



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



In the matter of:)
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 [NAME REDACTED]) ISCR Case No. 12-09306
)
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 Applicant for Security Clearance)

Appearances

For Government: Braden Murphy, Esq., Department Counsel
For Applicant: *Pro se*

06/24/2015

Decision

MALONE, Matthew E., Administrative Judge:

Applicant's financial problems began about nine years ago under unplanned circumstances. Applicant resolved a few of her debts, but her financial problems persist, as shown by the recent loss of her home to foreclosure and several missed car loan payments. Applicant only has acted on most of her debts in the two months before her hearing. Applicant did not meet her burden of persuasion, and her request for eligibility for access to classified information is denied.

Statement of the Case

On March 16, 2011, and June 29, 2012,¹ Applicant submitted Electronic Questionnaires for Investigations Processing (EQIP) to obtain eligibility for access to

¹ Applicant was directed to submit the second EQIP when her current employer took over the contract on which Applicant works and for which she requires a clearance. (Tr. 43 - 45)

classified information required for her work as a defense 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 national interest for Applicant to hold a security clearance.² On December 10, 2014, DOD adjudicators issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed under the adjudicative guidelines³ for financial considerations (Guideline F).

Applicant timely responded to the SOR (Answer) and requested a hearing. The case was assigned to me on March 3, 2015, and I convened a hearing on March 24, 2015. Department Counsel presented Government Exhibits (Gx.) 1 - 5.⁴ Gx. 1, 2, 4 and 5 were admitted without objection.⁵ Applicant testified and proffered Applicant's Exhibits (Ax.) A - D. I held the record open after the hearing to receive from Applicant additional relevant information. The record closed on April 7, 2015, when I received Ax. E - L, which have been admitted without objection. DOHA received the hearing transcript (Tr.) on April 1, 2015.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owes \$47,085 for 26 delinquent or past-due debts (SOR 1.a - 1.z).⁶ Applicant admitted SOR 1.b, 1.d, 1.f - 1.h, 1.n, and 1.q - 1.u. In denying the remaining allegations, Applicant based those responses, in part, on the fact that some of her debts are being collected by a successor party in interest, i.e., a collection agency. Applicant implied at hearing that she did not owe some of the debts alleged because she has never done business with those collection agencies. (Tr. 13 - 17) In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is 45 years old and is employed by a defense contractor as an aircraft electrical mechanic. She has worked at the same job site and in support of the same military organization since 2003, but the company holding the contract for that work has

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

³ 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).

⁴ A list of the Government's exhibits is included in the record as Hearing Exhibit (Hx.) 1.

⁵ Gx. 3, a summary of an interview between Applicant and a Government investigator on May 3, 2011, was offered for identification only and used as a basis for Department Counsel's questioning of the Applicant. I have not relied on Gx. 3 in reaching my decision. It is included in the administrative record in the blue case folder.

⁶ At hearing, Department Counsel moved to amend the SOR by changing the tax year cited in SOR 1.i from "2006" to "2009." This motion was made to conform to the information produced at the hearing (see Directive E3.1.17) and Applicant did not object. I granted the motion. (Tr. 60 - 62)

changed at least three times. Before going to work in the defense contracting industry, Applicant served on active duty in the U.S. Army and National Guard from May 1986 until September 2003. She was trained in avionics communications equipment repair and was honorably discharged as a staff sergeant. (Gx. 1; Gx. 4; Tr. 8, 88)

Applicant was married from October 1992 until divorcing her ex-husband, who is retired from the Army, in February 2004. She has two children, ages 21 and 17. She still supports the younger child. Applicant receives child support drawn from her ex-husband's Army retired pay. (Gx. 1; Gx. 4; Tr. 65, 69)

In both of the EQIPs she submitted, Applicant disclosed several past-due or delinquent debts, including those alleged at SOR 1.a - 1.d, 1.f, 1.h - 1.j, 1.m, 1.n, 1.q, 1.u, and 1.x - 1.z. Credit reports obtained during her background investigation supported all of the alleged debts. Applicant provided her own credit report, dated March 19, 2015. That exhibit also documented some of the alleged debts, including two car repossessions and a home mortgage foreclosure. Applicant's credit report also showed that she is chronically late in paying a car loan to the same creditor listed in SOR 1.c, 1.x, and 1.y. (Gx. 1; Gx. 4; Ax. A)

Applicant bought a house in 2005. She financed the purchase through two mortgages. Both mortgages had variable interest rates. The rates started rising in 2006, around the time Applicant had to have two emergency surgeries, for which she was only partially covered and lost two months of work in recuperation. Thereafter, Applicant struggled to meet her financial obligations. Applicant tried to arrange for modifications of her mortgages but was unsuccessful. Most recently, she engaged the services of a mortgage resolution company and paid them about \$3,500 to arrange a mortgage modification for her. However, Applicant's mortgage was foreclosed in October 2014, and she vacated the house the next month. As alleged at SOR 1.x and 1.y, two cars were repossessed in 2005 and 2006. It is likely she owes the debts alleged as the remainder after resale of both cars. The debt alleged at SOR 1.c for a late car payment appears to be part of the same debt alleged at 1.y. Applicant did not provide information showing she has a basis to dispute any of these debts or that she is in a repayment agreement to satisfy these debts. (Gx. 1; Gx. 2; Gx. 4; Gx. 5; Ax. Ax. F; Tr. 64 - 70, 94 - 104, 115 - 120)

Applicant also accrued medical debts totaling about \$2,009 as a result of her surgeries in 2006. The debts reflected costs not covered by Applicant's medical insurance. In response to the SOR, Applicant stated that she is making arrangements to repay the largest of these debts, alleged at SOR 1.n for \$1,498. On February 26, 2015, Applicant entered into a monthly repayment agreement for this debt. None of the other medical debts have yet been addressed. (Ax. B; Tr. 64)

