



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-03834

Appearances

For Government: Tara R. Karoian, Esquire, Department Counsel

For Applicant: *Pro se*

06/08/2018

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding financial considerations. Eligibility for a security clearance is denied.

Statement of the Case

On March 30, 2017, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application. On November 13, 2017, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to her, under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and Directive 4 of the Security Executive Agent (SEAD 4), (December 10, 2016), *National Security Adjudicative Guidelines* (AG) for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position, effective June 8, 2017.

The SOR alleged security concerns under Guideline F (Financial Considerations), and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

It is unclear when Applicant received the SOR as there is no receipt in the case file. In a sworn statement, dated December 8, 2017, Applicant responded to the SOR and elected to have her case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM) was mailed to Applicant by the Defense Office of Hearings and Appeals (DOHA) on February 5, 2018, and she was afforded an opportunity, within a period of 30 days after receipt of the FORM, to file objections and submit material in refutation, extenuation, or mitigation. In addition to the FORM, Applicant was furnished a copy of the Directive as well as the Adjudicative Guidelines applicable to her case. Applicant received the FORM on February 14, 2018. Applicant's response was due on March 16, 2018. Applicant timely submitted a brief one-page response to the FORM. The case was assigned to me on May 10, 2018.

Findings of Fact

In her Answer to the SOR, Applicant admitted with comments several of the factual allegations pertaining to financial considerations (§§ 1.a., 1.b., 1.d., and 1.g.) of the SOR. Applicant's admissions and comments are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 51-year-old employee of a defense contractor. She has been serving as a repair cycle technician with her current employer since June 2011, and held a similar position with a different government contractor from September 2006 until June 2011. She is a 1985 high school graduate. Applicant enlisted in the U.S. Air Force Reserve in October 1986, and she served in that capacity or with the U.S. Air Force until she was honorably discharged in March 1997. She was granted a top secret security clearance in 1987, and in 2006, she was granted a secret security clearance. Applicant was married in August 1988, and divorced in April 1994. She remarried in February 2005, but the status of that marriage has not been reported. She has two children, born in 1989 and 1998.

Financial Considerations¹

Other than the brief information mentioned in Applicant's e-QIP, her Personal Subject Interview, and her Answer to the SOR, very little is known about her, her military accomplishments, or her finances. Applicant mentioned some family members with their

¹ General source information pertaining to the financial accounts discussed below can be found in the following exhibits: Item 3 (e-QIP, dated March 30, 2017); Item 4 (Combined Experian, TransUnion, and Equifax Credit Report, dated July 8, 2017); Item 5 (Personal Subject Interview, dated July 24, 2017); Item 2 (Answer to the SOR, dated December 8, 2017).

own financial problems, and her efforts to assist them over difficult periods, as well as some discussions with her husband in considering a divorce. When initially interviewed by an investigator from the U.S. Office of Personnel Management (OPM) in July 2017, Applicant claimed that she was unaware of several of the delinquent accounts in her name, and seemed confused as to other delinquent accounts. Nevertheless, she indicated that she planned to obtain a copy of her credit report regarding her delinquent accounts, including those about which she was unaware, and she intended to pay off her debts.

The SOR identified nine purportedly delinquent accounts that had been placed for collection, charged off, or repossessed, as generally reflected by Applicant's 2017 credit report. Those debts, totaling approximately \$24,318, their current status, according to the credit report, and other evidence submitted by the Government and Applicant, are described as follows:

(SOR ¶ 1.a.): This is an automobile installment loan with a high credit of \$16,467 and past-due balance of \$12,401 that was placed for collection and the vehicle was repossessed.² Applicant initially told the OPM investigator that she had co-signed for the loan on a vehicle for her husband, but in her Answer to the SOR she changed her story to say that it was a loan for her nephew. She said that she was unaware that her husband stopped making the payments at about the time they were discussing whether or not to divorce, and she was not aware of the repossession. In addition, in her Answer to the SOR she contended that her nephew "has been making payments," but she failed to furnish any specifics regarding the repayment arrangements. She also failed to submit any documentation, such as letters, receipts, checks, bank account statements, etc., to support her contentions that payments have been made. The account has not been resolved.

