



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 14-02711
)	
Applicant for Security Clearance)	

Appearances

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

06/16/2015

Decision

MALONE, Matthew E., Administrative Judge:

Applicant’s response to the Government’s information was not sufficient to establish that she is working to resolve her past-due debts. Her financial problems arose from and were exacerbated by periods of unemployment. But Applicant also has been steadily employed since 2009, and has not shown that she acted responsibly to resolve her debts. The security concerns about her delinquent debts are not mitigated, and her request for a security clearance is denied.

Statement of the Case

On April 18, 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 23, 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 February 4, 2015, Department Counsel issued a File of Relevant Material (FORM)⁴ in support of the SOR. Applicant received the FORM on March 23, 2015, and was advised he had 30 days from the date of receipt to submit additional information in response to the FORM. The record closed on April 22, 2015, without any response to the FORM from Applicant. The case was assigned to me on May 20, 2015.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owes \$46,026 for 19 delinquent debts (SOR 1.a - 1.s). Applicant denied SOR 1.j and 1.s, averring the debts have been paid in full or closed, respectively. Applicant admitted all of the remaining SOR allegations. (FORM, Items 1 and 3) In addition to her admissions, I make the following findings of fact.

Applicant is 38 years old and employed by a defense contractor as an administrative assistant. She was hired for that job in September 2009 after being unemployed for eight months. She held a similar job beginning in November 2008, but she was laid off due to a lack of work after three months. From October 2003 until September 2007, Applicant was a volunteer organization coordinator. She was then laid off for about four months before finding work as a counselor. She left that job in September 2008 because it was incompatible with her childcare needs. (FORM, Item 5)

Applicant graduated from high school in 1995. She then obtained a bachelor's degree in psychology in June 2000. Applicant was married from August 2003 until April 2009, when the couple divorced. Her ex-husband's substance abuse caused their marriage to fail. Applicant has a 10-year-old child. (FORM, Items 5 and 7).

When Applicant submitted her EQIP, she disclosed she owed about \$1,000 after she was evicted from an apartment for non-payment of rent in October 2010. This debt is listed in SOR 1.e with a balance due of \$2,390. Credit reports obtained by the Government in May 2012 and May 2014 listed this debt, as well as the other debts alleged in the SOR. (FORM, Items 5, 6 and 8).

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 eight exhibits (Items 1 - 8) proffered in support of the Government's case.

On July 10, 2012, Applicant was interviewed by a Government investigator about her financial problems. She and the investigator reviewed the information in her 2012 credit report and the debts that have now been alleged in the SOR. As to the cause of her debts, Applicant cited periods of unemployment as the underlying cause for her financial problems, but stated that she was “currently getting back on track with her finances and is planning to start paying on her debts.” A personal financial statement (PFS) included in her response to interrogatories shows she has less than \$100 remaining each month after paying her monthly expenses, including debt payments on student loans and one credit card. (FORM, Item 7)

Applicant denied owing the \$912 judgment debt alleged at SOR 1.j. She relies on a pay stub she submitted in response to interrogatories showing her pay was garnished for \$945.60 in August 2013. However, as Department Counsel correctly observed in the FORM, no information was provided showing that the wage garnishment was tied to the debt at SOR 1.j. (FORM, Item 7; FORM at p. 3)

Applicant also denied the debt at SOR 1.s. This debt resulted after a car repossession in 2009. Applicant stated in her July 2012 interview that her mother had co-signed the car loan, and that together they had established a \$50 a month repayment plan. Applicant did not support her claim with documentation. (FORM, Items 6 - 8)

In response to the SOR, Applicant averred that she was paying the student loan debts alleged at SOR 1.a - c, and 1.f “on time.” No supporting documentation was provided; however, in response to interrogatories, she provided information claiming that she is paying less than five dollars (\$2.73 to be exact) a month for one student loan and \$240 a month for other student loans totaling \$25,480. Again, she did not support her claims with any corroborating documentation. In the FORM, Department Counsel repeatedly cited the lack of documentary support and suggested the benefit to Applicant’s case if she were to provide such documentation in response to the FORM. Applicant did not submit any information in response to the FORM. (FORM, Item 7; FORM at p. 3, 5 and 8)

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

⁵ Directive. 6.3.

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. 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

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

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).

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 accrued a significant amount of past-due or delinquent debt beginning around 2009. As to her student loans and a car repossession debt, she claims to be making payments, albeit in minimal amounts considering the high balances of each.

I have also considered the following AG ¶ 20 mitigating conditions that may be pertinent to these facts:

(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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) does not apply because Applicant's debt problems are recent, multiple, and continuing. AG ¶ 20(b) is partially applicable, in that Applicant's divorce and periods of unemployment likely had some adverse impact on her finances. However, it is incumbent on Applicant to show what that impact was, and, more importantly, to show that she has acted responsibly in the face of her financial problems. She has not met that burden. Applicant avers that one debt was resolved through involuntary wage garnishment. She also is paying small sums to resolve her student loans. Despite Department Counsel's repeated suggestions, Applicant did not provide sufficient documentation of her resolution efforts or other information that reflects good judgment regarding her finances. Applicant did not show that she has sought any financial counseling or other professional help in resolving her finances. Accordingly, AG ¶ 20(c) does not apply. Finally, AG ¶ 20(d) does not apply because Applicant did not show she has established a meaningful track record of timely efforts to pay or otherwise resolve her past-due debts. The only debt that might actually be resolved was paid through involuntary wage garnishment, not by payments that Applicant initiated. Available information does not show that her finances are under control, as she essentially is breaking even each month between her income and expenses.

In short, Applicant has not acted in any meaningful way to resolve her financial problems since discussing her debt with a Government investigator three years ago. The security concerns raised by information about Applicant's debts have not been mitigated.

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 - 1.s:	Against 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