



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
 [NAME REDACTED] ) ISCR Case No. 12-06684  
 )  
 Applicant for Security Clearance )

**Appearances**

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

07/14/2014

**Decision**

MALONE, Matthew E., Administrative Judge:

Applicant’s financial problems were caused by circumstances beyond her control. She timely addressed most of the debts alleged in the SOR and her personal finances are improved. Her financial problems do not indicate poor judgment or a lack of trustworthiness, and she is not likely to incur such financial problems in the future. Her request for continued access to classified information is granted.

**Statement of the Case**

On February 13, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain or renew eligibility for a security clearance required for her work as a defense contractor. Based on the results of the ensuing background investigation, which included Applicant’s responses to interrogatories from

Department of Defense (DOD) adjudicators,<sup>1</sup> it could not be determined that it was clearly consistent with the national interest for Applicant to continue to hold a security clearance.<sup>2</sup>

On December 18, 2013, DOD adjudicators issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed under the adjudicative guideline<sup>3</sup> for financial considerations (Guideline F). On January 31, 2014, Applicant responded to the SOR (Answer) and requested a hearing.

The case was assigned to me on May 13, 2014, and I convened a hearing on June 17, 2014. Department Counsel for the Defense Office of Hearings and Appeals (DOHA) presented Government Exhibits (Gx.) 1 - 5. Applicant testified and presented Applicant's Exhibits (Ax.) A - D. All exhibits were admitted without objection. I left the record open after the hearing to receive from Applicant additional relevant information. The record closed on July 7, 2014, when I received Applicant's post-hearing submissions, identified as Ax. E - G.<sup>4</sup> DOHA received the hearing transcript (Tr.) on June 23, 2014.

### **Findings of Fact**

Under Guideline F, the Government alleged that in October 2005, Applicant filed a Chapter 7 bankruptcy petition that resulted in a discharge of her debts on January 19, 2006 (SOR 1.a); and that she owed \$64,674 through 13 past-due or delinquent debts (SOR 1.b - 1.n). Applicant admitted, with explanations, the allegations at SOR 1.b - 1.k. She denied, with explanations, the SOR 1.l - 1.n allegations. Based on all available information, I make the following findings of fact.

Applicant is a 48-year-old multi-media specialist for a defense contractor, where she has worked since June 2002. Before that, she worked for a different company at the same location for 15 years. Applicant has an excellent reputation at work, and as a volunteer in her community, for integrity, reliability, honesty, and hard work. She first received a security clearance in October 1991. She is also two courses shy of earning a bachelor's degree in organizational management. (Gx. 1; Gx. 2; Ax. D; Ax. F; Ax. G; Tr. 36 - 37, 47 - 49)

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<sup>1</sup> Authorized by DOD Directive 5220.6 (Directive), Section E3.1.2.2.

<sup>2</sup> Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive), as amended.

<sup>3</sup> The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

<sup>4</sup> Hearing Exhibit (Hx.) 3 is an email from Department Counsel forwarding Ax. E - G, and waiving objection to their admission. Ax. E is a letter from a mortgage lender regarding disposition of the remainder after foreclosure of Applicant's mortgage. Ax. F consists of annual evaluations and other information about Applicant's work performance. Ax. G contains information about Applicant's charitable work in the community.

Applicant was married between August 1997 and January 2010. She and her ex-husband separated in 2005, when Applicant moved out with their two children, then ages 5 and 7. She filed for divorce in 2006. In the four years it took to finalize their divorce, Applicant received no child support. Since 2010, her ex-husband has paid court-ordered support of \$705 each month. When they separated, Applicant's ex-husband stayed in the marital residence, and Applicant was left to pay most of the marital debt. Because she was not receiving any support after they separated, Applicant filed a Chapter 7 bankruptcy petition in October 2005, through which she was discharged of marital debts totaling nearly \$37,000. (Answer; Gx. 1; Gx. 2; Gx. 3; Gx. 5; Tr. 39 - 40, 70 - 74)

