



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



In the matter of:)	
)	
)	ISCR Case No. 06-11659
)	
Applicant for Security Clearance)	

Appearances

For Government: Emilio Jaksetic, Esquire, Department Counsel

For Applicant: Nicholas W. Burns, Personal Representative

April 30, 2009

Decision

O'BRIEN, Rita C., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant has acted responsibly to meet her financial obligations and resolve her debts. The government did not present evidence related to the personal conduct allegation. She has mitigated the security concerns raised under the guidelines for Financial Considerations and Personal Conduct. Accordingly, her request for a security clearance is granted.

Statement of the Case

Applicant requested a security clearance by submitting a security clearance application, Standard Form 86 (SF-86) on January 21, 2008. After reviewing the results

of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding that it is clearly consistent with the national interest to grant Applicant's request. The action was taken under Executive order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On December 4, 2008, DOHA issued to Applicant a Statement of Reasons (SOR), which specified the basis for its decision: security concerns addressed in the Directive under Guideline F (Financial Considerations) and Guideline E (Personal Conduct) of the Revised Adjudicative Guidelines (AG). In her Answer to the SOR,¹ signed and notarized on December 30, 2008, Applicant admitted all allegations under Guideline F, except allegations 1.m., 1.n., and 1.o. Under Guideline E, she denied allegation 2.a., which alleged falsification of information she provided on her security clearance application. Applicant also requested a hearing before an administrative judge. At the hearing, Department Counsel stated on the record that the government would not pursue the Guideline E allegation.

Department Counsel was prepared to proceed on January 22, 2009, and the case was assigned to me the same day. DOHA issued a Notice of Hearing on January 28, 2009, and I convened the hearing as scheduled on February 26, 2009.

During the hearing, the government offered six exhibits, marked as Government Exhibits (GE) 1 through 6. GE 2 through 6 were admitted without objection. Applicant objected to GE 1. I overruled the objection and admitted the exhibit. Applicant testified, and offered three exhibits. Applicant's Exhibits (AE) were marked as A through C, and admitted without objection. I held the record open to allow Applicant to submit additional documentation. Department Counsel forwarded without objection Applicant's timely submission of three additional documents. I admitted the additional documents as AE D through F. DOHA received the transcript on March 13, 2009.

Findings of Fact

Applicant's admissions are admitted as fact. After a thorough review of the pleadings, Applicant's response to the Statement of Reasons, and the record evidence, I make the following additional findings of fact.

¹ Applicant attached the following six documents to her Answer: 1: release of 2007 state tax lien; 2: medical debt payment plan; 3: settlement related to allegation 1.m.; 4: settlement related to allegation 1.n.; 5: settlement related to allegation 1.o.; 6: Personal Financial Statement, dated December 29, 2008.

Applicant is a 31-year-old college graduate who earned a bachelor's degree in electrical engineering in 1999 (GE 2). Since 1996, she has had short-term jobs as a research assistant, an independent contractor engineer, and an assistant planning engineer. Among her longer term jobs was a position as an engineer for three-and-a-half years from 2000 to 2003, and as a software engineer for two years from January 2005 to December 2006. She had several short periods of unemployment, as well as a longer period from December 2003 to September 2004. She accepted employment with a defense contractor as a systems engineer in December 2006, and completed her current security clearance application for that position. Previously, she held a security clearance in 2006 while working as a software engineer (GE 2).

Applicant married in 1997 and had three sons, who are now 3, 6, and 11 years old (GE 2). Several factors led to financial difficulties during Applicant's marriage. When her first son was born, she and her husband were college students, with the attendant educational expenses. Later, Applicant was the sole support of the family while her husband pursued his Master's degree. She was unemployed for several months in 1998, again in 2000, and for nine months in 2004. Her husband was hospitalized in 2007, and on medical leave for approximately six months (Tr 61-62). He was under psychiatric care from June 2007 to at least January 2008 (GE 2). Applicant's husband was emotionally abusive during their marriage and she decided to take her children and leave him in May 2007.

