



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-03580

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

11/13/2018

Decision

RIVERA, Juan J., Administrative Judge:

Circumstances beyond her control contributed, in part, to Applicant's financial problems. She has acted responsibly under the circumstances. She resolved the statement of reasons (SOR) allegations. With her current earnings, she should be able to pay for her family's living expenses and current debts. Her financial problems are being resolved and are under control. Clearance granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on September 18, 2014, seeking to continue the clearance required for her position with a federal contractor. She was interviewed by a government background investigator in May and August 2016. After reviewing the information gathered during the background investigation, the Department of Defense (DOD) issued her a Statement of Reasons (SOR) on October 30, 2017, alleging security concerns under Guideline F (financial considerations). Applicant answered the SOR on November 20, 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 April 13, 2018, and issued a notice of hearing on June 1, 2018, setting the hearing for June 20, 2018. At the hearing, the Government offered seven exhibits (GE 1 through 7). Applicant testified and submitted seven exhibits (AE 1 through 7). AE 7 was received post-hearing. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on June 28, 2018.

Findings of Fact

In her Answer, Applicant admitted the factual allegations in SOR ¶¶ 1.a, 1.b, 1.e, and 1.f. She denied SOR ¶¶ 1.c, 1.d, 1.g, and 1.h. Her admissions to the SOR and at her hearing are incorporated herein as findings of fact. After a thorough review of the record evidence, including her testimony and demeanor while testifying, I make the following additional findings of fact:

Applicant is a 27-year-old employee of a federal contractor. She graduated from high school in 2009, and is currently working on her bachelor's degree. She anticipates graduating from college in 2020. She has never married and has two children, ages six and one. Neither Applicant nor her children have received any financial support from her children's fathers.

Applicant worked part-time as an intern for a federal agency between August 2008 and August 2009. She was unemployed while in school between August 2009 and February 2010. She worked full-time for federal contractors between February 2010 and March 2013. She was fired from her job because she had too many absences. Applicant credibly testified that her daughter was ill and Applicant had to stay home to care for her daughter because she could not attend school while sick. Applicant was unemployed between March 2013 and January 2014. She has been working for federal contractors since January 2014. Applicant current employer and clearance sponsor hired her in October 2016. Because of her internship with a federal agency, Applicant was granted a secret clearance in 2008, which she has held continuously to present.

During her background interviews with investigators from the Office of Personnel Management in May and August 2016, Applicant disclosed that she had a judgment filed against her, her salary was garnished, she had delinquent student loans, and some consumer accounts were delinquent. The background investigation addressed her financial problems and revealed the eight delinquent accounts alleged in the SOR. The status of the alleged accounts follows:

SOR ¶ 1.a alleges a delinquent rent account in collection (\$4,070). Applicant admitted she broke the apartment lease when she became pregnant with her second child and had to move back with her parents to make ends meet. Applicant established a payment arrangement with the collector in November 2017, and she has been making payments. She reduced her debt from \$4,070 to \$3,270. (AE 1, 7).

SOR ¶¶ 1.b and 1.d allege delinquent credit card accounts, the first in collection (\$325), and the latter charged off (\$1,800). Applicant testified that these accounts and

others became delinquent when she was fired from her job and was unemployed between March 2013 and January 2014. She paid the account alleged in SOR ¶ 1.b in February 2018. (AE 1) She paid the account alleged in SOR ¶ 1.d in June 2018. (AE 7)

SOR ¶ 1.c alleges a charged-off car loan (\$20,644). Applicant purchased a 2012 car in early 2014. The car was repossessed in around April 2017 when she was unable to make the note payments. Applicant testified that she tried to rehabilitate the loan, but the creditor wanted a large lump sum payment that she could not afford. In May 2018, Applicant settled the account for \$6,000 and agreed to pay \$250 a month to resolve the debt. (AE 2)

SOR ¶ 1.e alleges a delinquent telephone services account in collection (\$1,075). Applicant paid the account in February 2018. (AE 7, pg. 6) SOR ¶ 1.f alleges a delinquent medical account in collection (\$264). Applicant paid the account in February 2018. (AE 7, pg. 6)

