



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-01785

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

07/09/2018

Decision

HARVEY, Mark, Administrative Judge:

Applicant provided insufficient evidence that she was unable to make payments to two creditors. Her unpaid vehicle-related tickets are the primary concern. Financial considerations security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On November 5, 2015, Applicant signed a Questionnaire for National Security Positions (SF 86) or security clearance application (SCA). (Government Exhibit (GE) 1) On June 23, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. The SOR set forth security concerns arising under the financial considerations guideline. (Hearing Exhibit (HE) 2)

On July 19, 2017, Applicant provided a response to the SOR, and she requested a hearing. (HE 3) On September 12, 2017, Department Counsel was ready to proceed.

On February 18, 2018, the case was assigned to me. On February 27, 2018, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for March 12, 2018. (HE 1) Applicant waived her right to 15 days of notice of the date, time, and location of her hearing. (Transcript (Tr.) 14) Applicant's hearing was held as scheduled.

During the hearing, Department Counsel offered four exhibits; Applicant offered five exhibits; Applicant objected to the accuracy of the credit reports Department Counsel proffered; there were no other objections; and all proffered exhibits were admitted into evidence. (Tr. 18-22, 25-27; GE 1-4; Applicant Exhibit (AE) A-AE E) Applicant's objections to the credit reports go to the weight to be given to the evidence and not their admissibility. (Tr. 21-22; GE 2; GE 3) On March 19, 2018, DOHA received the hearing transcript. On March 26, 2018, Applicant provided one additional exhibit, which was admitted without objection. (AE F, 10 pages) The record was initially held open until May 15, 2018. (Tr. 72, 76) On May 24, 2018, Applicant asked if she could submit additional evidence. (AE G) On July 5, 2018, Applicant advised that she has been unemployed since May 29, 2018, and she is unable to address her vehicle-related tickets. (AE H)

Findings of Fact¹

In Applicant's SOR response, she admitted the debts in SOR ¶¶ 1.a, 1.c, and 1.i through 1.q. She also provided mitigating information. (HE 3) Her admissions are accepted as findings of fact.

Applicant is 34 years old, and she has been employed as an executive administrative assistant for 18 months. (Tr. 6, 8; GE 1) In 2001, Applicant graduated from high school, and in 2015, she received a bachelor of arts degree with a major in criminal justice and minors in forensic science and forensic psychology. (Tr. 6-7) In 2009, she married, and her children are ages 5, 7, 11, and 14. (Tr. 7-8) She has not served in the military. (Tr. 8)

Financial Considerations

The SOR alleges 17 delinquent debts totaling \$25,957, and the record establishes the status of Applicant's accounts as follows:

SOR ¶ 1.a alleges a judgment filed against Applicant in 2015 for \$7,561. Applicant admitted responsibility for the debt. (Tr. 28) Applicant and her family lived in an apartment from 2011 to 2014. (Tr. 36) Applicant's husband lost his job; Applicant fell behind on rent; and it was necessary to break the lease. (Tr. 37) Applicant did not pay the debt because of insufficient income; however, she plans to pay it after she pays the tickets in SOR ¶¶ 1.i through 1.q. (Tr. 38-39) She maintains contact with the landlord, and she told the landlord that she intends to pay the debt. (Tr. 38)

¹ Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

SOR ¶ 1.b alleged a judgment filed against Applicant in 2013 for \$3,780. On March 9, 2016, Applicant satisfied this judgment. (Tr. 29, 39-41; AE D; AE F at 9)

SOR ¶ 1.c alleges a judgment filed against Applicant for \$7,220. Applicant accepted responsibility for this debt, which resulted from breaking a lease on an apartment. (Tr. 42) Applicant and her family left the apartment three months early. (Tr. 42) Applicant made an initial payment of \$565, and then starting in February 2018, she initiated a \$164 monthly voluntary garnishment of her pay as part of her settlement agreement with the creditor. (Tr. 29-30, 42-43; AE D) Her pay statement reflects the monthly garnishment. (AE D) She paid an attorney \$450 because the creditor was charging an illegally excessive interest rate, and the attorney was able to have the interest rate reduced to six percent. (Tr. 44)