Applicant's three children live with her. Her husband did not pay child support for approximately one-and-a-half years after their separation. During the period when Applicant was separated and living without financial support from her husband, Applicant turned to her family for assistance. Her parents helped at times, when possible (AE A). A family court Order, issued in October 2008, required him to pay child support of \$861 per month (AE B). The final divorce order obligated him to continue to pay this amount (AE F).

The debts alleged in the SOR total almost \$8,000. Applicant's gross annual salary for 2008 was approximately \$51,800. She paid approximately \$5,000 for health insurance in 2008, and also set aside \$10,000 in health-care savings accounts. After taxes were withheld, her net annual income as of December 21, 2008 was \$27,949 (AE E). Applicant pays rent and has been on time with her payments since her separation. She owns a car on which the loan has been paid in full (GE 3). No judgments have been filed or garnishments placed on her wages, and she has no outstanding loans. Applicant did not seek financial counseling about her debts, but contacted creditors directly to arrange settlements and payment plans (Tr 51-55). On her November 2008 Personal Financial Statement, she had a negative monthly remainder of \$34. However, her husband is now responsible for a \$355 monthly payment that she had listed as a debt (Tr 49). Applicant's December 2008 Personal Financial Statement shows a positive monthly net remainder of \$395 (Answer Document 6).

The Statement of Reasons alleges 15 debts. The current status of the alleged debts follows.

- **State tax lien** (allegation 1.a.): While Applicant's husband was unemployed in 2007, he received unemployment compensation, which was taxable in the state in which they lived (Tr 61). Applicant and her husband were unaware that taxes were due on this income. The state filed a lien in April 2007 for \$885 (Tr 39). Applicant established a payment plan (Tr 24), and as of December 2008, the lien had been released (Answer document 1).
- **Medical debts** (allegations 1.b. through 1.l.): The medical debts alleged total approximately \$1,300. All the debts are owed to the same creditor, a hospital. They stem from the birth of Applicant's third son, a related surgery, and additional bills for the medical needs of her children. When Applicant researched the debts, she found that, in several cases, the hospital had failed to file for insurance reimbursement. As a result of her investigation, the hospital was reimbursed. She arranged a payment plan for the balance of the debt, and is current on the plan (AE C; Answer document 2; Tr 25-26; 40-43).
- **Credit card accounts** (allegations 1.m., 1.n., and 1.o.): These allegations relate to three credit card accounts that became delinquent during Applicant's marriage. After she began receiving child support in October 2008, Applicant contacted each creditor. She arranged a settlement of \$1,422 on the account at allegation 1.m. and paid it in full with three installments from October through December 2008 (Tr 26; Answer document 3). She arranged a settlement of \$1,387 on the account alleged at 1.n., and made three payments from October through December 2008, which paid the account in full (AE D; Answer document 4). Applicant also obtained a settlement of \$1,400 on the account alleged at 1.o., and paid it in full with three payments from October through December 2008 (Answer document 5).

Policies

Each security clearance decision must be a fair, impartial, and common-sense determination based on examination of all available relevant and material information, and consideration of pertinent criteria and adjudication policy in the Revised Adjudicative Guidelines (AG).² Decisions must reflect consideration of the "whole person" factors listed in ¶ 2(a) of the Guidelines.

² Directive. 6.3.

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. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under the cited Guidelines.

A security clearance decision is intended only to resolve the questions of whether it is clearly consistent with the national interest³ 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.⁴ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. Therefore, 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 her 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.⁵

Analysis

Guideline F, Financial Considerations

AG ¶18 expresses the security concern pertaining to financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known

³ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁴ See *Egan*, 484 U.S. at 528, 531.

⁵ See *Egan* at 531; Revised Adjudicative Guidelines, ¶ 2(b).

sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

Disqualifying condition AG ¶19(a) (inability or unwillingness to satisfy debts) and AG ¶19(c) (a history of not meeting financial obligations) apply.⁶ Applicant had financial problems during her marriage, from the late 1990s to about 2007, because of periods of unemployment, college tuition and expenses, and medical bills for her husband and children. After she separated from her husband, Applicant did not receive child support for approximately 18 months, which left her unable to address her financial delinquencies. The record contains no evidence of other disqualifying conditions such as frivolous spending, or debts related to alcoholism, gambling or deceptive practices.

