



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



In the matter of:)
)
) ISCR Case No. 15-05702
)
Applicant for Security Clearance)

Appearances

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

06/09/2016

Decision

RIVERA, Juan J., Administrative Judge:

Applicant's finances were adversely affected, to some extent, by circumstances beyond her control. She recently resolved five of the eight SOR debts, and has three SOR debts left to resolve. She has established a track record of debt payment and resolution. She understands that she is required to demonstrate financial responsibility to be eligible for a clearance and ultimately her job. Financial considerations security concerns are mitigated. Access to classified information is granted.

History of the Case

Applicant submitted a security clearance application (SCA) on November 6, 2014. 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 February 17, 2016, the DOD issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations).¹ Applicant answered the SOR on March 16, 2016 (Answer), and

¹ 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.

requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

The case was assigned to me on May 4, 2016. DOHA issued a notice of hearing on May 5, 2016, scheduling the hearing for May 12, 2016. Applicant's hearing was held as scheduled. Government exhibits (GE) 1 through 3, and Applicant's exhibit (AE) 1 (submitted post-hearing), were admitted into evidence without objection. On May 23, 2016, DOHA received the transcript of the hearing.

Procedural Issues

Applicant requested an expedited hearing on May 2, 2016, and the hearing was scheduled for May 12, 2016. At the hearing, she stated that she had sufficient time to prepare for her hearing and was ready to proceed. She affirmatively waived her right to 15 days advance notice of her hearing. (Tr. 12-13)

Findings of Fact

Applicant admitted all the factual allegations in the SOR and provided some evidence in extenuation and mitigation. 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 34-year-old employee of a federal contractor. She graduated from high school and attended college between 2001 and 2006, but did not earn a degree. She has never been married and has no children.

Between 2002 and 2007, Applicant was employed as a library technician. She then worked as an information technology coordinator, making about \$45,000 - \$50,000 a year, from 2007 to 2014. She has been working for Federal contractors since November 2014. Her annual salary is about \$70,000. Applicant's continued employment is contingent on her eligibility to possess a security clearance. There are no allegations or evidence of any rule or security violations.

Applicant submitted her first SCA in 2014. She was granted an interim secret clearance, which was revoked as a result of the financial considerations security concerns raised by the February 2016 SOR. Section 26 (Financial Record) of the 2014 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. The subsequent background investigation confirmed Applicant's disclosures and revealed the eight debts alleged in the SOR, totaling less than \$12,000. Applicant's credit reports and her SOR and hearing admissions established the debts in the SOR. The status of her SOR debts is as follows:

SOR ¶ 1.a (\$1,263) This was an old telephone services debt. Applicant was financially irresponsible and then forgot about the debt. She explained that in the past she did not pay attention to her credit report. Applicant paid this debt on March 15, 2016. (Documentary evidence attached to her Answer.)

SOR ¶ 1.b (\$4,311) Applicant purchased a car in 2008. She missed a couple of payments in 2012, but brought the account current. She became delinquent again in 2014, and her car was repossessed in July 2014. Applicant disclosed this debt on her 2014 SCA. Applicant averred that she had been in contact with the creditor since 2014 when she tried to avoid the repossession. She approached the creditor again in 2015 and 2016 to negotiate a settlement and establish a payment plan. However, she has yet to establish a payment plan. Applicant explained she has been paying other debts first and then will address this debt. This debt is unresolved.

SOR ¶ 1.c (\$1,968 – delinquent second mortgage) Applicant borrowed the down payment for her home in 2008 through a financial assistance program for low-income families. She was current on the two home mortgages up until 2013-2014, when her mother was laid off. Applicant provided financial support for her mother and siblings and neglected her mortgage payments. Applicant obtained a mortgage modification in 2015, and she is current on her first mortgage. She remained in contact with the second mortgage lender, and in early 2016, she made arrangements to pay an additional amount every month to become current on the second mortgage. (Tr. 22, 38)

SOR ¶¶ 1.d (\$112) This was an old medical services debt that Applicant forgot about. She initially believed it should have been paid by her insurance company. She paid this debt on March 10, 2016. (Documentary evidence attached to her Answer.)

SOR ¶ 1.e (\$2,217) This was a debt for unpaid college tuition. Applicant was not aware of the debt until she was confronted with it during her security clearance background interview in January 2015. To her knowledge, all her tuition expenses were covered by her student loans. After receipt of the SOR, Applicant contacted the creditor, to establish a payment plan, but has yet to establish it.

