



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



In the matter of:)
)
-----) ISCR Case No. 15-01919
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

04/14/2016

Decision

HARVEY, Mark, Administrative Judge:

Applicant’s statement of reasons (SOR) alleges 33 delinquent debts totaling \$21,797. She failed to provide sufficient information about her finances and demonstrate progress resolving her SOR debts. Financial considerations security concerns are not mitigated. Access to classified information is denied.

History of the Case

On July 24, 2014, Applicant completed and signed an Electronic Questionnaire for National Security Positions (e-QIP) (SF 86). (Item 3) On September 26, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a statement of reasons (SOR) pursuant to Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG), which became effective on September 1, 2006. The SOR set forth security concerns arising under the financial considerations guideline.

On November 12, 2015, Applicant provided a response to the SOR, and she requested a decision without a hearing. On December 10, 2015, Department Counsel completed the File of Relevant Material (FORM). On December 18, 2015, Applicant received the FORM. On February 26, 2016, DOHA received Applicant’s response to the

FORM. On April 4, 2016, the case was assigned to me. The Government's case consisted of seven exhibits. (Items 1-7)

Findings of Fact¹

In Applicant's SOR response, she wrote "I agree" for the allegations in SOR ¶¶ 1.b through 1.gg. She denied SOR allegation ¶ 1.a. She also provided extenuating and mitigating information. Applicant's admissions are accepted as findings of fact.

Applicant is a 30-year-old computer analyst employed by a defense contractor since September 2011.² After completing high school, she attended college at several institutions; however, she did not receive a degree. She has never served in the military. In July 2008, she married, and in September 2009, she divorced. In February 2013, she married. Her children were born in 2006, 2010, and 2013. Her husband is in the U.S. Navy.

Applicant was a nursing assistant from March 2003 to May 2006. She was a testing lead at a college from May 2006 to September 2006. She was unemployed from September 2006 to September 2007. She was a testing assistant from September 2007 until October 2010 at a college. She was unemployed from October 2010 to September 2011.

Financial Considerations

Applicant's history of delinquent debt is documented in her credit reports, SF 86, and SOR response. Her SOR alleges 33 delinquent debts totaling \$21,797. Her SOR includes 28 medical debts totaling \$7,243 as follows: ¶ 1.b (\$201); ¶ 1.c (\$299); ¶ 1.d (\$67); ¶ 1.e (\$250); ¶ 1.f to ¶ 1.h each for \$67; ¶ 1.i (\$70); ¶ 1.j (\$250); ¶ 1.k (\$299); ¶ 1.l (\$128); ¶ 1.m (\$454); ¶ 1.n (\$304); ¶ 1.o (\$202); ¶ 1.p (\$95); ¶ 1.q (\$88); ¶ 1.r (\$1,253); ¶ 1.s (\$67); ¶ 1.t (\$367); ¶ 1.u (\$236); ¶ 1.v (\$235); ¶ 1.y (\$787); ¶ 1.z (\$697); ¶ 1.aa (\$304); ¶ 1.bb (\$155); ¶ 1.cc (\$96); ¶ 1.dd (\$88); and ¶ 1.ee (\$50).

The SOR also alleges five non-medical debts totaling \$14,554 as follows: ¶ 1.a is a telecommunications collection debt for \$622; ¶ 1.w is a charged-off bank debt for \$3,335; ¶ 1.x is a charged-off bank debt for \$9,524; ¶ 1.ff is a collection account for \$163; and ¶ 1.gg is a collection account for \$910.

There is no evidence that Applicant received financial counseling. There is no evidence that she abused alcohol or used of illegal drugs. She disclosed 22 delinquent or formerly delinquent debts on her SF 86. (Item 3) Most of the delinquent debts listed

¹Some details have been excluded in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits.

²Unless stated otherwise, the source for the information in this paragraph and the next paragraph is Applicant's July 24, 2014 Electronic Questionnaire for National Security Positions (e-QIP) (SF 86) and her FORM response. (Item 3)

on her SF 86 are medical debts in which she indicated her husband was working with TRICARE to resolve the medical debts. (Item 3)

In Applicant's SOR response, she said she paid the telecommunications debt in SOR ¶ 1.a for \$622, and it was no longer listed on her credit report. (Item 2) For her medical debts, she said she was unaware that she needed a referral to doctors from TRICARE or she would be billed. (Item 2) She hired a firm to dispute the negative entries on her credit report. (Item 2) She said after she resolves her medical bills, she intends to work on paying her other delinquent debts. The firm she used to dispute negative credit entries advised Applicant that seven negative entries from collection companies were removed from her TransUnion credit report in 2015. (Item 2)

The file lacks documentary evidence that Applicant paid, arranged to pay, settled, compromised, or otherwise resolved any of the delinquent accounts alleged in the SOR. There is no evidence of Applicant's income, and she did not provide a budget or personal financial statement. The record lacks corroborating or substantiating documentation and detailed explanations of the causes for her non-medical financial problems and other mitigating information. The FORM noted that Applicant had 30 days from the receipt of the FORM "in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate. If you do not file any objections or submit any additional information . . . your case will be assigned to an Administrative Judge for a determination based solely" on the evidence set forth in this FORM. (FORM at 4)

Applicant said she had a payment plan with a collection company, and she was paying \$100 every two weeks to address \$3,218 in medical debts.³ She said once the medical debts were resolved, she would address her other delinquent SOR debts. Her documentation does not address the amount paid to address her medical debts, and which SOR medical debts were being addressed by the collection company. She noted that she does not have access to classified information, and she provided additional details about her background.

