



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



In the matter of: )  
)  
) ISCR Case No. 15-00993  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O'Connell, Esq., Department Counsel  
For Applicant: *Pro se*

05/31/2016

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant's finances were adversely affected by circumstances beyond her control. She resolved 9 of the 10 SOR debts, and has one SOR debt left to resolve. She has established a track record of debt payment and resolution. Financial considerations security concerns are mitigated. Access to classified information is granted.

**History of the Case**

Applicant submitted a security clearance application (SCA) on August 30, 2012. After reviewing it and the information gathered during a background investigation, the Department of Defense (DOD) was unable to make an affirmative decision to grant Applicant's eligibility for a clearance. On August 13, 2015, the DOD issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations).<sup>1</sup> Applicant answered the SOR on September 9, 2015, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

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<sup>1</sup> The DOD acted under Executive Order 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* (AG), implemented by the DOD on September 1, 2006.

The case was assigned to me on December 2, 2015. DOHA issued a notice of hearing on December 9, 2015, scheduling the hearing for January 13, 2016. Applicant's hearing was held as scheduled. Government exhibits (GE) 1 through 5, and Applicant exhibits (AE) 1 through 29, were admitted into evidence without objection. On January 22, 2016, DOHA received the transcript of the hearing. Applicant provided three additional documents after her hearing, and they were admitted without objection. (AE 30, 31, 32)

### **Findings of Fact**

Applicant admitted the factual allegations in SOR ¶¶ 1.a through 1.d, 1.i, and 1.j with explanations. She denied the allegations in SOR ¶¶ 1.e through 1.h. Her admissions are incorporated herein as findings of fact. After a thorough review of the record evidence, and having observed Applicant's demeanor while testifying, I make the following additional findings of fact:

Applicant is a 40-year-old employee of a federal contractor. She graduated from high school in 1994, and attended college on-and-off from 1995 to 2010, but did not earn a degree. She married in 1995, separated in 2012, and the divorce was final in 2014. She has two children, ages 16 and 12 of this marriage. She married her current husband in August 2014, and acquired a 9-year-old stepdaughter.

Applicant first applied for a security clearance in 2006, and believes she was granted eligibility for a top secret clearance in 2007 or 2008. She held her top secret clearance until 2012, when it was downgraded to a secret clearance because she had no need for it. Her secret clearance was continued to present.

Between 2002 and 2005, Applicant was self-employed and then worked as an office manager. She worked for a large federal contractor from 2005 until 2009, when she was laid off. She was unemployed between August 2009 and April 2010. She has worked for federal contractors from April 2010 to present. She has worked for her current employer since August 2011. Applicant's continued employment is contingent on her retaining her eligibility to possess a security clearance. There are no allegations and there is no evidence of any rule or security violations.

Section 26 (Financial Record) of the 2012 SCA asked Applicant to disclose whether during the last seven years she had any financial problems, including delinquent or in-collection debts; loan defaults; credit cards or accounts suspended, charged off, or cancelled; and whether she was currently over 120 days delinquent on any debt, or had been over 120 days delinquent on any debts.

Applicant answered "yes" and disclosed that she had financial problems that included being delinquent on rental and primary home mortgages, personal loans, student loans, and credit card accounts. The subsequent background investigation confirmed Applicant's disclosures and revealed the ten debts alleged in the SOR, totaling about \$194,000. Applicant's credit reports and her SOR and hearing admissions established most of the debts in the SOR. The status of her SOR debts is as follows:

SOR ¶ 1.a (\$118,611) Applicant and her first husband purchased this home in 2004 and lived in it until 2010. At the time, their combined yearly income was about \$105,000 and they could afford the property. Both Applicant and her spouse were laid off from their jobs (2007-2009) and forced to move to another state seeking employment. They rented their home when they moved; however, the renters failed to pay rent and damaged the property. Applicant could not afford to pay the mortgage and their living expenses. They tried to sell the property and asked for a mortgage modification without success. Additionally, Applicant and her husband separated in July 2012, which increased their living expenses. The house foreclosure proceedings started in 2013 and were completed in August 2015. The proceeds of the foreclosure sale were sufficient to settle the mortgage deficiency balance. (AE 31, p. 12) This allegation is resolved for Applicant.

SOR ¶ 1.b (\$34,983 – the SOR alleged a charged-off second mortgage owing \$45,803. The correct balance is \$34,983. (AE 31)) This was a second mortgage on the home alleged in SOR ¶ 1.a for a loan to build a swimming pool and fence. Applicant and her ex-husband have been in contact with the creditor since 2012. They are attempting to negotiate a settlement and they are disputing what they believed are overcharges. They are also trying to identify the legal owner of the second mortgage account because it has been resold several times. This debt is unresolved.

