



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 18-01765
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey DeAngelis, Esq., Department Counsel
For Applicant: Michael J. Harris, Esq.

03/14/2019

Decision

MALONE, Matthew E., Administrative Judge:

Applicant presented sufficient information to mitigate the security concerns about her financial problems and unpaid debts. Her request for continued security clearance eligibility is granted.

Statement of the Case

On October 19, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to renew her eligibility for a security clearance required for her employment with a federal contractor. Based on the results of the ensuing background investigation, adjudicators for the Department of Defense (DOD) could not

determine that it is clearly consistent with the interests of national security for Applicant to have a security clearance.¹

On June 29, 2018, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns under the adjudicative guideline for financial considerations (Guideline F). Applicant timely responded to the SOR (Answer) and requested a hearing.

I received the case on September 16, 2018, and convened the requested hearing on, December 12, 2018. The parties appeared as scheduled. Department Counsel proffered Government Exhibits (GX) 1 – 5. Applicant and two witnesses testified. Applicant also proffered Applicant Exhibits (AX) A – V. All exhibits were admitted without objection. I received a transcript of the hearing (Tr.) on January 2, 2019.

Findings of Fact

Under Guideline F, the Government alleged Applicant owed \$24,631.38 for three delinquent or past-due debts (SOR 1.a – 1.c). SOR 1.a and 1.b allege debts for unpaid income taxes totaling \$7,121.38 for the 2013 and 2014 tax years. SOR 1.c alleges a delinquent credit card account for \$17,510. In response to the SOR, Applicant admitted each allegation and provided extensive information about her financial circumstances over the past ten years. (Answer) In addition to the facts thus established, I make the following additional findings of fact.

Applicant is 41 years old. She has completed post-high school vocational training and, between 2006 and 2017, extensive DOD-sponsored acquisitions training. Applicant has held a security clearance since 2006 for a series of jobs in the defense industry. (GX 1)

Applicant and her husband, a major in the U.S. Air Force Reserve, have been married since October 2009. Applicant was married twice previously. Her first marriage ended in 2007, and she has one 19-year-old child from that marriage. Applicant and her current husband have one child, age 8, together. Her husband also has two children -- an 11-year-old son and another now-adult child who was still a minor when they married -- from before his marriage to Applicant. Currently, Applicant's children live with her and her husband, who also shares custody of his 11-year-old. That child lived with them until about 2012. (Answer; GX 1 – 3)

Applicant and her husband each brought debt to their marriage. In addition, they used the credit card addressed in SOR 1.c to pay for their wedding. For the most part, they have each managed their personal finances separately and were able to pay down existing debts, including the SOR 1.c credit card, while meeting their regular obligations. Applicant avers that events around the time their child was born in August 2010 as the beginning of their recent financial problems. The child was born a month early after a

¹ Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive), as amended.

difficult pregnancy. As a result, Applicant was unable to work for a few months and was eligible for short-term disability benefits from her company; however, the paperwork for those benefits was not properly processed, and Applicant was without any income during her time away from work. (Answer; GX 2; GX 3; Tr. 19, 51 – 52, 54 – 56, 77 – 78)

Applicant's husband was on active duty in the Air Force when they got married. Because he was dissatisfied with his career path, he took advantage of an early-release monetary incentive and left active duty in 2011. He then affiliated with an Air Force Reserve command that allowed him to work in his preferred technical field. Since 2011, he has primarily earned his income through a series of temporary active duty orders of between 90 and 180 days. Unfortunately, there were also times between orders when he earned no income for two to four months on average. In 2012, Applicant's husband obtained work as a defense contractor, but he was laid off in 2013 when the contract ended. After several months of unemployment, Applicant's husband found work as a civilian employee at a nearby Air Force base; however, he is again on full-time active duty orders through 2022. (Answer; GX 2; GX 3; Tr. 23 – 25, 36 – 40)

Before and after her child was born in August 2010, Applicant experienced a series of job-related and other unforeseen problems that impacted her income. Before the child was born, Applicant and her husband had been living in State A but he was transferred to State B, where they now live. Because Applicant's pregnancy was complicated, and because her older child was still in school in State A, she did not immediately accompany him. This resulted in added expenses for two residences on top of the expenses later incurred for moving and for special care for Applicant's child. As already discussed, she lost income when her short-term disability benefits. After the couple settled in State B, Applicant and her husband unexpectedly had to take over full-time care of his 11-year-old child, who was beset by numerous emotional and psychological problems. In addition to added expenses, care for that child often meant time away from work and lost income. By 2012, Applicant had fallen behind on several credit card accounts, including the debt at SOR 1.c. After Applicant's husband found work, they had more money but his schedule often meant he was not able to help with running their household. Additionally, Applicant's employer was not paying her the salary she thought they had agreed to when she was hired in 2010. When the contract she supported through that job ended in 2016, Applicant's next employment paid her about 20 percent less. Between being unable to coordinate day-to-day management of the household finances because of her husband's unavailability, and a lack of expected income, several bills and other routine obligations went unattended. (Answer; GX 1 – 3; Tr. 18 – 21, 51 – 56, 61 – 68, 77 – 80)

