



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 12-07963
)	
Applicant for Security Clearance)	

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

06/16/2015

Decision

MALONE, Matthew E., Administrative Judge:

Applicant has not acted to pay or otherwise resolve delinquent debts that are almost five years old. She did not present sufficient information to show that she is likely to resolve her financial problems in the foreseeable future. The resulting security concerns about her delinquent debts are not mitigated, and her request for a security clearance is denied.

Statement of the Case

On March 1, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (eQIP) to obtain a security clearance required for her job with a defense contractor. After reviewing the completed background investigation, which included Applicant's responses to interrogatories from Department of Defense (DOD)

adjudicators,¹ it could not be determined that it is clearly consistent with the national interest for Applicant to have access to classified information.²

On July 22, 2014, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline F (Financial Considerations).³ Applicant timely responded to the SOR and requested a decision without a hearing. On January 29, 2015, Department Counsel issued a File of Relevant Material (FORM)⁴ in support of the SOR. Applicant received the FORM on March 9, 2015, and was advised she had 30 days from the date of receipt to submit additional information in response to the FORM. The record closed on April 8, 2015, without any response to the FORM from Applicant. The case was assigned to me on May 4, 2015.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owes \$12,463 for three delinquent debts (SOR 1.a - 1.c). Applicant admitted all of the SOR allegations and provided copies of correspondence with all three creditors from August 2014. (FORM, Items 1 and 2) In addition to her admissions, I make the following findings of fact.

Applicant is a 42-year-old employee of a defense contractor. She requires a security clearance for an information technology (IT) position she has held since August 2011. When she submitted her EQIP, she disclosed adverse information about her finances, including a past-due mortgage that she was trying to resolve through a short sale, and at least one delinquent credit card. (FORM, Items 4 and 6)

In 2005, Applicant purchased a home for \$250,000. When she went to close on her purchase, she realized that her purchase was financed through an adjustable rate mortgage (ARM) that would change rates in two years. She decided to complete the transaction as she did not want to lose the house. Two years later, Applicant took a second ARM of about \$25,000 in the form of an equity loan to pay for repairs to her house. In 2006 and 2008, both mortgage interest rates adjusted upward and Applicant was faced with about \$200 more each month in mortgage payments. Around the same time, her income decreased after regular overtime, on which she had come to rely, was cut back or eliminated. Applicant struggled to keep up with her monthly payments and began to rely on personal credit cards to meet her other expenses. By 2010 and 2011, she was delinquent on several consumer credit accounts. (FORM, Items 6 and 7)

¹ See DOD Directive 5220.6 (Directive), as amended, Section E3.1.2.2.

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

³ See Directive, Enclosure 2. See also 32 C.F.R. § 154, Appendix H (2006).

⁴ See Directive, Enclosure 3, Section E3.1.7. The FORM included ten exhibits (Items 1 - 10) proffered in support of the Government's case.

On April 5, 2012, Applicant was interviewed during a background investigation pursuant to her EQIP submission. She and the investigating agent discussed Applicant's EQIP disclosures of past-due debts. They also discussed the contents of a March 17, 2012 credit report that documented the debts alleged at SOR 1.a - 1.c. That credit report also documented eight other delinquent debts that were the subject of civil judgments or had been referred for collection. All but the three debts alleged in the SOR no longer appear in her credit reports; however, Applicant did not establish that she took any action to resolve any of her debts until August 2014, when she wrote to the three creditors listed in SOR 1.a - 1.c. (FORM, Items 7 - 10)

Applicant's house was sold through a short sale in June 2012. As to the two credit card debts alleged at SOR 1.a and 1.b, Applicant has not submitted any information showing she has resolved those debts. The \$70 debt at SOR 1.c has likely been resolved. (FORM, Item 7)

When Applicant responded to adjudicators' interrogatories in April 2014, she provided a personal financial statement (PFS). At that time, the PFS showed that she had about \$171 remaining each month after all expenses were paid. She did not include any payments to her past-due debts as part of her expenses. (FORM, Item 7)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁵ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new 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 interest⁶ for an applicant to either receive or continue

⁵ Directive. 6.3.

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

to have access to classified information. Department Counsel must produce sufficient reliable information on which DOD based its preliminary decision to deny or revoke a security clearance for an applicant. Additionally, Department Counsel must prove controverted facts alleged in the SOR.⁷ If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.⁸

Because no one is entitled to a security clearance, applicants bear a heavy burden of persuasion to establish that it is clearly consistent with the national interest for them to have access to protected information.⁹ A person who has access to such information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, there is a compelling need to ensure each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the nation's 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 to classified information in favor of the Government.¹⁰

Analysis

Financial Considerations

Available information supports the allegations in the SOR. The facts established herein raise a security concern addressed, in relevant part, 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.

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*). Applicant has experienced significant debt and other financial problems since about 2008, when two ARM interest rates increased and her income decreased from lost overtime pay. Applicant began to rely on credit cards and other forms of credit to make ends meet, but she has not established that she acted responsibly in the face of her mounting financial problems. Applicant has yet to present information in response to the SOR or the FORM that shows her finances are under control; that she has made good-faith efforts to resolve her debts; that she has obtained

⁷ Directive, E3.1.14.

⁸ Directive, E3.1.15.

⁹ See *Egan*, 484 U.S. at 528, 531.

¹⁰ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

financial counseling or other professional help to resolve her debts; or that she has a basis to dispute any of the alleged debts as not her responsibility or as not valid.

In summary, the Government established its case for disqualification. The burden was then shifted to Applicant to present sufficient information to mitigate, extenuate, or refute the allegations underlying the security concerns about her finances. Applicant's submission of letters to her creditors in August 2014, two years after she was interviewed about her debts, is not sufficient to meet her burden of persuasion. None of the AG ¶ 20 mitigating conditions can be applied here and the Guideline F security concerns raised by the Government's information remain.

In addition to my evaluation of the facts and application of the appropriate adjudicative factors under Guideline F, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). A fair and commonsense assessment of all available information shows that doubts remain about Applicant's suitability for access to classified information. Because protection of the national interest is the principle concern in these adjudications, those doubts must be resolved against the Applicant.

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:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant

Conclusion

In light of all available information, it is not clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge