



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



In the matter of:)
)
) ISCR Case No. 16-02555
)
Applicant for Security Clearance)

Appearances

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

08/13/2018

Decision on Remand

RIVERA, Juan J., Administrative Judge:

Applicant's financial problems were partially caused or aggravated by circumstances beyond her control, and partially because of her financial irresponsibility. 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 October 30, 2015. She was interviewed by a government investigator on February 12, 2016. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued a statement of reasons (SOR) on December 3, 2016, alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on December 29, 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 13, 2017. At the hearing, the Government offered six exhibits (GE 1 through 6). Applicant testified on her own behalf and

submitted three exhibits (AE) 1 through 3. All exhibits were admitted as evidence without objections. I kept the record open until Friday, July 28, 2017, to allow Applicant the opportunity to submit additional documents to supplement the record. DOHA received the hearing transcript (Tr.) on July 21, 2017. No documents were received by July 28, 2017, and the record closed July 29, 2017.

On March 14, 2018, I denied Applicant's request for a security clearance. Applicant appealed, alleging in part, that post-hearing documents she submitted three days before the record closed, were not considered before I issued the decision. On June 6, 2018, the Appeal Board remanded the case. Neither Department Counsel nor I received any correspondence from Applicant after the hearing.

On June 7, 2018, Department Counsel asked Applicant to resubmit her post-hearing documents. On June 18, 2018, Department Counsel forwarded Applicant's post-hearing documents to me. The content of Applicant's post-hearing submission is summarized on Department Counsel's forwarding email to me, marked as Post-Hearing Exhibit (PHE) 1. Applicant's post-hearing documents were marked as follows: (a) PHE 2 is a two page summary – exhibit list including Applicant's statement of intent; (b) PHE 3 is a bank statement identifying payments made to creditors of accounts alleged in the SOR; (c) PHE 4 is a five-page account payment history from a company assisting Applicant in paying her debts; (d) PHE 5 is a receipt indicating that the account alleged in SOR 1.x was paid in April 2013; (e) PHE 6 are two settlement offers (expiring on August 15, 2018) concerning SOR 1.m and SOR 1.o; and (f) PHE 7 is a receipt showing the account alleged in SOR 1.k was settled in full on July 25, 2017. Applicant's post-hearing documents were made part of the record, without objections, and were fully considered before I issued the remand decision.

Findings of Fact

Applicant admitted the SOR financial considerations allegations in ¶¶ 1.a through 1.i, 1.k, 1.n, 1.o, and 1.s through 1.bb. She denied the allegations in SOR ¶¶ 1.j, 1.l, 1.m, and 1.p through 1.r. 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 44-year-old employee of a federal contractor. After graduating from high school, she attended a technical college where she received an accounting certificate. She earned her bachelor's degree in Business and Information Technology Management in 2005. Applicant started working on her master's degree in October 2007. As of her hearing date, she had two classes to take to complete her master's degree in Finance.

Applicant married in 2003, and she has two children, ages 21 and 15, that depend on her for support. She intends to file for divorce in the near future. Applicant's husband is disabled. He was diagnosed with renal failure in 2013, and since then he

has received disability benefits. She has been the sole provider for the family since 2013. (Tr. 25)

Applicant has been working for federal contractors on and off from April 2005 to present. She has held a secret clearance for the last 10 years. There is no evidence to show any security concerns during that period, except for financial problems. Applicant's work history revealed numerous periods of unemployment. She was unemployed between January 2005 and April 2005; between November 2010 and March 2011; between July 2013 and September 2013; and between August 2016 and December 2016. She relocated with her two children to her current state of residency for a better-paying job. Her current employer, a federal contractor, hired Applicant in January 2017. She testified that now that she has a better-paying job, she is trying to get her household finances in order. (GE 1, Tr. 22-23, 30)

Applicant disclosed on Section 22 (Police Record) of her 2015 SCA that she was convicted of issuing checks without sufficient funds in January 2009. She further disclosed on Section 26 (Financial Record) that she had financial problems, which included: a 2007-2008 Chapter 7 bankruptcy, delinquent student loans, hospital bills, and several delinquent consumer accounts.