Applicant's tax problems began in 2011. When her husband received his early release from active duty, no taxes were withheld from the incentive bonus he received. They were unable to pay the resulting \$13,000 tax bill, but they established a repayment plan in April 2012 through which they satisfied their tax debt in May 2018. For reasons related to loss of income, Applicant and her husband also were unable to pay their 2013 and 2014 taxes on time. As of May 2018, as alleged in SOR 1.a and 1.b, they owed a total of \$7,121.38. Those tax bills were satisfied between August and September 2018

as a result of payments made starting in October 2016. The most recent credit report produced by the Government does not reflect any past-due tax obligations. (GX 2 – 5; Answer; AX A; Tr. 22 – 23, 38 – 39, 57, 81 – 83)

Between 2012 and 2016, Applicant and her husband struggled to meet their regular financial obligations in addition to a variety of unexpected events (two car wrecks, failed appliances, and unplanned travel in connection with Applicant's stepchild's moves to and from his mother's home in State C). Additionally, since 2012, when Applicant's stepchild's mother regained custody, Applicant's husband has been paying \$600 each month in child support. Additionally, Applicant's husband had to pay additional child support for several years for his older child. Applicant's efforts to resolve her debts were slowed further when she and her husband separated in November 2016, thus incurring additional expenses for two separate residences and for legal fees associated with a contemplated divorce. The couple reconciled in April 2018. (Answer; GX 2; GX 3; Tr. 18 – 21, 33 – 35, 53 – 54, 78 – 80, 87 – 88)

The last time Applicant was able to make any payments or attempts to negotiate a resolution of the debt at SOR 1.c was 2013, when she learned the debt had been charged off as a business loss. Between 2013 and 2018, Applicant chose instead to resolve other debts that were within her means to pay. In 2018, Applicant was able to negotiate a repayment agreement with the SOR 1.c creditor and, in July 2018, began paying \$200 each month according to that agreement. After resolving her tax debts, Applicant began paying as much as \$400 more each month to accelerate resolution of that debt. (Answer; GX 1 – 3; AX B; AX C; Tr. 30 – 31, 51, 57 – 61, 80 – 81)

Applicant's finances are currently sound. A townhouse they owned as a rental property has been sold, thus freeing up extra funds and their income is again sufficient to pay their debts and meet all of their routine obligations. Applicant and her husband have not incurred any new unpaid debts. They have filed their taxes as required since 2014, and they have ensured that sufficient taxes are being withheld from their pay so they will avoid any unpayable tax bills in the future. The most recent credit report produced in this case does not reflect any adverse financial information. (Answer; GX 5; Tr. 81 – 83)

Applicant presented extensive information regarding her job performance and her overall character. A witness testified about Applicant's significant generosity and about Applicant's volunteer activities at her child's school and at a community food bank. Applicant has a superior record of performance and enjoys a solid reputation for professionalism throughout her career in the defense industry. Among the observations of government and industrial coworkers and supervisors is that Applicant has a spotless record of safeguarding sensitive information and is exceedingly reliable and trustworthy. (Answer; AX D – V; Tr. 28 – 30, 41 – 47)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,² and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG).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 interest⁴ for an applicant to either receive or continue to have access to classified information.

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.⁵ 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

² See Directive. 6.3.

³ The current adjudicative guidelines were issued by the Director of National Intelligence on December 10, 2016, to be effective for all adjudications on or after June 8, 2017.

⁴ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵ See *Egan*, 484 U.S. at 528, 531.

interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.⁶

Analysis

Financial Considerations

The Government established Applicant accrued the delinquent debts alleged in the SOR. When the SOR was issued, those debts had not yet been resolved. That information reasonably raised 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 supported application of the disqualifying conditions at AG ¶¶ 19(a) (*inability to satisfy debts*); 19(c) (*a history of not meeting financial obligations*); and 19(f) (*failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required*). Applicant and her husband did not pay their income taxes on time for the 2011, 2013 and 2014 tax years. They also accrued significant credit-card debt through one delinquent account that was unresolved for almost ten years.

By contrast, Applicant established that her debts arose from events and circumstances beyond her control. This included significant fluctuations in income, a marital separation, and other events that adversely impacted their finances. Applicant acted in a responsible manner under the circumstances. Although not addressed through the SOR, over the past five years, Applicant has resolved numerous other debts while trying to pay or otherwise resolve the debts listed in the SOR. In 2016, Applicant proactively addressed her tax debts through repayment plans with the IRS. Those debts are now paid. Attempts in 2012 and 2013 to negotiate with the SOR 1.c creditor were unsuccessful. Nonetheless, she continued resolving other debts and, more recently, was

⁶ See *Egan*; AG ¶ 2(b).

able to establish a repayment agreement regarding SOR 1.c. Since July 2018, Applicant has made regular monthly payments, and more recently, has increased the amount she pays under that plan by using the money previously earmarked for her tax debts. Applicant has not incurred any new delinquencies, and the record does not show that her financial problems were caused by poor decision making, irresponsible spending, or misconduct.

All of the foregoing supports 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;
- (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 and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

On balance, I conclude the record as a whole is sufficient to mitigate the security concerns raised by the Government's information about Applicant's finances.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). Particularly noteworthy is the information regarding Applicant's response to adverse financial circumstances. It reflects well on Applicant's judgment and reliability. Further, the testimony and recommendations about Applicant's character is significant. Applicant has a reputation for generosity, volunteerism, and integrity that supports a favorable assessment of her suitability for access to classified information. A fair and commonsense assessment of the record evidence as a whole shows the security concerns about his finances are mitigated.

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.c: 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