Applicant also has paid other debts listed in the SOR. On February 17, 2015, she settled the cable television account debt alleged at SOR 1.c for \$514.04, about sixty-six percent of the original debt. On March 3, 2015, she settled the credit card debt at SOR 1.t for \$466.13, about sixty-four percent of the original debt. A week after her hearing on

April 1, 2015, Applicant paid the \$101 cell phone debt at SOR 1.g. Applicant denied owing the \$429 cell phone debt alleged at SOR 1.p to the same cell phone company. That debt appeared in her 2011 credit report, but is not listed in more recent reports. (Gx. 2; Gx. 4; Ax. A; Ax. I; Ax. J; Tr. 79 - 80, 121 - 133)

In 2009, as alleged in SOR 1.i, Applicant incurred a tax lien for unpaid state taxes totaling \$2,682 from the 2001 and 2002 tax years. Applicant averred in response to the SOR that this debt was satisfied in 2012. However, available information shows that the debt is still due. Applicant claimed the debt was incurred when she and her ex-husband divorced in 2003. She thought it was paid because she has been receiving state income tax refunds that would normally be diverted to satisfy such a debt. However, the unpaid taxes are due to the state where she lived until at least 2011, when she submitted her first EQIP. Thereafter, she has filed her state tax returns in her current state of residence and has been receiving those refunds without intervention by the prior state. After the hearing, Applicant applied for an installment agreement with the state where she previously lived to satisfy her tax debts. Applicant received a \$1,713 state tax refund for the 2013 tax year, a \$4,000 federal tax refund, and a \$317 state tax refund for the 2014 tax year. She did not establish that she used any of her refunds to pay any of her debts. (Gx. 1; Gx. 2; Gx. 4; Gx. 5; Ax. D; Ax. G; Tr. 53 - 62, 91 - 94, 138)

As alleged in SOR 1.j, Applicant also incurred a \$2,261 debt for unpaid homeowners association (HOA) dues in relation to the home she lost to foreclosure. The creditor obtained a judgment to collect the debt. Applicant provided an undated letter from the HOA showing the debt has been resolved. The debt no longer appears on Applicant's credit reports. (Gx. 1; Gx. 2; Gx. 4; Gx. 5; Ax. A; Ax. C; Tr. 103 - 104)

Aside from two months in 2006 when she was recuperating from surgery, Applicant has been steadily employed since leaving the Army in 2003. At her hearing, she was asked to summarize her monthly personal finances. She estimated that, after meeting her current expenses, she was living paycheck to paycheck with little money left over each month. As part of her post-hearing submissions, Applicant provided a written personal financial statement (PFS). The PFS showed that Applicant actually has about \$1,000 remaining after expenses, including payments of a car loan, a medical debt, and her state tax debt. (Ax. K; Tr. 34 - 35, 89 - 91, 134 - 138)

Applicant held a security clearance while in the Army. She also has held a security clearance in connection with her civilian employment. Personal and professional references laud her for her character, dependability, and her generosity. (Gx. 1; Gx. 4; Ax. E)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁷ and consideration of the pertinent criteria and adjudication policy in the adjudicative

⁷ See Directive. 6.3.

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 interest⁸ 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.⁹

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.¹⁰

⁸ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁹ See *Egan*, 484 U.S. at 528, 531.

¹⁰ See *Egan*; AG ¶ 2(b).

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*).

I also have considered 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, 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
- (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.

AG ¶ 20(a) does not apply because Applicant's debts are multiple and her financial problems continue. As shown by her recent credit report, Applicant is frequently behind on her third car loan with a creditor to whom she has already lost two repossessed vehicles. She also presented a conflicting view of her current finances, alternately claiming that she lives paycheck to paycheck, then claiming a positive monthly cash flow of about \$1,000. As to AG ¶ 20(b), Applicant faced unplanned financial circumstances when the rise of her ARM interest rates coincided with the loss of two months' income when she unexpectedly underwent two surgeries in 2006. However, Applicant did not establish that in the intervening nine years she made any timely, concerted, or organized effort to resolve her medical debts. She likely did what she could to stay in her house, but in so doing, she incurred other delinquent debts in the form of car loans, cable television bills, credit cards, and cell phone bills. As to her taxes, Applicant incurred those debts while she was still married. Applicant did not take any action to resolve those debts until after her hearing in this matter. Aside from resolution of the HOA judgment, for which little detail is provided, she did not make any of the other debt payments until within two months of her hearing. All of the foregoing shows that Applicant did not act responsibly in addressing financial problems that arose from factors beyond her control. It also precludes application of AG ¶¶ 20(c) and 20(d). AG ¶ 20(e) does not apply. Applicant disputes her responsibility for several of the alleged debts, but she did not corroborate those disputes. Applicant has not mitigated the security concerns about her finances.

In addition to evaluating the facts presented, and having applied 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). Applicant is an honorably-discharged Army veteran with a good reputation at work and in her community. However, without more information showing she has resolved her financial problems, doubts remain about her suitability for access to classified information. Because protection of the national interest is the principle goal of these adjudications, any remaining doubts must be resolved against the individual.

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.d, 1.g, 1.i, 1.p, 1.t:	For Applicant
Subparagraphs 1.a - 1.c, 1.e, 1.f, 1.h, 1.j - 1.o, 1.q - 1.s, 1.u - 1.z:	Against Applicant

Conclusion

It is not clearly consistent with the national interest for Applicant to be eligible for access to classified information. Applicant's request for a security clearance is denied.

MATTHEW E. MALONE
Administrative Judge