In February 2016, a government investigator questioned Applicant about her financial problems. During the interview, Applicant acknowledged and agreed with most of the delinquent debts that are now listed in the SOR. Applicant explained to the investigator that she had accumulated numerous delinquent medical accounts for services provided to her and her family because some of the medical services were not covered by her insurance. She was hoping to get on a payment plan with the creditors to pay her debts as soon as possible.

Applicant told the investigator that she was trying to fix her credit scores to buy a home. She retained a credit counseling company to help her remove some of her delinquent accounts from her credit report. At the suggestion of the credit counseling company, she opened two personal loans to pay off accumulated delinquent accounts, and the loans became delinquent. She also opened several credit card accounts to reestablish her credit in 2015 that also became delinquent. She attempted to fix her credit, but "fell short of keeping herself financially in line." (Tr. 40) In addition to the above debts, Applicant purchased furniture in 2015, and she and her spouse bought at least three vehicles, which they could not afford to pay. The vehicles were repossessed and they acquired the deficiency balances on the debts.

The SOR alleges Applicant's 2008 bankruptcy discharge of close to \$60,000 in unsecured debts, and that following the discharge, Applicant accumulated 27 delinquent or in collection accounts. They include three repossessed vehicles, 14 delinquent medical services accounts (ranging from \$69 to \$855), three utility delinquent accounts, and several loans and consumer accounts, all of which total approximately \$30,000. The accounts alleged in the SOR are established by Applicant's admissions and the credit reports in evidence.

Three times during her testimony, Applicant acknowledged that she had financial problems because she had been financially irresponsible acquiring her debts, and that she had not been diligent repaying her debts. (Tr. 13, 50, 62) She claimed her efforts to resolve her delinquent debts were precluded by her periods of unemployment, her spouse's disability and unemployment, and she being the sole provider for a family of four. She claimed that she tried to establish payment plans with her creditors, but they were not willing to accept what Applicant could afford to pay. Applicant presented no documentary evidence to show her efforts to contact her creditors, settlement offers made, or any payments made towards the SOR debts, before July 25-26, 2017, except for SOR ¶ 1.x, which was paid in June 2013.

Applicant plans to pay most of her small delinquent debts by using excess funds from her current student loans. (Tr. 13, 19) Applicant owes between \$125,000 and \$150,000 in student loans. Although the student loans have been delinquent in the past, they are currently in deferment while she is in college. She noted that credit counseling agencies advised her to start by paying her small debts first. Then, she was to save money and attempt to negotiate settlements for less than what she owed. At hearing, Applicant claimed she had been paying off her small debts and making payment on other accounts. She submitted a spreadsheet identifying 23 accounts that she claimed to have paid off, or was making payments on. (AE 3)

I asked Applicant to submit documentary evidenced of her alleged payments and left the record open for her to supplement the record. Applicant's post-hearing document (PHE 3 and PHE 4) show that she settled and paid the following debts on July 25-26, 2017: SOR ¶¶ 1.j, 1.k, 1.l, 1.p, 1.q, 1.r, 1.s, 1.t, 1.v, 1.w, 1.x, 1.y, and 1.z. The documentary evidence shows that the account alleged in SOR ¶ 1.x was paid in June 2013.

Applicant received settlement offers (for less than owed) from the creditors of the accounts alleged in SOR ¶¶ 1.n and 1.o. The offers are valid until August 15, 2018. She stated her intent to pay them, but presented no evidence showing these two debts were paid. (PHE 6)

In her post-hearing statement, Applicant acknowledged that seven of the debts alleged in the SOR were unpaid or unresolved: SOR ¶¶ 1.b, 1.c, 1.d, 1.e, 1.g, 1.h, and 1.i. (PHE-2) Applicant promised that after paying the accounts alleged in SOR ¶¶ 1.n and 1.o, she would contact the creditors to settle and make payment arrangements, starting with the smallest debts first. She promised to pay all the debts within a period of two to three years, provided she was allowed to keep her clearance and her current job.

