



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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[NAME REDACTED]) ISCR Case No. 18-01037
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Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

09/26/2019

Decision

MALONE, Matthew E., Administrative Judge:

Applicant was unable to pay the debts she owed when she divorced in 2017. Applicant's debts arose from, or were exacerbated by, events and circumstances beyond her control, and she acted responsibly in addressing her debts. Available information is sufficient to mitigate the security concerns about Applicant's financial problems, and her request for a security clearance is granted.

Statement of the Case

On October 25, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain eligibility for a security clearance required for her employment with a federal contractor. Based on the results of the ensuing background investigation, Department of Defense (DOD) adjudicators could not determine that it is clearly consistent with the interests of national security for Applicant to have a security

clearance, as required by Security Executive Agent Directive (SEAD) 4, Section E.4, and by DOD Directive 5220.6, as amended (Directive), Section 4.2.

On May 4, 2018, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under the adjudicative guideline for financial considerations (Guideline F). The adjudicative guidelines cited in the SOR were issued by the Director of National Intelligence on December 10, 2016, to be effective for all adjudications on or after June 8, 2017.

Applicant timely responded to the SOR (Answer) and requested a hearing before an administrative judge at the Defense Office of Hearings and Appeals (DOHA). I received the case on April 5, 2019, and I convened the requested hearing on May 21, 2019. The parties appeared as scheduled, and DOHA received a transcript of the hearing (Tr.) on June 3, 2019. Department Counsel proffered Government Exhibits (GX) 1 – 3. Applicant testified and proffered Applicant Exhibits (AX) A and B. All exhibits were admitted without objection. One witness also testified for Applicant. Additionally, I held the record open after the hearing to receive additional relevant information. The record closed on June 10, 2019, after I received Applicant's post-hearing submission (AX C) and Department Counsel's waiver of objection to its admissibility.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed \$23,985 for 22 delinquent or past-due debts (SOR 1.a – 1.v). Two of the allegations (SOR 1.b and 1.c) addressed unpaid student loans totaling \$4,222, and 17 of the allegations (SOR 1.d, and 1.g – 1.v) addressed unpaid medical bills totaling \$9,058. The largest single debt alleged (SOR 1.a) is for the \$10,511 balance due, after resale, for an automobile that Applicant voluntarily surrendered for repossession. In response to the SOR, Applicant admitted all of the allegations. (Answer) In addition to the facts established by Applicant's admissions, I make the following additional findings of fact.

Applicant is 41 years old and was offered a position with a defense contractor in October 2016. That job is contingent on eligibility for a security clearance and would pay her about \$65,000 annually. This is Applicant's first application for a security clearance. For most of the preceding seven years, Applicant was a stay-at-home mother. Over the past two-and-a-half years, she has been self-employed as the owner of a house cleaning service, from which she earns between \$15,000 and \$25,000 annually. Applicant has been married twice, most recently between May 2010 and August 2017, when she divorced for the second time. Applicant's first husband, from whom Applicant was separated for several years before a divorce was finalized in 2009, was in the military. She and her second husband separated in May 2016, and they have three children (eight-year-old twins and a six-year-old) together. Applicant also has an 18-year-old child from her first marriage. The twins live with Applicant's second husband and she pays \$296 each month in child support. (GX 1; AX A; Tr. 27 – 29, 31, 42, 46 – 48)

When Applicant and her second husband separated, she did not have enough income from her house-cleaning business to make her car loan payments as required. The \$10,511 debt alleged at SOR 1.a arose after she called the dealer and surrendered the car for repossession. Applicant presented information after the hearing showing she repaid that debt between July and November 2018. (Answer; GX 1 – 3; AX C; Tr. 33 – 34)

The debts alleged at SOR 1.b and 1.c are for unpaid student loans Applicant obtained in 2008. She did not finish the degree or certification program for which she obtained the loans. It appears she was able to make her required payments until December 2016, seven months after she and her second husband separated. Applicant testified she is now in the process of establishing an income-based student loan rehabilitation and repayment plan. Although she did not support her claims with any corroborating information, I found her testimony credible. (Answer; GX 1 – 3; Tr. 34 – 37, 43 – 44)