SOR ¶¶ 1.d and 1.e allege two debts owed to the same telecommunications company and placed for collection for \$2,022 and \$877. Applicant disputes her responsibility for these debts. (Tr. 30) She had copies of letters of dispute, which ask for verification of the accounts. (Tr. 45-47) Applicant said the two debts were removed from her credit report. (Tr. 31)

SOR ¶ 1.f alleges a debt owed to a telecommunications company placed for collection for \$1,192. On March 11, 2016, the creditor wrote the debt was settled on March 1, 2016. (Tr. 31, 47; AE F at 10)

SOR ¶ 1.g alleges a medical account placed for collection for \$685. Applicant disputed this debt, and it was removed from her credit report. (Tr. 31, 48) She paid three other medical debts. (Tr. 33; AE E; AE F at 2-5)

SOR ¶ 1.h alleges a bank debt placed for collection for \$568. On March 22, 2018, the debt was satisfied. (Tr. 48-49; AE F at 6-8)

SOR ¶¶ 1.i through 1.q allege nine vehicle-related fines or tickets placed for collection totaling \$2,052 for \$360, \$360, \$260, \$246, \$240, \$240, \$126, \$115, and \$105. Applicant said she paid about \$700 to the creditor when her vehicle was impounded. (Tr. 33; AE D at 11) She provided a printout of her tickets dated July 13, 2016. It lists 18 tickets from September 6, 2013 to February 26, 2015. (AE D at 11) She said she owes \$3,333 to the creditor. (Tr. 32-33; AE D at 11) The creditor offered to settle the debt for \$2,500 on February 23, 2017. (Tr. 32; AE D at 11) The creditor refused to accept a payment plan and demanded payment in full of the debt because Applicant previously had a payment plan with the creditor. (Tr. 31, 50)

Applicant had her student loans consolidated, and she is making required payments. (Tr. 33-34, 60) Her student loans total \$77,000, and under her income-based payment plan, she pays \$31 monthly. (Tr. 60) Her payments will increase next year because her income has increased. (Tr. 60) On March 1, 2018, she paid a non-SOR rent debt for \$3,004. (Tr. 52, 61-62; AE A) She fell behind on rent because her husband was consistently unemployed from February 2014 until March 2018. (Tr. 53-54) She received financial counseling, and she uses a budget. (Tr. 55-56, 61) Applicant's salary has

increased about \$20,000 from 2016, and her husband is now receiving annual income of about \$44,000. (Tr. 59, 67) Applicant's two credit cards are current. (Tr. 59)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant's eligibility for access to classified information "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.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and the Director of National Intelligence have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

Failure 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 or otherwise questionable acts to generate funds. . . .

The Appeal Board explained the scope and rationale for the financial considerations security concern in ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012) (citation omitted) as follows:

This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts. Rather, it requires a Judge to examine the totality of an applicant’s financial history and circumstances. The Judge must consider pertinent evidence regarding the applicant’s self-control, judgment, and other qualities essential to protecting the national secrets as well as the vulnerabilities inherent in the circumstances. The Directive presumes a nexus between proven conduct under any of the Guidelines and an applicant’s security eligibility.

AG ¶ 19 includes three 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.” In ISCR Case No. 08-12184 at 7 (App. Bd. Jan. 7, 2010), the Appeal Board explained:

It is well-settled that adverse information from a credit report can normally meet the substantial evidence standard and the government’s obligations under [Directive] ¶ E3.1.14 for pertinent allegations. At that point, the burden shifts to applicant to establish either that [he or] she is not responsible for the debt or that matters in mitigation apply.

(internal citation omitted). The record establishes the disqualifying conditions in AG ¶¶ 19(a) and 19(c) requiring additional inquiry about the possible applicability of mitigating conditions.