The Financial Considerations guideline also contains factors that can mitigate security concerns. The following mitigating conditions under AG ¶ 20 are relevant:

(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.

Applicant had a difficult marriage. Soon after they married, she and her husband had a baby. At the same time, they were both attending college. Subsequently, Applicant was the sole family support while her husband attended graduate school. They had the expenses attendant on raising a child, as well as tuition and other college and graduate school expenses. Applicant's husband became emotionally abusive, was hospitalized, and was under psychiatric care. Both she and her husband also had periods of unemployment during the marriage. After they separated, Applicant's husband refused to provide financial support for one-and-a-half years, and she faced financial hardship trying to support four people on one income. The unemployment, her husband's medical problems, his refusal to support his children, and the abuse, were conditions that Applicant could not control. She acted reasonably by leaving the abusive situation, and by seeking financial assistance from her family. When her husband began paying child support in October 2008, she again acted reasonably by immediately taking action to resolve her debts. AG ¶ 20(b) applies.

⁶ Although a state tax lien for \$885 was filed against Applicant and her ex-husband, AG ¶ 19(g) does not apply. Applicant mistakenly failed to pay state income tax on her husband's unemployment compensation in 2007; however, nothing in the record indicates that she failed to file an income tax return, and the SOR does not allege a failure to file taxes as a concern.

Although Applicant did not seek financial counseling, she did bring her financial situation under control, and AG ¶ 20(c) applies partially. The dates of Applicant's payment plans indicate that as soon as her husband began providing child support in October 2008, giving Applicant the funds to resolve her debts, she began to establish payment plans. She has either paid or established a payment plan for each debt in the SOR. AG ¶ 20(d) also applies, as Applicant's conduct shows a good-faith effort to resolve her delinquencies. All the debts alleged in the SOR are paid, except for the medical debts. Applicant established a payment plan for the balance owed to this single creditor, and is current on that plan.

Guideline E, Personal Conduct

At the hearing, Department Counsel stated that the government did not intend to pursue the allegation of falsification under this Guideline. As the government did not withdraw the allegation, a finding is required. I find for the Applicant under this Guideline.

Whole Person Analysis

Under the whole person concept, an administrative judge must evaluate the Applicant's security eligibility by considering the totality of the Applicant's conduct and all the circumstances. An 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall common-sense judgment based upon careful consideration of the Guidelines and the whole person concept. Under the cited Guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant accrued delinquent debt of almost \$8,000 over the past several years. Her financial problems resulted from a combination of factors including college and graduate school expenses, periods of unemployment experienced by both Applicant and her husband, as well as medical bills for her children and her husband. After leaving her abusive husband, Applicant was unable to support herself and her three

children on her sole income and pay her delinquencies. However, her immediate action on the debts, once her husband was required to pay child support, shows that her debts resulted not from any desire to avoid her obligations, but from lack of funds. Applicant acted in a mature and responsible fashion. Her consistent payments soon resolved the balances on all but one debt. Her payment plan is current on the medical debt. Applicant's efforts demonstrate a sincere intent to meet her financial obligations. A fair and common-sense assessment of the available information bearing on Applicant's suitability for a security clearance shows she has satisfied the doubts about her ability or willingness to protect the government's interests.

Overall, the record evidence satisfies the doubts raised about Applicant's suitability for a security clearance. For these reasons, I conclude Applicant has mitigated the security concerns arising from the cited adjudicative guidelines.

Formal Findings

Paragraph 1, Guideline F	For Applicant
Subparagraphs 1.a. through 1.p.	For Applicant
Paragraph 2, Guideline E	For Applicant
Subparagraph 2.a.	For Applicant

Conclusion

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

RITA C. O'BRIEN
Administrative Judge