(SOR ¶ 1.b.): This is another automobile installment loan with a high credit of \$11,649 and past-due balance of \$11,490 that was placed for collection. The creditor charged off \$6,515 in November 2013.³ The vehicle was eventually repossessed. Applicant initially told the OPM investigator that she had co-signed for the loan on a vehicle for her close friend, but in her Answer to the SOR she changed her story to say that it was a loan for her husband's daughter. In addition, in her Answer to the SOR she contended that her close friend/husband's daughter "has been making payments," but she failed to furnish any specifics regarding the repayment arrangements. She also failed to submit any documentation, such as letters, receipts, checks, bank account statements, etc., to support her contentions that payments have been made. Applicant has had no communication with her close friend/husband's daughter, and she does not know the current status of the account. The account has not been resolved.

(SOR ¶¶ 1.c., 1.e., 1.h., and 1.i.): These are unspecified accounts with unpaid balances of \$2,133, \$687, \$502 (for a telephone account), and \$250 (for insurance) that

² Item 4, *supra* note 1, at 6.

³ Item 4, *supra* note 1, at 6; Item 5, *supra* note 1, at 4.

were placed for collection.⁴ Applicant claimed that she had no knowledge of the accounts and contended that they were opened by her “ex-husband.” She did not indicate that she had made any effort to contact the creditors to resolve or dispute the accounts. The accounts have not been resolved.

(SOR ¶ 1.d.): This is a charge account with a high credit of \$4,200 and a past-due balance of \$991 that was placed for collection.⁵ Applicant explained that she had used the card for family members who had fallen on hard times, and she contended that it was being paid with direct deposits. In July 2017, during her OPM interview, she expected to pay off the remaining balance “in just a few weeks.” In her Answer to the SOR, she said that payments were being made. She failed to submit any documentation, such as letters, receipts, checks, bank account statements, etc., to support her contentions that payments were being made. The account has not been resolved.

(SOR ¶ 1.f.): This is an account with an unpaid balance of \$43 that was placed for collection.⁶ Applicant contends that this does not refer to a debt, but rather to a credit.⁷ She failed to submit any documentation to support her contention. The account has not been resolved.

(SOR ¶ 1.g.): This is a medical account with an unpaid balance of \$796 that was placed for collection.⁸ Applicant said that the account was for her son, that payments were being made, and the true balance should be \$230.⁹ She failed to submit any documentation, such as letters, receipts, checks, bank account statements, etc., to support her contentions that payments were being made. The account has not been resolved.

It is not known what Applicant’s financial resources may be because she did not submit a Personal Financial Statement to reflect her net monthly income; monthly expenses; and any monthly remainder that might be available for discretionary spending or savings. There is no evidence of a budget. There is no evidence of any financial counseling. Although she claimed to be able to handle her other debts, Applicant offered no evidence to indicate that her financial situation is now under control. She admitted that “in the past, [she] used less than good judgement to help [her] family members and that is just proof that [she is] human, not unscrupulous.”¹⁰

⁴ Item 4, *supra* note 1, at 6-7, 9-10.

⁵ Item 4, *supra* note 1, at 7; Item 5, *supra* note 1, at 3.

⁶ Item 4, *supra* note 1, at 7.

⁷ Item 2, *supra* note 1, at 2.

⁸ Item 4, *supra* note 1, at 9.

⁹ Item 4, *supra* note 1, at 9.

¹⁰ Response to FORM, dated March 12, 2018.

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.”¹¹ 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. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”¹²

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the guidelines in SEAD 4. In addition to brief introductory explanations for each guideline, the guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”¹³ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government.¹⁴

¹¹ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

¹² Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

¹³ “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “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).

¹⁴ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. 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 as to potential, rather than actual, risk of compromise of classified information. Furthermore, "security clearance determinations should err, if they must, on the side of denials."¹⁵

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."¹⁶ Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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. 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

¹⁵ *Egan*, 484 U.S. at 531.

¹⁶ See Exec. Or. 10865 § 7.

The guideline notes several conditions that could raise security concerns under AG 19:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Nine purportedly delinquent debts, totaling approximately \$24,318, were placed for collection, charged off, or resulted in repossessions, as generally reflected by Applicant's credit report. There is no evidence that Applicant was unwilling to satisfy her debts, but there is some evidence of a reluctance to do so, especially regarding the two repossessions. AG ¶¶ 19(a) and 19(c) have been established. AG ¶ 19(b) has not been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties under AG ¶ 20:

- (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;¹⁷ and

¹⁷ 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 [or statute of limitations]) in order to claim the benefit of [the "good-faith" mitigating condition].

(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.

