



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



In the matter of:)	
)	
REDACTED COPY)	ISCR Case No. 17-02675
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert B. Blazewick, Esq., Department Counsel
For Applicant: *Pro se*

03/30/2018

Decision

RIVERA, Juan J., Administrative Judge:

Applicant's financial problems were caused or aggravated by circumstances beyond her control. Notwithstanding, her documentary 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 November 18, 2015. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued a statement of reasons (SOR) on August 15, 2017, alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on August 30, 2015, and requested a decision based on the 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 October 11, 2017. Applicant received the FORM on October 25, 2017. She was allowed 30 days to submit any objections to the FORM and to provide material to refute,

extenuate, or mitigate the concerns. Applicant responded to the FORM with a one-page statement, dated January 5, 2018, and 14 attached documents. Applicant did not raise any objections to the proposed FORM evidence. The case was assigned to me on February 27, 2018.

Procedural Issue

In the FORM, Department Counsel submitted as proposed evidence summaries of Applicant's interviews conducted by a government background investigator on October 17 and 27, 2016; November 1, 2016; and April 4 and July 7, 2017. (Item 4). The summary of the interviews are part of the report of investigation (ROI) prepared to document the background investigation.

An ROI may be received and considered as evidence when it is properly authenticated by a witness. (Directive, Enclosure 3, ¶ E3.1.20). Here, Item 4 is not authenticated in any way. Although Applicant, who is representing herself, has not raised the issue via an objection, I am raising it *sua sponte*. Applicant's failure to object does not amount to a knowing waiver of her right to object to Item 4 (ROI). The record does not support the conclusion that she intended to waive her right to object to the ROI. The FORM provided Applicant no information about her right to object to Item 4, or about the legal consequences of objecting to it, or failing to object to it. Applicant did not make a knowing and informed decision to waive her right to object to an unauthenticated ROI. Accordingly, Item 4 is not admissible and I have not considered it.

Findings of Fact

Applicant did not specifically admit or deny the SOR financial considerations allegations. However, in her answer to the SOR, she admitted that the accounts listed in the SOR were her and her spouse's responsibility. Her admissions 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 46-year-old personnel security assistant employed with a federal contractor. She married in 1999, and she has two children, ages 26 and 14, that depend on her for support. Applicant has been working for federal contractors on and off since 1997. She has held a top-secret clearance for the last eight years. Her current employer, a federal contractor, hired Applicant in January 2015. Through the years, Applicant had several periods of unemployment due to medical conditions.

Applicant disclosed in Section 26 (Financial Record) of her 2015 SCA that she had financial problems, which included a car repossession and delinquent consumer accounts. Applicant explained that she and her husband acquired financial obligations when both were working, but were unable to address their financial obligations during periods of unemployment.

In about 2011, Applicant's husband was diagnosed with heart disease, placed on disability for a long period, and ultimately had major heart surgery. Applicant has been the sole provider for the family since 2012. Her income alone was insufficient to pay for the family's living expenses and their debts, and many accounts became delinquent.

In October 2015, Applicant was diagnosed with breast cancer and underwent numerous operations and treatments. Many of the medical expenses were not covered by her insurance and she acquired further medical debt that became delinquent. Because of her medical condition, she was unable to work full time during extended periods and did not have the financial resources to pay her obligations. To complicate matters, her husband was also disabled and not working. Applicant anticipated that her husband would start working full time again in 2017. She promised to contact her creditors, to establish payment agreements, and to start paying her delinquent debts as soon as both she and her husband were working again.

The SOR alleges that Applicant accumulated 20 delinquent accounts totaling about \$41,560, of which 18 (\$13,898) had been placed for collection, and two (SOR ¶¶ 1.a and 1.b, totaling \$27,662) were charged off. The accounts alleged in the SOR are established by Applicant's admissions and the credit reports in evidence.

SOR ¶¶ 1.a, 1.f (consumer credit accounts); 1.b (repossessed vehicle); 1.c (cable TV); and 1.d, 1.e, 1.g, 1.h, 1.i, and 1.k (cell phone accounts) are all identified as Applicant's "individual accounts" in the credit reports. SOR ¶¶ 1.j, 1.p, 1.q, 1.r, and 1.s are all delinquent medical accounts for services provided to Applicant or her family members. SOR ¶¶ 1.l, 1.m, 1.n, and 1.t are all for unpaid traffic tickets. Applicant claimed her husband drove a vehicle that was in her name, but that he was the one who incurred the traffic tickets.

In her January 2018 response to the FORM, Applicant included documentation showing that in November 2017, she made an agreement to pay \$50 monthly between November 2017 and October 2018, for a partial payment of \$600 on the account alleged in SOR ¶ 1.b. She presented no evidence of any payments made pursuant to the November 2017 agreement.

Applicant submitted a one-page document showing she successfully disputed some medical charges. However, the document does not identify the number of charges or accounts resolved in her favor. She also presented a document from a credit union showing that the authorized user of a credit card was removed from the account. It is not clear who was the "authorized user" and who was the owner of the account.

Applicant settled for less than owed the account alleged in SOR ¶ 1.f, and agreed to make six \$58 payments between November 2017 and April 2018. She presented no evidence of any payments made pursuant to the November 2017 agreement. Applicant's documentary evidence shows that she made a \$100 payment to each of the accounts alleged in SOR ¶¶ 1.h and 1.i; and she made one \$25 payment on the account alleged in ¶ 1.c, and two \$25 payments on two unidentified accounts. She

also contacted the collection company for the accounts alleged in SOR ¶¶ 1.d and 1.k, but there is no evidence of any payment agreements established or of any payments made.

Applicant claimed she contacted the creditor of the account alleged in SOR ¶ 1.a, and that the creditor refused to provide any information to her because she was not the account owner. The July 2017 credit report shows Applicant is disputing the account. Applicant stated that the collector for the account alleged in SOR ¶ 1.e, no longer has that account in collection, and she could not find the legal owner of the account. Applicant also alleged that she consolidated all the medical debts into one account and that she established a payment plan with the collector. She presented no documentary evidence of the consolidation, of any payment agreements established, or of any payments made pursuant to the agreement.

Applicant presented no evidence about her current financial situation. She presented no documentary evidence of any contacts with creditors, payment agreements established, or of any payments made before she received the SOR.

Policies

The SOR was issued 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* (Directive) (January 2, 1992), as amended; and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), applicable to all adjudicative decisions issued on or after June 8, 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 Security Executive Agent Directive (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 inability to satisfy her debts and to meet her financial obligations is documented in the record. Between 2011 and 2016, Applicant accumulated the 20 delinquent accounts alleged in the SOR, all of which total over \$41,000. 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.

The following 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, 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;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:

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)).

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 and ongoing. Applicant's documentary evidence established that her financial problems were caused or aggravated by circumstances beyond her control. Notwithstanding, her documentary evidence is insufficient to show that she was responsible in the acquisition of some of the debts (cell phone accounts), and that she was financially responsible in her efforts to resolve, pay, or dispute her accumulated delinquent obligations.

I considered Applicant's recent efforts to settle, establish payment arrangements, and to pay some of her accounts. However, most of her efforts to resolve her financial problems were initiated after receipt of the SOR. Moreover, even though she established payment agreements, she presented limited documentary evidence of payments made pursuant to those agreements.

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 of sufficient efforts to resolve her financial problems.

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, 46, 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.c, and 1.e:	For Applicant
Subparagraphs 1.b, 1.d, and 1.f-1.t:	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