



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



In the matter of:)
)
-----) ISCR Case No. 14-04669
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

03/24/2015

Decision

HARVEY, Mark, Administrative Judge:

Applicant’s statement of reasons (SOR) alleges 12 delinquent judgments or collection debts totaling \$15,142. She did not provide documentary evidence of any payments to address the SOR debts. She did not provide sufficient evidence of her progress resolving her SOR debts. Financial considerations security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On March 21, 2014, Applicant signed an Electronic Questionnaires for Investigations Processing (e-QIP) (SF 86) (Item 4). On October 28, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a SOR to him, alleging security concerns under Guideline F (financial considerations). (Item 1) The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on September 1, 2006.

Based on information available to the Government, DOD adjudicators could not make the preliminary affirmative finding that it is clearly consistent with national security to grant or continue Applicant’s security clearance, and it recommended that her case

be submitted to an administrative judge for a determination whether her clearance should be granted, continued, denied, or revoked. (Item 1)

On November 19, 2014, Applicant responded to the SOR allegations and waived her right to a hearing. (Item 3) A complete copy of the file of relevant material (FORM), dated January 13, 2015, was provided to her on January 26, 2015. Applicant did not respond to the FORM. The case was assigned to me on March 16, 2015.

Findings of Fact¹

Applicant's SOR response admitted the allegations in SOR ¶¶ 1.a to 1.l. (Item 3) Her admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is a 27-year-old apprentice, who has worked at a construction facility since February 2014.² In 2009, she earned a bachelor's degree. She has served in the National Guard since October 2009. She was unemployed from February 2013 to September 2013. She married in July 2013, and she has one child, who was born in 2012.

Financial Considerations

Applicant's SOR and April 17, 2014 credit report allege 12 delinquent judgments, or collection debts totaling \$15,142 as follows: 1.a is a judgment for \$1,720; 1.b is a judgment for \$11,417; 1.c, 1.e, 1.g, 1.h, 1.i, and 1.j are six medical debts being collected by the same collection company for \$423, \$297, \$190, \$150, \$150, and \$127; 1.d is a telecommunication collection debt for \$357; 1.f is a telecommunications collection debt for \$200; and 1.k and 1.l are two debts being collected by the same collection company for \$74 and \$37.

On her March 21, 2014 SF 86, Applicant disclosed the following 11 debts: 2010 income tax debt for \$1,962; judgments from an accident for \$11,417 and \$1,720; medical debts for \$297, \$190, \$127, \$150, \$150, and \$423; utility debt for \$357; and a telecommunications debt for \$200. (Item 4) She said she was making \$75 monthly payments to address each of the two judgments for \$11,417 and \$1,962 resulting from an accident in 2008. (Item 4) She indicated she had insufficient funds to address the other SOR debts. She did not provide proof of any payments to any SOR creditors.

The FORM advised Applicant that she needed to provide proof that she was making the \$75 monthly payments on her two judgments as claimed in her SF 86 because these two debts comprise more than 85 percent of her SOR debt. (FORM at 3-

¹To protect Applicant and her family's privacy, the facts in this decision do not specifically describe employment, names of witnesses, and names of other groups or locations. The cited sources contain more specific information.

²The source for the facts in this paragraph is Applicant's March 21, 2014 Electronic Questionnaires for Investigations Processing (e-QIP) (SF 86) (Item 4).

4) Despite Department Counsel's forewarning of the necessity to submit corroborating documentation of payments, no such evidence of payments was provided.

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. See also Executive Order 12968 (Aug. 2, 1995), § 3.1. 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 about applicant's allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense 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. Sep. 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 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 provides two disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts;” and “(c) a history of not meeting financial obligations.” Applicant’s SOR alleges 12 delinquent judgments or collection debts totaling \$15,142. Applicant admitted her responsibility for all of the SOR debts. Her admissions are corroborated by her credit report. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c), requiring additional inquiry about the possible applicability of mitigating conditions.

Five 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), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;³ 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:

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).

None of the mitigating conditions apply to all of her SOR debts. Nevertheless, there is some mitigating financial information. Applicant's delinquent debt was affected by her vehicle accident, medical treatment, and unemployment. These are circumstances largely beyond her control under AG ¶ 20(b). Department Counsel emphasized in the FORM that Applicant needed to provide proof that she was making the \$75 monthly payments to address each of her two judgments, as claimed in her SF 86. Proof of these payments would have mitigated more than 85 percent of the SOR debts; however, Applicant did not provide proof of such payments.

³The 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)).

AG ¶ 20(e) does not apply to any of her debts because she did not provide “documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.”

Applicant admitted responsibility for 12 delinquent judgments or collection debts totaling \$15,142. She did not provide proof of any payments to address any of these debts, even though seven of them are for \$200 or less, and two of them are under \$100 each. She did not take reasonable and responsible actions to resolve her SOR debts. There are not clear indications the problem is being resolved and is under control. She did not receive financial counseling or establish that she was unable to make some payments to some of her SOR creditors. Her efforts are insufficient to fully mitigate financial considerations security concerns.

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(a):

- (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 AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under Guideline F, but some warrant additional comment.

There is some evidence supporting Applicant’s continued access to classified information; however, this evidence is not sufficient to mitigate security concerns. Applicant is a 27-year-old apprentice, who has worked at a construction facility since February 2014. In 2009, she received her bachelor’s degree. She served in the National Guard since October 2009. She was unemployed from February 2013 to September 2013. There is no evidence that Applicant has committed any security violations. Her finances were harmed by unemployment, medical problems, and an accident in 2008. These are circumstances beyond her control that contributed to her financial problems.

The factors weighing towards reinstatement of Applicant’s security clearance are less substantial than the factors weighing against its reinstatement. On her March 21, 2014 SF 86, Applicant disclosed 11 debts, and 10 of those debts were listed on her

SOR. She said she was making \$75 monthly payments to address each of the two judgments for \$11,417 and \$1,962 resulting from an accident in 2008. She did not provide proof of her payments, and Department Counsel in the FORM warned her of the importance of providing such information; however, no such evidence was provided. There is insufficient documented progress to establish there are clear indications the problem is being resolved and her finances are under control. She did not receive financial counseling or establish that she was unable to make some payments to more of her SOR creditors. She did not act responsibly under the circumstances, and her financial problems are likely to continue. She did not provide documentation showing she disputed any of her SOR debts. The record does not show enough evidence of inability to pay debts, documented financial progress, financial effort, good judgment, trustworthiness, and reliability to warrant mitigation of financial considerations security concerns.

It is well settled that once a concern arises regarding an applicant's eligibility for a security clearance, there is a strong presumption against the grant or renewal of a security clearance. Unmitigated financial considerations concerns lead me to conclude that reinstatement 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 to justify the award of a security clearance in the future. With more effort towards resolving 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 worthiness for a security clearance.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude Applicant has not carried her burden and financial considerations concerns are not mitigated. Eligibility for access to classified information is denied.

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 to 1.l:	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 security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Mark Harvey
Administrative Judge