SOR ¶ 1.g alleges a tax lien filed by a state authority in February 2015 (\$2,582). Applicant paid the account via garnishment of wages and the lien was released. (AE 5) SOR ¶ 1.h alleges a judgment entered against Applicant for unauthorized unemployment benefits she received after she was employed (\$3,449). Applicant paid the account via garnishment of wages. (AE 6 and 7)

Applicant believes that she was unable to pay her delinquent accounts because of circumstances beyond her control. Applicant is a single mother of two young children and she is the only breadwinner. She only receives limited financial assistance from her parents. Her income was sufficient to pay only for her family's living expenses and some debts. After her termination in 2013, she did not have the income to pay her debts. Applicant credibly testified that she was terminated because she had to stay at home to care for her sick daughter and missed too many days of work.

Applicant's financial situation improved after she started working for federal contractors in 2014. She believes that she has been working hard to resolve her financial problems. She wants to take care of her children and purchase a home. Applicant is aware that she has to demonstrate financial responsibility to be eligible for a clearance. With her current earnings, Applicant should be able to pay for her living expenses and finish paying her delinquent debts.

Applicant believes she has learned a valuable lesson. She understands the seriousness of the security concerns raised by her financial problems. She credibly promised to timely pay her financial accounts in the future. Applicant highlighted her years of employment with federal contractors while holding a clearance without any issues or concerns, except for her financial problems. Applicant credibly promised to continue paying her debts. She believes that her financial situation is now stable.

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 *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), implemented by the DOD on 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, § 2. 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 for 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 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 financial problems is documented in the record. She developed financial problems in 2013 because she was terminated from her job and was unemployed for some time. Applicant rehabilitated the debt alleged in SOR ¶ 1.a, and established a payment arrangement for the debt in SOR 1.c. She paid off the accounts alleged in SOR ¶¶ 1.b, and 1.d through 1.h. The state's tax lien and judgment for unauthorized unemployment benefits were paid through wage garnishments.

AG ¶ 19 provides three 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 . . . income tax as required." The record established the 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, or a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving 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

(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. Sept. 24, 2013).

Some of the above financial considerations mitigating conditions are raised by the facts in this case and mitigate the security concerns. Applicant's financial problems are ongoing and recent because she is still paying some of her delinquent debts. However, her financial problems occurred under circumstances unlikely to recur and they do not cast doubt on her current reliability, trustworthiness, or judgment. AG ¶ 20(a) applies.

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. June 4, 2001)).

Applicant's financial problems are attributed to, or were aggravated by, her employment termination, child's illness, period of unemployment, and being the sole breadwinner for her family. These factors, all conditions beyond her control, prevented her from paying her delinquent accounts more diligently. AG ¶ 20(b) applies.

Applicant's efforts to pay her debts are not ideal, but she made an effort to resolve her debts by contacting the creditors, negotiating payment agreements, and making payments on the debts. Her actions, although recent, show diligence and responsibility in the handling of her financial obligations. AG ¶¶ 20(c) and 20(d) apply.

Considering the evidence as a whole, and including her recent actions, Applicant has been financially responsible under the circumstances. Her financial situation is improving and there are clear indications that her financial problems are being resolved and under control. Her earnings should be sufficient to pay for her family's living expenses and current debts.

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 is a 27-year-old employee of a federal contractor. She has worked for federal contractors since 2008. She has held a clearance during her employment without any issues or concerns, except for her financial problems. The record evidence is sufficient to establish that her financial problems are being resolved and are under control.

The AGs do not require an Applicant to immediately resolve or pay each and every debt alleged in the SOR, to be debt free, or to resolve first the debts alleged in the SOR. An applicant needs only to establish a plan to resolve financial problems and take significant actions to implement the plan. Applicant has implemented a plan to resolve her financial problems and she has made significant progress implementing her plan.

Applicant is fully aware of the security concerns raised by her failure to be financially responsible. She promised to maintain financial responsibility to be eligible for a clearance. The financial considerations security concerns are 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:

FOR APPLICANT

Subparagraphs 1.a - 1.h:

For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest of the United States to grant eligibility for a security clearance to Applicant. Clearance is granted.

JUAN J. RIVERA
Administrative Judge