



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



In the matter of:)
)
) ISCR Case No. 17-03029
)
Applicant for Security Clearance)

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel
For Applicant: *Pro se*

10/23/2018

Decision

RIVERA, Juan J., Administrative Judge:

Applicant's evidence is insufficient to demonstrate financial responsibility or that her financial problems are being resolved or under control. The financial considerations security concerns are not mitigated. Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 11, 2016. He was interviewed by a government investigator on July 6, 2016. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued a Statement of Reasons (SOR) on October 26, 2017, alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on November 10, 2017, and requested a decision based on the written record in lieu of a hearing.

A copy of the Government's file of relevant material (FORM), submitting the evidence supporting the security concerns, was provided to Applicant by letter dated December 21, 2017. Applicant received the FORM and was granted an extension of time to submit any objections to the FORM and to provide material to refute, extenuate,

and mitigate the concerns. Applicant's response to the FORM included a two-page letter with numerous attachments addressing the SOR allegations, dated February 14, 2018. The case was assigned to me on April 13, 2018. Lacking any objections, I admitted and considered both the Government's proposed evidence and Applicant's submissions.

Procedural Issue

In the FORM, Department Counsel advised Applicant that the FORM included her unauthenticated summary of interview with a government background investigator from July 6, 2016. (FORM, Item 9) Applicant was informed she could object to the summary of her interview, and it would not be admitted or considered, or that she could make corrections, additions, deletions, and update the document to make it accurate. Applicant was informed that her failure to respond to the FORM or to raise any objections could be construed as a waiver and the proposed FORM evidence would be considered. Applicant responded to the FORM and raised no objections. I admitted the FORM's proffered evidence and considered it.

Findings of Fact

In her SOR answer, Applicant admitted SOR allegations ¶¶ 1.a, 1.b, 1.c, and 1.e. She denied the remaining SOR allegations (¶¶ 1.d and 1.f through 1.i), and submitted comments and documents in mitigation. 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 56 years old. She graduated from high school in 1980. She married in 1979 and divorced in 1995. She married her second husband in 1996 and divorced in April 2012. After a short period, they reconciled and remarried in December 2012. She has four adult children, ages 35, 32, 21, and 19.

Applicant started working for federal contractors in June 2005. Her current employer, a federal contractor, hired her in October 2010, and she has been working for the same federal contractor to present. Applicant was granted a secret-level clearance in 2005, which has been continued to present. She seeks the continuation of her clearance which is required for her position.

In response to Section 26 (Financial Record) of her 2016 SCA, Applicant disclosed that: she had financial problems related to her inability to pay her mortgage; filed for Chapter 13 bankruptcy in 2011; and owed about \$1,700 to the IRS for her 2014 taxes.

During her July 2016 interview, Applicant discussed with the government investigator her financial problems, including the delinquent consumer accounts that were alleged in the SOR, most of which she denied for lack of knowledge. She indicated that she was 70 days delinquent on her mortgage, that her 2011 Chapter 13 bankruptcy

filing was dismissed because she was unable to make the trustee payments after a 2015 reduction in her salary. She reiterated her \$1,700 debt to the IRS for tax year 2014, and that she had not established a payment plan. She also discussed her 2003 Chapter 7 bankruptcy filing that was discharged in 2004.

Applicant explained that her financial problems resulted from her 2012 divorce and her income dropping \$7,000 per year starting in March 2013. Apparently, the employer reorganized job titles and salaries after a labor strike and her income was reduced. She tried to reduce her payment to the Chapter 13 bankruptcy trustee, but her request was denied. She was unable to afford the bankruptcy payments, and the Chapter 13 filing was dismissed. Some of her creditors attempted to collect after the bankruptcy dismissal, but she ignored their claims. She did not contact her creditors or pay her debts after the Chapter 13 bankruptcy dismissal.

Applicant stated that before March 2015, she was \$18,000 delinquent on her mortgage and pending foreclosure. Her spouse borrowed money from his 401k retirement plan to bring the mortgage current. Applicant did not present evidence to show she was following a budget, or that she participated in any financial counseling beyond that she received during her bankruptcy. (FORM, Item 9)

In her 2011 SCA, Applicant explained that she filed for Chapter 13 in August 2011, because of her separation, pending divorce, and \$50,000 worth of debt she could not afford to pay on her salary. (SOR 1.a) She indicated she filed for bankruptcy in 2004, because she had credit cards charged off as a result of a large medical bill incurred to pay her son's medical treatment. At the time, she did not have medical insurance and she did not have the financial means to repay the credit card debts. (SOR 1.b)

Concerning her 2014 tax debt, Applicant explained that she had not been in contact with the IRS because her computer crashed. She promised to contact the IRS local office and establish a payment plan in November 2017. (SOR answer.) Applicant's documentary evidence shows that she paid \$1,000 to the IRS in December 2017. She claimed she issued a \$149 check to pay the remainder of the 2014 tax debt in February 2018. She failed to document the \$149 payment to the IRS.