Five financial considerations mitigating conditions under AG ¶ 20 are potentially applicable in this case:

- (a) the behavior happened so long ago,² 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial 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; 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 DOHA 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

² A debt that became delinquent several years ago is still considered recent because "an applicant's ongoing, unpaid debts evidence a continuing course of conduct and, therefore, can be viewed as recent for purposes of the Guideline F mitigating conditions." ISCR Case No. 15-06532 at 3 (App. Bd. Feb. 16, 2017) (citing ISCR Case No. 15-01690 at 2 (App. Bd. Sept. 13, 2016)).

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).

Applicant presented some mitigating evidence. She and her husband were unemployed or underemployed at times from 2014 to present. These are circumstances beyond her control that adversely affected her finances. She does not receive full mitigating credit under AG ¶ 20(b) because she did not act responsibly under the circumstances.

All of Applicant’s debts are mitigated except for SOR ¶¶ 1.a and 1.i through 1.q. She made some progress on her other SOR debts, and those debts are mitigated. SOR ¶ 1.a is a judgment filed in 2015 for \$7,651 and SOR ¶¶ 1.i through 1.q are nine tickets totaling \$2,052. She has not made any payments to address these debts. The tickets are the most problematic because they were generally avoidable and unnecessary. Some of the tickets were incurred in 2014. While she said she intends to pay these debts, they have been delinquent for several years.³

Applicant did not prove that she has been unable to make any payments to these two creditors owed the debts in SOR ¶¶ 1.a and 1.i through 1.q. There is insufficient evidence about why Applicant was unable to make greater progress resolving the debts in SOR ¶¶ 1.a and 1.i through 1.q. There is insufficient assurance that these SOR debts are being resolved. Under all the circumstances, she failed to establish that financial considerations security concerns are mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an Applicant’s eligibility for a security clearance by considering the totality of the Applicant’s conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (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.

³ The Appeal Board has indicated that promises to pay off delinquent debts in the future are not a substitute for a track record of paying debts in a timely manner and otherwise acting in a financially responsible manner. ISCR Case No. 07-13041 at 4 (App. Bd. Sept. 19, 2008) (citing ISCR Case No. 99-0012 at 3 (App. Bd. Dec. 1, 1999)). A promise to pay debts is given greater weight when there is a track record of paying other debts.

Under AG ¶ 2(c), “[t]he ultimate determination” of whether to grant a security clearance “must be an overall commonsense judgment based upon careful consideration of the guidelines” and the whole-person concept. My comments under Guideline F are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is 34 years old, and she has been employed as an executive administrative assistant for 18 months. In 2015, she received a bachelor of arts degree with a major in criminal justice and a minor in forensic science and forensic psychology. In 2009, she married, and her children are ages 5, 7, 11, and 14.

Applicant presented some mitigating evidence. She paid several debts and established a payment plan to address the debt in SOR ¶ 1.c. She and her husband were underemployed or unemployed at times from 2014 to present.

Applicant has a judgment filed against her in 2015 for \$7,651 and nine unpaid tickets for \$2,052. She has not made any payments to address these debts. The tickets are the most problematic because they were generally avoidable and unnecessary. Some of the tickets were incurred in 2014. Applicant provided insufficient corroborating or substantiating documentary evidence of payments and established payment plans for these debts. She did not establish she had insufficient income to make any payments. Her actions show a lack of financial responsibility and judgment and raise unmitigated questions about Applicant’s reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18. More information about inability to pay debts, financial history, or documented financial progress is necessary to mitigate security concerns.

It is well settled that once a concern arises regarding an applicant’s security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont*, 913 F. 2d at 1401. Unmitigated financial considerations 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.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that financial consideration 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
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b through 1.h:	For Applicant
Subparagraphs 1.i through 1.q:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or reinstate Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

MARK HARVEY
Administrative Judge