Character Evidence

The sense of the five letters from Applicant's supervisors and colleagues is that Applicant is skilled, trustworthy, competent, professional, helpful, conscientious about security, ethical, and responsible. Her character references support her request for access to classified information.

³The information in this paragraph and the next paragraph is from Applicant's FORM response.

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 revised 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. Thus, nothing in this decision should be construed to suggest that it is based, 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 history of delinquent debt is documented in her credit reports, SF 86, SOR response, and FORM response. Applicant’s SOR alleges 33 delinquent debts totaling \$21,797. She admitted responsibility for 32 SOR debts totaling \$21,175 in her SOR response. 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;⁴ 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).

Applicant's conduct in resolving her delinquent debt does not warrant full application of any mitigating conditions to all of her SOR debts; however, she presented some important mitigating information. She was unemployed from September 2006 to September 2007, and from October 2010 to September 2011. She had 28 SOR medical debts. Unemployment and medical debts are circumstances beyond her control that adversely affected her finances. She did not provide enough details about what she did to address her SOR debts after she became employed and the degree of impact of these circumstances beyond her control to establish full mitigation. She did not describe receipt of financial counseling.

⁴The 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)).

I have credited Applicant with resolving the telecommunications debt in SOR ¶ 1.a for \$622. Applicant did not provide sufficient documentation relating to the other SOR debts: (1) proof of payments, such as checking account statements, photocopies of checks, or a letter from the creditor proving that she paid or made any payments to the creditors; (2) correspondence to or from any creditors to establish maintenance of contact with creditors;⁵ (3) credible debt disputes indicating she did not believe she was responsible for the debts and why she held such a belief; (4) attempts to negotiate payment plans, such as settlement offers or agreements to show that she was attempting to resolve these debts; or (5) other evidence of progress or resolution of her debts.

Applicant provided some evidence of successful debt disputes; however, she did not establish that any of the disputes related to specific SOR debts. She failed to establish mitigation under AG ¶ 20(e) for any specific SOR debts because she did not provide documented proof to substantiate the basis of the dispute or the result of the dispute.

There is insufficient evidence about why Applicant was unable to make greater progress resolving more of her SOR debts. There is insufficient assurance that her financial problems are being resolved, are under control, and will not recur in the future. Under all the circumstances, she failed to establish that financial considerations security concerns are mitigated.

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.

⁵"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

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 Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

There is some evidence supporting approval of Applicant's clearance. Applicant is a 30-year-old computer analyst employed by a defense contractor since September 2011. In 2013, she married. Her children were born in 2006, 2010, and 2013. Her husband is in the U.S. Navy. She was unemployed from September 2006 to September 2007, and from October 2010 to September 2011. The sense of the five letters from Applicant's supervisors and colleagues is that Applicant is skilled, trustworthy, competent, professional, helpful, conscientious about security, ethical, and responsible. Her character references support her request for access to classified information. Medical debts and unemployment adversely affected her finances. There is no evidence of abuse of alcohol or use of illegal drugs. She disclosed her financial problems on her SF 86.

The financial evidence against approval of Applicant's clearance is more substantial at this time. Applicant has a history of financial problems. Her SOR alleges 33 delinquent debts totaling \$21,797. She said she paid the debt in SOR ¶ 1.a for \$622, and she was making \$200 monthly payments to a medical-collection company.⁶ She provided insufficient corroborating or substantiating documentary evidence of payments to her other SOR creditors, payment plans, or her communications to those creditors. She did not provide documentation showing her attempts to resolve most of her SOR debts in good faith. Her failure to provide more documented evidence of progress resolving her SOR debts shows lack of financial responsibility and judgment and raises unmitigated questions about Applicant's reliability, trustworthiness, and ability to protect classified information. See AG ¶ 18. More information about inability to pay debts, financial history, or documented financial progress is necessary to mitigate security concerns.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont*, 913 F. 2d at 1401. Unmitigated financial considerations 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

⁶Applicant did not establish the length of time she was making these payments to address her medical debts. The Appeal board stated, "an applicant who begins to resolve debts only after an SOR placed him on notice that his clearance was in jeopardy may lack the judgment and self discipline to follow rules and regulations over time or when there is no immediate threat to his own interests." ISCR Case No. 14-05476 at 4 (App. Bd. Mar. 25, 2016) (citing ISCR Case No. 14-03358 at 4 (App. Bd. Oct. 9, 2015). In this instance, Applicant reasonably delayed addressing her medical debts until TRICARE had an opportunity to fully consider whether TRICARE should pay them.

obligations, she may well be able to demonstrate persuasive evidence of her security clearance worthiness.

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that financial consideration concerns are not mitigated, and it is not clearly consistent with the national interest to grant Applicant security clearance eligibility at this time. Financial considerations concerns are not 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:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b through 1.gg:	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.

MARK HARVEY
Administrative Judge