I have concluded that none of the mitigating conditions apply. The nature, frequency, and recency of Applicant's continuing financial difficulties make it difficult to conclude that it occurred "so long ago" or "was so infrequent," or that it is "unlikely to recur." While Applicant attributed some of her financial difficulties to co-signing car loans for friends or family members, or to helping family members in times of their own financial difficulties, she failed to describe how those actions impacted her finances, or how or why she did not attempt to resolve those accounts, knowing that she was financially responsible for the loans or the charge accounts used by her.

Applicant indicated a willingness to engage her creditors in good-faith efforts to resolve her delinquent debts, but without the appropriate documentation, there is no evidence that she did so. She contended that payments were being made, but she failed to submit any documentation, such as letters, receipts, checks, bank account statements, etc., to support her contentions that payments were being made. Furthermore, it is not known what Applicant's financial resources may be because she did not submit a Personal Financial Statement to reflect her net monthly income; monthly expenses; and any monthly remainder that might be available for discretionary spending or savings. There is no evidence of a budget. There is no evidence of any financial counseling. There is no evidence of disputes. Although she claimed to be able to handle her other debts, Applicant offered no evidence to indicate that her financial situation is now under control. Applicant's actions under the circumstances cast doubt on her current reliability, trustworthiness, and good judgment.¹⁸

Clearance decisions are aimed at evaluating an applicant's judgment, reliability, and trustworthiness. They are not a debt-collection procedure. The guidelines do not require an applicant to establish resolution of every debt or issue alleged in the SOR. An applicant needs only to establish a plan to resolve financial problems and take significant actions to implement the plan. There is no requirement that an applicant immediately resolve issues or make payments on all delinquent debts simultaneously, nor is there a requirement that the debts or issues alleged in an SOR be resolved first. Rather, a reasonable plan and concomitant conduct may provide for the payment of such debts, or resolution of such issues, one at a time. Mere promises to pay debts in the future, without further confirmed action, are insufficient.

(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)).

¹⁸ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

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 SEAD 4, App. A, ¶ 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.

Under SEAD 4, App. A, ¶ 2(c), the 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. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.¹⁹

There is some evidence mitigating Applicant's conduct. She has been serving as a repair cycle technician with her current employer since June 2011, and held a similar position with a different government contractor from September 2006 until June 2011. She enlisted in the U.S. Air Force Reserve in October 1986, and she served in that capacity or with the U.S. Air Force until she was honorably discharged in March 1997. She was granted a top secret security clearance in 1987, and in 2006, she was granted a secret security clearance. Applicant financially assisted her family and friends.

The disqualifying evidence under the whole-person concept is simply more substantial. There are nine delinquent accounts, including some that were charged off or resulted in repossessions, alleged in the SOR with a combined unpaid balance of \$24,318. Her unsubstantiated comments that she contacted her creditors and payments are being made to resolve them, without more, are simply insufficient to prove that she made any of those good-faith efforts. There is no evidence that she disputed any of the accounts.

Considering the lack of evidence regarding her current finances, I am unable to reach a positive conclusion pertaining to Applicant's eligibility for a security clearance.

¹⁹ See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:²⁰

In evaluating Guideline F cases, the Board has previously noted that the concept of “meaningful track record” necessarily includes evidence of actual debt reduction through payment of debts. However, an applicant is not required, as a matter of law, to establish that he [or she] has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he [or she] has “. . . established a plan to resolve his [or her] financial problems and taken significant actions to implement that plan.” The Judge can reasonably consider the entirety of an applicant’s financial situation and his [or her] actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (“Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

Applicant has demonstrated an extremely poor track record of debt reduction and elimination efforts, seemingly avoiding the debts in her name, and failing to take timely corrective actions. While her unsubstantiated comments refer to her resolution efforts, she failed to submit documentation to support those efforts. Overall, the evidence leaves me with substantial questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For all of these reasons, I conclude Applicant has failed to mitigate the security concerns arising from her financial considerations. See SEAD 4, App. A, ¶¶ 2(d)(1) through AG 2(d)(9).

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
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraph 1.d.:	Against Applicant
Subparagraph 1.e.:	Against Applicant
Subparagraph 1.f.:	Against Applicant

²⁰ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Subparagraph 1.g.:	Against Applicant
Subparagraph 1.h.:	Against Applicant
Subparagraph 1.i.:	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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ROBERT ROBINSON GALES
Administrative Judge