Applicant has a degenerative bone disorder that has impacted her spine and knees. Treatment has been ongoing for several years and includes multiple MRI and X-Ray examinations and periodic corrective surgeries. She also takes medications every day and sees medical specialists every month. Her medical insurance covers a substantial part of these services; however, co-payments, deductibles, and medications for specialized treatments exceed her medical insurance by several thousand dollars annually. (Answer; Ax. B; Tr. 34 - 35, 44 - 47)

Applicant also has adult attention deficit disorder (ADD). For Applicant, the effects of ADD include a diminished capacity for organization and memory. In particular, Applicant has difficulty keeping track of time and deadlines. She was diagnosed about ten years ago and was prescribed Cymbalta. (Answer; Gx. 2; Ax. B; Tr. 34 - 36)

In July 2012, Applicant became responsible for caring for her grandmother, who was suffering from Alzheimer's disease. Applicant incurred expenses through direct and indirect financial support, as well as from lost wages when Applicant had to take her grandmother to receive medical care in an adjoining state where her grandmother's doctors were located. Applicant's grandmother eventually moved in with her and stayed until passing away in November 2013. Applicant also bore most of the cost of her grandmother's funeral. (Answer; Ax. A; Ax. C; Tr. 41 - 42)

In January 2013, Applicant assumed care for her nephew, who was recovering at home from injuries suffered in an accident. Surgeries and infections from those surgeries complicated his recovery and required professional in-home care, which the boy's parents could not afford. Applicant was asked to take him in because she is a qualified emergency medical services technician, able to manage intravenous care, including PIC lines and medication injections. Her nephew stayed with Applicant until May 2013. Applicant had difficulty meeting the additional expenses associated with her nephew's care because of reduced income from unplanned time off from work. (Answer; Gx. 2; Ax. A; Tr. 42 - 44, 75 - 76)

In 2006, Applicant's car was stolen. At the time, Applicant was current on her car loan and still owed about \$17,600. This debt is alleged at SOR 1.n, and still appears on her credit report. Her car insurance policy covered theft but would not pay before 30 days had elapsed. The car was found in another state on the 30<sup>th</sup> day and was taken to

a garage but never returned to Applicant. She stopped paying her car loan because she thought the insurance would pay off the loan. However, the loan finance company began demanding repayment. Applicant has not yet resolved this matter and denies she has any remaining obligation for the car loan. The listing of this account in a February 2012 credit report includes a notation that she was disputing this debt. Applicant indicated at hearing she would renew her dispute and try to resolve this obligation. (Answer; Gx. 1; Gx. 2; Ax. A; Tr. 56 - 60)

All of the forgoing caused financial difficulties for Applicant between 2006 and 2013. When she submitted her EQIP in February 2012, she disclosed her Chapter 7 bankruptcy, alleged at SOR 1.a, the car loan debt alleged at SOR 1.n, and a delinquent cell phone account alleged at SOR 1.l. As to SOR 1.l and 1.m, another past-due debt owed to the same cell phone company, Applicant credibly testified that the creditor has no information about either account that would show she owes them any money. SOR 1.l is likely a cell phone account owed by her ex-husband. Applicant also disclosed several other accounts not alleged in the SOR that she had paid off or was in the process of resolving. (Gx. 1; Tr. 30, 55 - 56)

In the ensuing background investigation and preliminary adjudication, credit reports and Applicant's responses to interrogatories documented all of the SOR allegations. However, Applicant established that she has paid or is resolving the debts alleged at SOR 1.b, and 1.d - 1.j. At hearing, the Government acknowledged that SOR 1.k addresses the same debt as in SOR 1.e. Applicant represented in her Answer and at hearing that she is repaying some of her debts. However, she did not provide documentation of those payments. Nonetheless, her testimony is consistent with actions she took to resolve debts listed in her EQIP that her background investigation showed had, in fact, been resolved. I have accepted her testimony on this issue as credible and sufficient to support her claims that she is working to resolve all of her debts. (Answer; Gx. 1 - 5; Ax. A; Tr. 30 - 31, 49 - 56)

