



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



In the matter of:)
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[NAME REDACTED]) ISCR Case No. 13-00554
)
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Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

02/25/2014

Decision

MALONE, Matthew E., Administrative Judge:

Applicant mitigated the security concerns raised by her financial problems. Her debts arose through unforeseen circumstances, and she has acted responsibly in addressing her obligations. Clearance is granted.

Statement of the Case

On June 10, 2013, Department of Defense (DOD) adjudicators issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the adjudicative guidelines¹ for financial considerations (Guideline F). Applicant timely responded to the SOR (Answer) and requested a decision without a

¹ 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).

hearing. However, Department Counsel timely requested a hearing,² and the case was assigned to me on October 29, 2013. I convened a hearing on November 21, 2013. Department Counsel presented Government Exhibits (Gx.) 1 - 5, which were admitted without objection.³ Applicant testified and proffered Applicant's Exhibits (Ax.) A and B, which were admitted without objection.⁴ DOHA received the transcript of hearing (Tr.) on December 3, 2013.

Findings of Fact

Under Guideline F, the Government alleged that Applicant had incurred four delinquent debts totaling \$18,829 (SOR 1.a - 1.d). SOR 1.a and 1.b total \$18,524, or 98% of the total debt alleged. Applicant admitted, with explanations and supporting documents (Tr. 12 - 13), the SOR 1.a and 1.b allegations. She denied, with explanations, the other two. In addition to her admissions, I make the following findings of fact.

Applicant is a 46-year-old chief operating officer of a three-person contract services company with various federal contracts. She started working in that capacity in April 2009. For about 17 years before that, Applicant worked in accounting and property management jobs not related to federal agencies. This is her first application for a security clearance. The president of her company sponsored her request for a security clearance so she could help market her company's services to DOD and other agencies, whose contracts require eligibility for access to sensitive information. (Gx. 1; Tr. 5, 82 - 83)

Applicant is engaged to be married in August 2014. She has been married twice before. Her first marriage began in July 1986 and ended by divorce in January 1993. Applicant and her first husband had one child, now 25 years old. Applicant remarried in October 1994. That marriage became abusive and caused them to separate in 2004. A divorce was finalized in March 2009. Applicant and her second husband, who died in March 2011, had two children, now ages 18 and 17. The older child is in college and the 17-year-old is still in high school and living with Applicant. (Answer; Gx. 1; Gx. 3; Tr. 87)

During her separation and divorce from her second husband, Applicant was not focused on their finances. Rather, most of her efforts were focused on the well-being of her children and obtaining full custody. Applicant never received consistent child support after they separated. She and her ex-husband had several credit cards and other accounts they used to buy furniture and to fund other expenses, including travel. When

² As authorized by DoD Directive 5220.6 (Directive), as amended, Section E3.1.7. Department Counsel's request for hearing is included in the record as Hearing Exhibit (Hx.) 1.

³ Tr. 24 - 30.

⁴ Tr. 34 - 37.

they divorced, Applicant understood that her ex-husband would repay their marital debts. (Gx. 3; Tr. 44 - 46, 70 - 71)

On December 4, 2012, Applicant submitted her Electronic Questionnaire for Investigations Processing (EQIP), in which she disclosed that she was liable for the two large credit card delinquencies, alleged in SOR 1.a and 1.b. Neither account was used after 2004. These and other debts were incurred during her second marriage but were left unpaid by her ex-husband before he died. She learned of those delinquencies when she pulled her credit report before completing the EQIP. Applicant also learned of other smaller debts at that time and was able to pay or otherwise resolve them. (Gx. 1; Gx. 2; Gx. 3; Tr. 71, 74 - 80, 93)

Applicant established at hearing that she has entered into monthly payment agreements with the SOR 1.a and 1.b creditors. She also established that the SOR 1.a debt balance is almost \$4,000 less than alleged in the SOR, and that the actual principal amount of the debt is about \$6,000. As to SOR 1.b, Applicant disclosed that the balance past due is about \$1,200 more than alleged in the SOR. She has received offers from both creditors to settle these debts through lump sum payments of between 25 and 50 percent of the total owed. (Answer; Gx. 3; Ax. A)

In response to DOD interrogatories in May 2013, Applicant provided a personal financial statement (PFS). In it, she disclosed that her expenses exceeded her income by nearly \$500. However, in August 2013, Applicant and her youngest child moved in with her fiancé. They have combined their incomes and bank accounts, as well as reducing her expenses. However, she is also supporting her middle child as a full-time college student, and she occasionally sends her oldest child \$200 to help with student loan payments. As of the hearing, Applicant was also awaiting payment of bonuses from her company for successful completion of current contract work. Previous bonuses have averaged about \$5,000. She will be able to settle both the SOR 1.a and 1.b debts for less than the full amount using her bonuses. (Gx. 2; Tr. 86)

Applicant has been unsuccessful in trying to resolve the \$196 medical debt alleged at SOR 1.c. She believes the bill was for a minor surgical procedure and that she already paid it. However, when she called the creditor they had no record of this debt. It does not appear on her most recent credit report. As to the \$109 debt alleged at SOR 1.d, Applicant denies that it is her debt. She has been unable to verify its accuracy. It is listed on her most recent credit report as a bad check. (Answer; Gx. 2 - 5; Tr. 66 - 67)

Applicant has an excellent professional and personal reputation. She is broadly praised for her expertise, hard work, and integrity. Collectively, her references reflect good judgment, reliability, and trustworthiness. (Ax. B)

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 (AG). 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 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.⁷

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

⁵ See Directive. 6.3.

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

⁷ See *Egan*, 484 U.S. at 528, 531.

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

Analysis

Financial Considerations

The Government's 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 (c) (*a history of not meeting financial obligations*). Applicant recently learned she was liable for two large credit card accounts from her second marriage. They have only recently been addressed through monthly payment plans. As to the AG ¶ 19(a) disqualifying condition, all available information reflects an inability rather than unwillingness to repay her debts.

By contrast, the record also requires application of the following AG ¶ 20 mitigating conditions:

(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; and

(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.

Most of the debt at issue here, the credit card delinquencies alleged at SOR 1.a and 1.b, was to be paid by Applicant's late ex-husband. Applicant became aware of the

⁸ See *Egan*; AG ¶ 2(b).

remaining debt when she submitted her EQIP. Unfortunately, she did not have the means to promptly resolve either debt. She did, however, resolve other smaller debts to the best of her ability. After her personal and financial circumstances changed about ten months later, Applicant was able to start making monthly payments to the SOR 1.a and 1.b creditors. The negative cash flow reflected in her PFS has changed because of increased household income and decreased individual expenses. But her individual expenses still demand most of her individual income. Nonetheless, she has incurred no new delinquencies, and she will soon be able to resolve her largest debts when she receives contract completion bonuses. The mitigating conditions at AG ¶¶ 20(b) and (c) apply. On balance, Applicant mitigated the security concerns about her financial problems.

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 46 years old and presumed to be a mature, responsible adult. The positive statements from her company, and from other personal and professional associates support this presumption. Her performance evaluations reflect superior performance and reliability. Applicant's financial problems were beyond her control and not due to any misconduct or irresponsible behavior. She has been candid and forthright about her finances at all times during the current investigation and adjudication of her clearance suitability. The circumstances surrounding the adverse information in her background is not likely to recur, and she has acted promptly and to the best of her abilities to address her financial problems. A fair and commonsense assessment of all available information shows the Government's security concerns have been satisfied.

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.d:	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.

MATTHEW E. MALONE
Administrative Judge