



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 16-03714

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel

For Applicant: *Pro se*

11/15/2017

Decision

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant did not mitigate the security concerns regarding her financial problems. Eligibility for access to classified information is denied.

Statement of Case

On January 3, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make the affirmative determination of eligibility for a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken 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* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AGs) implemented by DOD on September 1, 2006.

Security Executive Agent, by Directive 4, *National Security Adjudicative Guidelines* (SEAD 4), dated December 10, 2016, superceded and replaced the September 2006 adjudicative guidelines (AGs). They apply to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. Procedures for administrative due process for contractor personnel continue to be governed by DOD Directive 5220.6, subject to the updated substantive changes in the AGs, effective June 8, 2017. Application of the AGs that were in effect as of the issuance of the SOR would not affect my decision in this case.

Applicant responded to the SOR on June 31, 2017, and elected to have her case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on February 24, 2017. She timely responded to the FORM and did not object to any of the exhibit items in the FORM. She documented payments to the creditors covered by SOR ¶¶ 1.g-1.h and payment progress with creditor 1.f, but provided no documentation of payment developments with the remaining creditors.

Summary of Pleadings

Under Guideline F, Applicant allegedly accumulated eight delinquent federal debts exceeding \$22,000. Allegedly, these alleged debts remain outstanding.

In her response to the SOR, Applicant denied most of the SOR allegations. She admitted the allegations contained in SOR ¶¶ 1.a-1.b and 1.f. In explanation of the admitted debts, she claimed she is working on settlement offers with creditors ¶¶ 1.a and 1.b, and is in the process of paying off the consumer debt covered by SOR debt ¶ f. with an established automatic payment plan.

Addressing the SOR debts she denied (SOR debts ¶¶ 1.c-1.e and 1.g-1.h), Applicant claimed the following: Creditor 1.c was going out of business and advised Applicant to leave her contract without penalty; she notified creditor 1.e that the alleged transaction covered a fraudulent transaction; and the alleged debts covered by SOR ¶¶ 1.g-1.h were previously paid in full.

Findings of Fact

Applicant is a 29-year-old apprentice for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant is single and has one child from a prior relationship (age six). (item 3) She earned a bachelor's degree in May 2010 and attended apprentice classes between June 2015 and September 2016. (Items 3-4) She reported no military service. (Item 3)

Since June 2015, Applicant has been employed by her current employer as an apprentice. (Items 3-4) Between February 2011 and June 2015, she worked as a teacher

for a public school district. (Items 3-4) Applicant worked part-time jobs between January 2008 and April 2014 and reported periods of unemployment between June 2006 and January 2008. (item 4)

Applicant's finances

Applicant contracted for educational loans with SOR ¶ 1.a in August 2007 to finance her college classes. (Items 4-6) She accumulated delinquent educational loans totaling \$16,311 while enrolled in college between 2006 and 2009. (Item 5-6) Altogether, she accumulated five separate loans totaling \$22,125. (items 4-6)

Applicant paid off \$6,000 of the loans before defaulting on the last two loans with her insufficient income. (Items 4-6) In an effort to repay the loans, she enrolled in a payment plan with creditor ¶ 1.a in June 2015 with payment terms set between \$100 and \$200 a month. (Item 4) Unable to meet the monthly terms of her payment plan, she defaulted in December 2015 and has not made any more payments on her defaulted student loans with SOR creditor ¶ 1.a.

Besides her student loans, Applicant, accumulated delinquent debts with other creditors (SOR debts ¶¶ 1.b-1.h) between April 2015 and October 2015. (Items 4-6) These delinquent accounts are comprised of the following accounts: SOR debts ¶¶ 1.b (\$3,400), 1.c (\$792), 1.d (\$546), 1.e (\$505), 1.f (\$356), 1.g (\$157), and 1.h (\$55). (Items 4-6)

Addressing her delinquent accounts, Applicant enrolled in a payment plan with SOR creditor 1.f and has made progress with her payments to this creditor, and to some extent with some of the other listed creditors. (Items 4-9) She resolved her debts with SOR creditors ¶¶ 1.g-1.h and arranged a payment plan with SOR creditor ¶ 1.d. (Items 6-8) And she is committed to meeting her monthly payment terms on her plan with SOR creditor 1.d (Items 7-9) Still, she has not provided documentary evidence of payments or payment arrangements with her education lender (SOR debt ¶ 1.a), or any of her remaining SOR creditors. Nor has she furnished any evidence of extenuating circumstances that may have contributed to her debt defaults.