The medical debts alleged at SOR 1.d and 1.g – 1.v arose when the service providers billed the wrong insurance company. Most of the medical care underlying those debts was related to the birth of her twins in 2011, as well as more recent treatment of Applicant's strep throat. Applicant avers the hospital should have billed her current husband's insurance, but billed her first husband's military insurance instead. Applicant was able to correct the error after about two years; however, at that point her second husband's insurance would not cover her claims. The debts at issue are less than seven years old, yet the most recent credit reporting information in the record reflects only the debt alleged at SOR 1.d. (Answer; GX 1 – 3; AX B; Tr. 25 – 26, 37 – 38, 41)

The debts at SOR 1.e and 1.f are for unpaid cable television and/or internet accounts. Applicant claimed she has paid both debts, but she did not provide any documentation of those payments. (Answer; GX 2 and 3; AX B; Tr. 38)

Applicant's prospective supervisor testified on her behalf at the hearing. He has known Applicant personally and professionally for about 15 years. At the end of Applicant's first marriage, she had worked in a non-defense industry position similar to that for which she currently is being considered. The witness knew Applicant at that time and considers her a good fit for defense contractor employment. He characterized her as hard working, trustworthy, and honest. (Tr. 49 – 52)

Applicant's current finances are sound. She has not incurred any new debts that she is unable to pay, and she meets all of her regular monthly obligations as required. (Tr. 39 – 40)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,

and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). (See Directive, 6.3) Decisions must also reflect consideration of the factors listed in ¶ 2(d) of the guidelines. Commonly referred to as the “whole-person” concept, those factors are:

- (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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest for an applicant to either receive or continue to have access to classified information. (Department of the Navy v. Egan, 484 U.S. 518 (1988))

The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion. (See Egan, 484 U.S. at 528, 531) A person who has access to classified information enters 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 one who will protect the national interests as his or her 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. (See Egan; AG ¶ 2(b))

Analysis

Financial Considerations

The Government established that Applicant incurred delinquent or past-due debts, totaling \$23,985. The Government's information also showed that her debts remained unresolved as of May 2018. That information reasonably raises a security concern about Applicant's finances that is articulated at 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.

More specifically, available information requires application of the following AG ¶ 19 disqualifying conditions:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

By contrast, the record evidence as a whole also requires application of the following AG ¶ 20 mitigating conditions:

- (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; 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.

Applicant's financial problems stemmed, in part, from her 2016 marital separation and subsequent divorce in 2017. At that time, she was unable to continue paying her student loans and her car note. As to the latter, she presented documentation showing the remainder after resale of her car has been paid off. As to her student loans, Applicant testified credibly that she is in the process of establishing an income-based student loan rehabilitation and repayment plan. Finally, Applicant's claim that her delinquent medical

bills resulted from insurance company billing errors was plausible. Her claims in this regard also have support in the absence of all but one of those debts from the most recent available credit reporting information, despite the fact they are not old enough to have exceeded any credit reporting statute of limitations. Applicant's current finances are sound, and she has not incurred any new unpaid debts. All of the foregoing supports application of the mitigating conditions at AG ¶¶ 20(a), 20(b), and 20(e).

Financial problems present a two-fold inquiry. First, does the ongoing presence of unpaid debt or other unresolved financial burdens present a likelihood that Applicant would resort to illegal acts or other conduct that might compromise national interests? Here, that appears highly unlikely. Applicant appears to be living prudently on a limited self-employment income and her prospective supervisor testified that Applicant has a reputation for reliability and trustworthiness that tends to show she would not act counter to the national interest as a way of resolving her debts.

Second, did Applicant's financial problems arise from irresponsible decisions, poor judgment, or other factors that indicate she is unreliable or untrustworthy? I conclude they did not. Applicant's financial problems were caused or exacerbated by the failure of her second marriage. She has paid off the largest of her debts and is in the midst of resolving her past-due student loans, which were current until the end of 2016. The record as a whole establishes that the circumstances underlying her financial problems are unlikely to recur. On balance, available information shows she is resolving her debts and is sufficient to mitigate the security concerns raised by Applicant's financial problems.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). Of note is the positive information about Applicant's character provided by her prospective supervisor. Additionally, Applicant's efforts to resolve her debts to the best of her abilities reflect well on her judgment and reliability. A fair and commonsense assessment of the record evidence as a whole shows that Applicant has mitigated the security concerns about his financial problems.

Formal Findings

Formal findings 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.v:	For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

MATTHEW E. MALONE
Administrative Judge