SOR ¶1.f (\$1,380) This was an old cable services debt that Applicant forgot about. Applicant paid this debt in full after receipt of the SOR. (Answer, Tr. 20, 43-44)

SOR ¶ 1.g (\$320) This is an old credit card debt. Applicant contacted the credit card company and collection agency, but apparently, the account is so old that they don't have records of the debt. She is trying to identify the legal creditor to establish a payment plan.

SOR ¶ 1.h (\$325) This is a tuition debt to a college. Applicant believed she did not owe the debt because she withdrew from the class. However, she paid the debt in March 2016. (AE 1) Applicant's documentary evidence shows that she consolidated her student loans under one account, and she has been making payments. (AE 1)

Applicant's testimony was candid and forthcoming. She took responsibility for her financial problems and attributed some of her old delinquent debts to being immature, irresponsible, and ignorant of the consequences of not being financially responsible. She forgot some of her old debts. During her background interview she was made aware of her delinquent debts. She was unable to immediately start paying her debts because she was still getting back on her feet from helping her family with their living expenses and the financial burden of repairing her home.

Applicant currently follows a budget, reviews her credit reports, and is making strides to correct her financial problems. Applicant noted that some of the more recent delinquent debts were caused by circumstances beyond her control. In 2013 or 2014, her mother was laid off and Applicant provided her with extensive financial support. At some point, Applicant moved into her mother's apartment to consolidate their living expenses and rented out her home. When the lease ended, Applicant and her mother moved back into Applicant's home. Applicant's renter damaged her home and she incurred significant expenses (fix broken pipes, water damage, paint, and other problems) to rehabilitate her home. She estimated having repair expenses close to \$3,000.

Applicant's mother worked 16 years for a large hotel before getting laid off in 2013. She was unemployed for 15 months. During that period, Applicant paid for about 90 percent of her mother's bills and living expenses (around \$400 monthly). Applicant is considered to be the backbone of her family. She not only has helped her mother financially, but she also helps her two sisters and their six children on a frequent basis. Applicant provided between \$200 and \$300 to her sisters in financial support. Applicant's dedication and financial assistance to her family was corroborated by her Aunt's testimony.

Applicant also presented the testimony of a coworker who retired from the U.S. Navy as a chief petty officer (E-7) in 2002. Both Applicant and her coworker started working for their current employer at about the same time in 2014. Applicant's coworker has been providing financial counseling and assisting Applicant to contact creditors, negotiate settlement agreements, and pay some of her debts. In her opinion, Applicant is honest, down to earth, reliable, and an excellent worker. She recommended Applicant's eligibility for a clearance without reservations.

Applicant's monthly take home pay is \$4,000. After paying her living expenses and debts, she has about \$1,000 left over in discretionary income. Applicant testified that since receiving the SOR, she had been using her discretionary income to pay her delinquent debts. 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 has gained control of her finances, and plans to pay all her creditors.

Applicant credibly testified that the security clearance process opened her eyes to the possibility of her losing her job and the importance of being financially responsible. Applicant promised to continue resolving all her delinquent obligations. Her

mother is currently working and she is assisting Applicant with her debts. Applicant now understands that she is required to demonstrate financial responsibility to be eligible for a security clearance.

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.

In the past, Applicant was financially irresponsible. Currently, with the financial counseling and mentoring from a knowledgeable coworker, she has demonstrated increase maturity and financial responsibility. Applicant's documentary evidence established that she resolved five of the eight delinquent accounts alleged in the SOR, albeit after receipt of the SOR. Applicant worked diligently to regain contact with her creditors and resolved most of the SOR debts. She credibly promised to resolve the remaining debt in the near future.

Applicant's finances were adversely affected by circumstances beyond her control, including her mother's period of unemployment and having to provide financial support to her mother, siblings, and their children.

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 has sufficient income to keep her 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 34-year-old employee of a federal contractor. This is her first SCA. She held an interim security clearance for some time during 2014. There are no allegations of rule or security violations. Applicant has worked for two federal contractors since 2014.

The SOR alleged 8 delinquent debts. Applicant showed current financial responsibility by contacting her creditors and making payment arrangements to resolve five delinquent debts. She still has 3 SOR debts 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 and ultimately her job.

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.h:	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.

JUAN J. RIVERA
Administrative Judge