SOR ¶ 1.c (\$16,979 – the SOR alleged a delinquent mortgage.) This mortgage was for a property Applicant's father purchased. When he died in 2006, Applicant inherited his estate and assumed the delinquent mortgage as well as about \$50,000 in credit card debt, and delinquent taxes owed to the IRS (\$12,000). The credit grantor reclaimed the property and the mortgage was settled. (AE 31, p. 11) Between 2006 and 2009, Applicant established payment agreements with the IRS and other creditors and paid or settled most of her father's delinquent debts, totaling close to \$100,000. Applicant's documentary evidence shows she established a payment plan with the IRS in 2013 and has been making consistent monthly payments of \$300.

SOR ¶¶ 1.d and 1.i (\$5,832 and \$6,128, respectively, alleged the same account) Applicant submitted documentary evidence showing the account was paid. (AE 19, 32; Tr. 51-52; 65)

SOR ¶ 1.e (\$350) This was a debt for unpaid telephone services. Applicant submitted documentary evidence showing the account was paid. (AE 17, 31, p.16; Tr. 65)

SOR ¶¶ 1.f (\$288), 1.g (\$204), 1.h (\$201) Applicant successfully disputed these debts and they were removed from her credit reports.

SOR ¶ 1.j (\$50) This was a debt for unpaid medical services. Applicant testified that she paid it.

Applicant credibly explained that her financial problems were caused by a combination of factors: her and her ex-husband's periods of unemployment, their

inability for find jobs where they were living, having to move to another state to find employment, their separation and divorce, providing financial assistance to her grandmother, the death of her father, and her assuming her father's inheritance and debts.

After Applicant was laid off and could not find employment, she moved from one state to another seeking employment. After securing a job, she established payment agreements with some of her creditors, and paid most of her father's delinquent debts including her father's tax debt to the IRS (\$12,000), a \$50,000 credit card debt, \$11,000 on legal fees, and \$5,000 funeral expenses. She had to repay his father's delinquent debts to release liens on his property and then be able to sell the properties. Applicant estimated she paid about \$100,000 to settle her father's estate over a period of four years. Applicant believes that she has been paying her debts responsibly and reducing her expenses to be able to pay her debts.

Applicant believes that she is currently financially stable and that she is in control of her finances. When asked whether she has acquired any recent financial obligations, Applicant disclosed that she and her current husband owed her state of residency \$1,000 in back taxes, but she has a \$165 monthly payment plan established. Additionally, she and her ex-husband owe the IRS about \$6,000. She presented evidence showing that she established a payment plan with the IRS in 2012. Her documents show consecutive monthly payments of \$300 to the IRS between December 2013 and January 2016.

Applicant expressed sincere remorse and embarrassment for her financial problems. She noted that she has been managing her financial situation and has brought her debt down. She believes she is back in control of her finances, and plans to pay all her creditors.

## **Policies**

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 AG ¶ 2(a). 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; AG ¶ 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**

Under Guideline F, the security concern is that 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 ¶ 18)

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

Applicant's history of financial problems is documented in her credit reports, SOR response, and hearing record. 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." 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; 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.

All the above mitigating conditions apply and mitigate the financial considerations concerns. Applicant's finances were adversely affected by circumstances beyond her control, including: her and her ex-husband's periods of unemployment, their inability for find jobs where they were living, having to move to another state to find employment, their separation and divorce, providing financial assistance to her grandmother, the death of her father, and her assuming her father's debts.

Applicant's documentary evidence shows that she worked diligently to remain in contact with her creditors and resolve most of the SOR debts with little help from her ex-husband. Applicant settled SOR ¶¶ 1.a and 1.c. She paid SOR ¶¶ 1.d, 1.e, 1.i, and 1.j. She also successfully disputed SOR ¶¶ 1.f through 1.h, and the debts were removed from her credit reports. Of the ten delinquent debts alleged, only SOR ¶ 1.b is unresolved. Applicant plans to resolve this debt in the near future.

Based on Applicant's actions addressing and paying her debts, and her credible and sincere promise to timely pay her debts, future delinquent debt is unlikely to recur and does not cast doubt on her current reliability, trustworthiness, or good judgment. I find there are clear indications that her financial problem is being resolved and is under control. Her payments of some of her debts showed good faith. She and her current husband have sufficient income to keep their debts in current status and to continue making progress paying her remaining delinquent debts. Her efforts are sufficient to fully mitigate financial considerations security concerns.

## 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. AG ¶ 2(c). 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.

Applicant is a 40-year-old employee of a federal contractor. She has held a security clearance since 2007. There are no allegations of rule or security violations. Applicant has worked for two federal contractors since 2011.

The SOR alleged 10 delinquent debts. Applicant showed financial responsibility by staying in contact with her creditors, making payment arrangements to resolve her delinquent debts, and by disputing some questionable debts. She resolved nine SOR debts. She still has one SOR debt to resolve.

Applicant's finances were adversely affected by circumstances beyond her control. She promised to pay or resolve the remaining unpaid SOR debt. She understands that she is required to demonstrate financial responsibility to retain her security clearance.

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

[T]he 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 has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has . . . established a plan to resolve his 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 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.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations and quotation marks omitted). Applicant has established a "meaningful track record" of debt re-payment, and I am confident she will maintain her financial responsibility. 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.j: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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JUAN J. RIVERA  
Administrative Judge