Applicant provided no evidence of budgeting or financial counseling. Nor did she furnish character references, performance evaluations, or evidence of community involvement.

Policies

The SEAD 4, App. A lists guidelines to be used by administrative judges in the decision-making process covering security clearance cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include conditions that could

raise a security concern and may be disqualifying (disqualifying conditions), if any, and many of the conditions that could mitigate security concerns.

These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with App. A, AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in App. A, AG ¶ 2(d) of the AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person.

The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk. The following App A, AG ¶ 2(d) factors are pertinent: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

Financial Considerations

The Concern: 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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal acts or otherwise questionable acts to generate funds. . . . AG ¶ 18.

Burden of Proof

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a

security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995).

As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. "[S]ecurity-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

Analysis

Security concerns are raised over Applicant's accrual of delinquent educational, medical, and consumer accounts. Applicant's accumulation of delinquent debts warrant the application of three of the disqualifying conditions (DC) of the Guidelines: DC ¶¶ 19(a), "inability to satisfy debts"; 19 (b), "unwillingness to satisfy debts regardless of the ability to do so"; and 19(c), "a history of not meeting financial obligations."

Applicant's pleading admissions with respect to her accumulation of two delinquent debts (SOR ¶¶ 1.a-1.b) negate the need for any independent proof (see *McCormick on Evidence*, § 262 (6th ed. 2006)). Each of Applicant's delinquent debts are fully documented in her credit reports and interview by an agent of the Office of Personnel Management (OPM) and create some judgment issues. See ISCR Case 03-01059 at 3 (App. Bd. Sep. 24, 2004).

Financial stability in a person cleared to protect classified information is required precisely to inspire trust and confidence in persons cleared to access classified information. While the principal concern of a security clearance holder's demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are implicit in cases involving debt delinquencies.

Applicant provided little documented evidence of extenuating circumstances, financial counseling, or reasonable disputes with any of the listed SOR debts. Based on the evidence provided, none of the mitigating conditions pertaining to evidenced extenuating circumstances, financial counseling, or reasonable basis to dispute a past-due debt, apply to Applicant's situation.

To her credit, Applicant, documented evidence of some progress in addressing her debts. She established a payment plan with SOR creditor 1.f. And she has paid off her two small debts covered by SOR ¶¶ 1.g and 1.h. She provided no evidence, however of payment progress with her remaining creditors (*viz.*, SOR debts ¶¶ 1.a and 1.b-1.e). These listed SOR debts remain unaddressed and outstanding. In recognition of her payment progress with SOR debts ¶¶ 1.f-1.h, some application of MC ¶ 1(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," is warranted.

In evaluating Guideline F cases, the Appeal Board has stressed the importance of a "meaningful track record" that includes evidence of actual debt reduction through voluntary payment of debts. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted). In Applicant's case, her insufficient demonstration of responsible efforts in addressing her SOR-listed debts preclude favorable findings and conclusions with respect to his security clearance application. See ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. Nov. 29, 2005)).

Whole-person assessment is unfavorable to Applicant. She has shown insufficient progress to date in addressing her delinquent consumer debts covered in the SOR. Her actions to date reflect insufficient financial responsibility and judgment and raise unresolved questions about her trustworthiness, reliability, and ability to protect classified information. See AG ¶ 18.

More documented information about her inability to make more progress in paying or otherwise resolving her delinquent consumer debts is necessary to mitigate financial concerns under the financial guideline and consideration of the whole-person to mitigate security concerns.

Taking into account all of the documented facts and circumstances surrounding Applicant's education loan consumer debt accruals that she has accrued and addressed in part to date, Applicant has failed to demonstrate enough probative efforts to mitigate financial concerns. Conclusions are warranted that her finances are insufficiently stabilized at this time to meet minimum eligibility requirements for holding a security clearance.

Unfavorable conclusions are entered with respect to the allegations covered by subparagraphs ¶¶ 1.a-1.e of the SOR; while favorable conclusions are warranted with respect to SOR debts ¶¶ 1.f-1.h of the SOR. Eligibility to hold a security clearance under the facts and circumstances of this case is not consistent with the national interest.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

Subparagraphs 1.a-1.e:	Against Applicant
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Subparagraphs 1.f-1.h:	For Applicant
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Conclusions

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's eligibility to hold a security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge

