



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



In the matter of:)
)
) ISCR Case No. 17-00615
)
Applicant for Security Clearance)

Appearances

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

03/09/2018

Decision

RIVERA, Juan J., Administrative Judge:

Applicant’s 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 August 28, 2015. She was interviewed by a government investigator on September 27, 2016. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued a statement of reasons (SOR) on March 24, 2017, alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on May 11, 2017, 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 14, 2017. At the hearing, the Government offered five exhibits (GE 1 through 5). Applicant testified on her own behalf and submitted exhibit (AE) 1, comprised of several documents. All exhibits were admitted as

evidence without objections. DOHA received the hearing transcript (Tr.) on July 24, 2017.

Findings of Fact

Applicant admitted the 22 SOR financial considerations allegations (§§ 1.a through 1.v). 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 29-year-old employee of a federal contractor. She graduated from high school in 2007, and attended college for less than a year in 2012. She withdrew from college because of the birth of her son, now six-year-old. Applicant has never been married. She is raising her son alone. The son's father has never provided support for her son or assistance to Applicant.

Applicant worked part time as a sales person between January 2006 and July 2008, and full time between July 2008 and November 2009. She worked full time as a clerical aide between November 2009 and July 2012. She worked at a motel between July 2012 and July 2014. She worked part time for a private company between July 2014 and February 2015. She started working for federal contractors in February 2015. Her current employer, a federal contractor, hired Applicant in January 2017.

Applicant disclosed on Section 26 (Financial Record) of her 2015 SCA that she had financial problems, including delinquent student loans, a state property tax debt, and that creditors had obtained garnishments against her wages. The background investigation revealed the 22 delinquent or in collection accounts alleged in the SOR, totaling over \$33,000, which are established by Applicant's admissions and the credit reports in evidence.

SOR §§ 1.a, 1.d, 1.e, 1.m, and 1.v are related to Applicant's student loans and date back to 2012. Applicant testified that approximately six months before her hearing, she contacted a creditor attempting to consolidate her student loans, without success. About 30 days before her hearing, Applicant contacted a collection company to start a student loan rehabilitation program. Applicant anticipated a call back from the collection company at the end of July 2017. She presented no documentary evidence of any contacts with her student loan creditors or of any payments made on any of the student loans since she opened the loans in 2012.

SOR §§ 1.g, 1.i through 1.l, and 1.n through 1.t are delinquent medical bills incurred by Applicant and her son through the years. Applicant explained that sometimes she did not have medical insurance to pay for the services, or the insurance did not cover all of the charges and her earnings were insufficient to pay the medical bills. She testified that shortly before her hearing, she contacted the creditor and established a \$68 a month payment plan to resolve her delinquent medical debts. She presented no documentary evidence to support her claims.

SOR ¶ 1.b is a charged-off loan she opened to pay for auto repairs. (Tr. 41) She recently purchased a used 2012 car. Her payment is \$500 monthly. SOR ¶ 1.c is a charged-off account she opened to buy furniture for her house in March-April 2015. She testified she was making monthly payments of about \$60 to pay the furniture. She stopped making the payments because she had judgments and garnishment of wages filed against her. The creditors were taking money out of her pay check and she could not afford to make the furniture payment. (Tr. 42) SOR ¶ 1.f is a charged-off account Applicant opened to purchase a bedroom set. SOR ¶ 1.h is a charged-off account Applicant opened to purchase a television. She explained that her pay was being garnished and she did not have the money to pay these accounts. (Tr. 43-44)

Applicant volunteered she recently moved out of her apartment and broke her lease because of the frequent gunfire in the area. She believes she owes about \$2,400 between back rent and for breaking the lease. Applicant has not participated in any financial counseling; however, her supervisor volunteered to help her with her finances. She recently contacted a debt consolidation company and the company asked her for about \$2,000 to help her resolve her financial problems. (Tr. 38) She could not afford the fees.

Applicant submitted no documentary evidence to show that she has paid or made payments arrangements on any of her delinquent medical debts, except for those debts that were paid through the garnishment of wages. She presented no documentary evidence of any payments made towards any of the debts alleged in the SOR. Applicant explained that her low earnings have prevented her from paying her delinquent debts. (Tr. 44)

Applicant's immediate supervisor testified on her behalf. He is a retired Navy sailor, and the program manager for the federal contractor employing Applicant. He hired Applicant for her current position and has been impressed with her excellent performance. Applicant displays great work ethic. She is punctual, diligent, dependable, and reliable. She is well liked by the customers and is technically proficient. She volunteers to do work beyond her tasks and has a great disposition. The supervisor believes Applicant has great potential and he would like to keep her as an employee.

Applicant acknowledged she has made some mistakes. She considers that all of her medical expenses were incurred under circumstances beyond her control. She believes her financial problems are unlikely to recur, and that she initiated good-faith efforts to repay her creditors. Applicant noted that during her September 2016 interview, she promised the investigator to use her income tax refund to pay some of her delinquent debts. At her hearing, she explained she was unable to follow up with her promise because she had to use her tax refund to pay tickets at the Division of Motor Vehicles. Her driver's license was suspended due to three unpaid tickets for driving without a license, expired inspection certificates, lack of car insurance, and other traffic violations. She needed to pay the tickets to reinstate her driving license to be able to work and care for her son.

Applicant believes it is an honor to work for a federal contractor helping service members who place their lives in the line to protect our freedom. She finds great joy in her job and taking care of her son. Applicant would like the opportunity to continue serving and doing her job.

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 debt and to meet her financial obligations is documented in the record. Between 2008 and 2016, she accumulated 22 accounts in collection or past due, including at least one judgment, totaling about \$33,000, that remain outstanding. 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

(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. Some of her medical debts may have been incurred under circumstances beyond her control. However, she failed to submit any

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. Jun. 4, 2001)).

documentary evidence of any efforts to resolve her debts. Nor did she present any evidence showing her financial responsibility under the circumstances. On the contrary, the evidence suggests Applicant continued to spend beyond her financial means knowing that she could not afford to repay the debts. There is no evidence she participated in financial counseling. The only payments Applicant made were pursuant to a garnishment of wages.

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.

Applicant, 29, 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 the 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.v:	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