In May 2013, the mortgage on Applicant's home was foreclosed because she had missed several payments while caring for her grandmother and nephew. As alleged in SOR 1.f, she had also fallen behind on her student loan payments in 2013. Applicant was able to consolidate her student loans after being granted a hardship forbearance. She is once again current on her student loans after having renewed payments in January 2014. As to her mortgage, she was 120 days past due when she was interviewed for her clearance in 2012. Initially, she retained a firm that claimed to specialize in resolving past-due mortgages, only to get no results after paying them several thousand dollars. Subsequently, Applicant's attempt to obtain a hardship loan from her retirement account failed due to a technicality, and she lost the home in May 2013. The home was sold at auction, but Applicant owes no debt for any remaining loan deficiency. (Answer; Gx. 1 - 3; Ax. A; Ax. C; Ax. E; Tr. 31 - 33, 37 - 38, 60 - 62)

Applicant's current finances are sound. In addition to repaying her old debts, she meets all of her current obligations. She has incurred no new unpayable debts, and her monthly income exceeds all of her monthly expenditures by more than \$300. Although Applicant has not received any financial counseling, she appeared to have a good

command of her personal finances. She is mindful of using a written budget because of her ADD and the organizational challenges it presents. (Gx. 2; Tr. 62 - 69)

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>5</sup> and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(a) 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<sup>6</sup> 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.<sup>7</sup>

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

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<sup>5</sup> See Directive. 6.3.

<sup>6</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>7</sup> See *Egan*, 484 U.S. at 528, 531.

any reasonable doubt about an applicant's suitability for access in favor of the Government.<sup>8</sup>

## Analysis

### Financial Considerations

Available information is sufficient to support all of the SOR allegations. The facts established raise a security concern about Applicant's finances that is addressed at AG ¶ 18, as follows:

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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

More specifically, available information requires application of the disqualifying conditions at AG ¶¶ 19(a) (*inability or unwillingness to satisfy debts*); and 19(c) (*a history of not meeting financial obligations*). As to AG ¶ 19(a), the record shows Applicant was unable, not unwilling, to repay her past-due debts.

I have also considered the following pertinent 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, 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

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<sup>8</sup> See *Egan*; AG ¶ 2(b).

(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 first started when her marriage ended in 2005. Through a Chapter 7 bankruptcy petition, she resolved the marital debts with which she was burdened when she left her ex-husband. Lack of child support for four years, as well as unexpected events such as the theft of her car, having to care for two relatives at her own expense, and her own chronic health issues caused her further financial stress until 2013. Her difficulties culminated in the May 2013 foreclosure of her home. However, the record shows that in response to her financial problems, Applicant did not wait to take corrective action. She tried, albeit unsuccessfully, to resolve her mortgage debt through retention of a mortgage resolution firm and through a loan from her retirement fund. Although she lost the house, she owes no deficiency remainder and she has been paying her rent on time for the past year. Applicant also obtained a hardship forbearance and consolidation of her student loans, for which she is once again in good standing. Even before the current background investigation, Applicant had acted to resolve numerous past-due debts that are not alleged in this case. As to her delinquent car loan, Applicant reasonably disputed its legitimacy because of the failure of her car insurance to cover the loss. Applicant's current finances are sound and she has not incurred any new unpayable debts.

All of the foregoing supports application of the mitigating conditions listed above. On balance, I conclude Applicant has mitigated the security concerns raised by the Government's information.

### **Whole-Person Concept**

I have evaluated the facts and have applied the appropriate adjudicative factors under Guideline F. I also have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is 48 years old and presumed to be a mature, responsible adult. She has raised two children despite her chronic medical conditions. She also cared for her grandmother and a nephew despite the resulting financial burdens. Applicant has an excellent record on the job at a site where she has worked for more than 20 years. She also is well-regarded for volunteer work in her community. Applicant has worked through her financial setbacks in a way that shows good judgment and reliability in fulfilling her responsibilities. There is little likelihood her financial problems will recur. A fair and commonsense assessment of all available information shows that Applicant's finances no longer present an unacceptable security risk.

### **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.n: For Applicant

**Conclusion**

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

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MATTHEW E. MALONE  
Administrative Judge