SOR ¶ 1.h (\$7,200), is the largest delinquent debt alleged in the SOR. Applicant explained that she and her spouse purchased a time-share property in 2014-2015, and they were not able to afford the mortgage payments and it became delinquent. Applicant did not address the debt alleged in SOR ¶ 1.f, which she admitted in her SOR answer. She stated that it resulted from her 2016 unemployment, and expressed her desire to pay it in the future. There is no evidence it was paid or resolved. SOR ¶¶ 1.u,

1.aa, and 1.bb are debts for medical services that were not addressed by Applicant's evidence. Since they are medical accounts similar to those consolidated, settled, and paid by Applicant on or about July 25-26, 2017, I find these accounts for Applicant too.

Applicant's current salary is \$65,000. Her take-home pay is about \$1,900 after taxes twice a month. Her rent payment is \$980, and her car payment is \$500. She has about \$800 left over at the end of the month on discretionary income. She testified that her marital problems, depending on her medically disabled husband to provide financial assistance, and her periods of unemployment and underemployment prevented her from responsibly addressing her delinquent debts. Because of her lack of income, she did not have the financial resources to pay the family's living expenses and her delinquent debts.

Applicant testified that she understands the security concerns raised by her financial situation. She believes that she is completely trustworthy, as demonstrated by her 10 years of service working for federal contractors while possessing a secret clearance. Applicant would like to continue working for federal contractors but she needs her clearance eligibility to do so. She noted that she just moved with her children to her current state, and she needs her job to support her children. Applicant believes that her financial situation is currently improving as a result of her better-paying job. She noted that her earnings are meeting the family needs and anticipated starting to pay off 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 debts and to meet her financial obligations is documented in the record. Applicant's dischargeable financial obligations (about \$60,000) were discharged in 2008, pursuant to a Chapter 7 bankruptcy filing. Between 2008 and 2016, Applicant accumulated the 27 delinquent accounts alleged in the SOR. They include three repossessed vehicles, 14 delinquent medical services accounts (ranging from \$69 to \$855), three utility delinquent accounts, and several loans (one for a time-share property) and consumer accounts, all of which total approximately \$30,000. The accounts alleged in the SOR are established by Applicant's admissions and the credit reports in evidence.

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:

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].

(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 partially caused or aggravated by circumstances beyond her control. However, she was irresponsible acquiring debts she could not afford, and in her efforts to resolve them.

Applicant submitted documentary evidence showing that she settled and paid 17 of the SOR debts between July 25 and July 26, 2017 (after her hearing). Nevertheless, her post-hearing evidence failed to corroborate her assertions of payments made, or of good-faith efforts to resolve her debts, before her hearing. That is, except for the account alleged in SOR ¶ 1.x, which was paid in June 2013.

I note that some of Applicant's SOR debts are for relatively small amounts (less than \$100). She presented little documentary evidence of contacts with creditors, payment plans, disputes, or that she made any payments on any of the SOR debts prior to July 2017 (except for SOR ¶ 1.x). The evidence suggests that Applicant may have been overwhelmed by her circumstances and was unable to repay the debts. Nevertheless, Applicant failed to present evidence showing that she attempted to be financially responsible under the circumstances. On the contrary, the evidence suggests she continued to acquire financial obligations knowing that she could not afford to repay them.

(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)).

Applicant's plan to pay some of her delinquent debts using her student loans surplus is not a viable plan to resolve her delinquent debts. She owes between \$125,000 and \$150,000 in student loans. If she were to put her payment plan into place, she just would be transferring the debt from one creditor to another. Her student loans are not dischargeable through a bankruptcy proceeding. Applicant's financial problems are not 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) 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.

I considered Applicant's personal, financial, and medical circumstances. I specifically considered that she resolved 17 SOR accounts – most of them post-hearing as shown by the record evidence. An applicant who waits until his or her clearance is in jeopardy before resolving debts may be lacking in the judgment expected of those with access to classified information. ISCR Case No. 16-01211 (App. Bd. May 30, 2018), *citing* ISCR Case No. 15-03208 at 5 (App. Bd. Mar. 7, 2017)

Applicant, 44, 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 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.i, 1.m-1.o:	Against Applicant
Subparagraphs 1.j-1.l, 1.p-bb:	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