The status of the remaining SOR allegations follows:

SOR ¶ 1.d: In her SOR Answer, Applicant indicated she intended to contact the creditor to dispute the debt. In her FORM answer, Applicant documented that she settled the account for less than she owed and paid it.

SOR ¶ 1.e: In her SOR Answer, Applicant stated: "Paid in full today 11/10/17 check #213." In her FORM answer she stated: "... balance \$79 was paid 2/14/18 by check number 223." She presented no documentary evidence to support her payment claim.

SOR ¶ 1.f: In her SOR Answer, Applicant stated that this account was included in her Chapter 13 bankruptcy proceeding and she intended to dispute the debt. In her FORM answer, she claimed the creditor could not find her account and suggested she dispute the debt through the credit bureau.

SOR ¶ 1.g: In her SOR Answer, Applicant stated that this account was included in her Chapter 13 bankruptcy proceeding and she intended to dispute the debt. In February 2018, Applicant contacted the creditor and made a \$123 payment towards her \$3,212 debt. She verbally agreed to make monthly payments of \$123 thereafter. She presented no further evidence of any payments made.

SOR ¶ 1.h: In her SOR Answer, Applicant stated that this account was included in her Chapter 13 bankruptcy proceeding and she intended to dispute the debt. In her FORM answer, Applicant claimed that she settled the account for less than she owed and had promised to pay it off on March 16, 2018. She presented no documentary evidence of the settlement agreement or of any payments made.

SOR ¶ 1.i: In her SOR Answer, Applicant stated that this account was included in her Chapter 13 bankruptcy proceeding and she intended to dispute the debt. In her FORM answer, Applicant claimed that she agreed to pay \$125 a month until the debt was paid. She presented no documentary evidence of the settlement agreement or of any payments made.

SOR ¶ 1.j: In her SOR Answer, Applicant stated that this account was included in her Chapter 13 bankruptcy proceeding and she intended to dispute the debt. In her FORM answer, Applicant stated that she contacted the creditor in February 2018 and was trying to negotiate a payment plan. She presented no documentary evidence of her contacts with the creditor, of any settlement agreement reached, or of any payments made.

SOR ¶ 1.k: In her SOR Answer, Applicant stated that this account had been paid in 2008. The credit reports on file show she paid the account in 2008.

SOR ¶ 1.l: In her SOR Answer, Applicant stated that she did not recognize this account. Documentary evidence submitted with the FORM answer shows she issued a \$95 check to pay off the account and that the clearing of the check was pending. There is no evidence showing that the check cleared.

Applicant presented no evidence about her current financial situation (income, outstanding debts, whether her income is sufficient to pay for her living expenses, and whether her financial problems are resolved or under control).

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 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 financial problems are documented in the record. She filed for Chapter 7 bankruptcy in 2003 that was discharged in 2004. She then filed for Chapter 13 bankruptcy in 2011 that was dismissed for failure to make the trustee's payments. Applicant explained that her 2012 divorce and a \$7,000 reduction of her yearly earnings starting in March 2013, precipitated the delinquent accounts alleged in the SOR. AG ¶ 19 provides disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability to satisfy debts"; "(c) a history of not meeting financial obligations"; and "(f) failure to file or fraudulently filing annual federal, state or local income tax returns or failure to pay annual federal, state, or local income tax as required". The record established these disqualifying conditions, requiring additional inquiry about the possible applicability of mitigating conditions.

The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

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 financial problems are ongoing and unresolved. Applicant did not present sufficient evidence of good-faith efforts to pay her debts or that she has been financially responsible under her circumstances. There is no evidence of financial counseling (beyond that received during the bankruptcy), or of a working budget.

Applicant's 2012 divorce and period of underemployment after March 2013 (\$7,000 reduction of yearly income) could be considered circumstances beyond her control that created or contributed to her financial problems. Notwithstanding, she failed to present sufficient evidence of good-faith efforts to remain in contact with or to repay her creditors. She did not address her 2014 tax debt, or any of the other SOR delinquent accounts until after the SOR was issued, except for SOR ¶ 1.k, which she paid in 2008. After the dismissal of her Chapter 13 bankruptcy filing, Applicant failed to remain in contact with her creditors and made no further effort to repay her debts. She also claimed in her answer to the FORM that she had established payment arrangements with some of her creditors, or made certain payments, but failed to present documentary evidence to substantiate her claims.

In light of the lack of evidence concerning her efforts to resolve her debts, and lack of information about her current financial situation, Applicant's evidence is insufficient to demonstrate financial responsibility, or that her financial problems are being resolved. The financial considerations security concerns are not mitigated.

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. Security Executive Agent Directive (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, 56, has been employed with federal contractors and has held a clearance since 2005. Her evidence is insufficient to establish a track record of 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 granting 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 his delinquent debts, a healthy financial picture, 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, 1.d, 1.k, and 1.l:	For Applicant
Subparagraphs 1.b, and 1.e-1.j:	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 continue Applicant's eligibility for a security clearance. Clearance is denied.

JUAN J. RIVERA
Administrative Judge