debts. As of February

2016, Applicant's monthly net pay was \$2,685, and after paying her monthly living expenses and debts she had a positive balance of \$466. During her interview, Applicant repeatedly reiterated her intention to pay all her delinquent debts because she would like to purchase a home in the near future.

Applicant did not respond to the FORM and presented no evidence about her current financial situation. It is not clear whether her income is sufficient to pay for her family's living expenses and debts, or whether her financial problems are resolved or under control.

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. The case will be decided under Security Executive Agent Directive (SEAD) 4, National Security Adjudicative Guidelines (AG), effective 8 June 2017.

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 either 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 file record. AG ¶ 19 provides 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.” The record established the three 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).

ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 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 financial

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)).

problems are ongoing and recent. Her evidence is insufficient to show that her financial problems occurred under circumstances unlikely to recur.

Applicant's periods of unemployment, underemployment, and the separation from her cohabitant likely contributed to or aggravated her poor financial situation. However, Applicant's evidence is insufficient to establish that she was financially responsible under the circumstances. She admitted to her financial irresponsibility in the handling of her credit before she filed for bankruptcy protection, and her unauthorized use of a company credit card. Notwithstanding, her bankruptcy discharge, Applicant has subsequently acquired new delinquent debt. She presented little evidence of efforts to resolve these newer debts. She presented no documentary evidence of any payments made, contacts with creditors, or payment agreements established after her 2013 bankruptcy discharge, or after she was confronted with her additional delinquent debts during her 2016 interview, in her SOR answer, or in response to the FORM.

Considering the period during which the debts have been delinquent, the number of delinquent debts, the amount of debt involved, and that she has been employed since January 2013, Applicant failed to present sufficient evidence of good-faith efforts to resolve her delinquent debts.

Even if I was to consider Applicant's evidence as sufficient to establish that circumstances beyond her control prevented her from paying the debts, she failed to present sufficient information to show she was financially responsible. Additionally, the record is not clear about Applicant's current financial situation and whether her income is sufficient to pay for her family's living expenses and current debts. The evidence fails to show that Applicant's financial problems are resolved or under control.

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. In sum, Applicant presented insufficient information to establish that she is financially responsible and that her financial problems have been resolved or are under control. 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.h:	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