



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 14-01044
)	
Applicant for Security Clearance)	

Appearances

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

10/31/2014

Decision

MALONE, Matthew E., Administrative Judge:

Applicant’s financial problems were caused by circumstances beyond her control. Her timely response to her financial problems reflects well on her judgment and reliability. Applicant did not incur her debts through any misconduct. Her personal finances will continue to improve, and she is taking steps to ensure she is not likely to incur such financial problems in the future. Her request for a security clearance is granted.

Statement of the Case

On December 10, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain eligibility for a security clearance required for her job with a defense contractor. After reviewing the results of the ensuing background

investigation, DOD adjudicators were unable to determine that it is clearly consistent with the national interest to grant Applicant's request for a clearance.¹

On May 12, 2014, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts which, if proven, raise security concerns addressed through the adjudicative guideline (AG)² for financial considerations (Guideline F). On June 16, 2014, Applicant responded to the SOR (Answer) and requested a decision without a hearing. However, on July 14, 2014, the Government requested a hearing.³

The case was assigned to me on August 5, 2014, and I convened a hearing on September 10, 2014. Department Counsel for the Defense Office of Hearings and Appeals (DOHA) presented Government Exhibits (Gx.) 1 - 3. 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. However, no post-hearing submission was made, and the record closed on September 22, 2014. DOHA received the hearing transcript (Tr.) on September 25, 2014.

Findings of Fact

Under Guideline F, the Government alleged that Applicant accrued 20 delinquent or past-due debts (SOR 1.a - 1.t) totaling \$46,015. Applicant admitted, with explanations, the allegations at SOR 1.a, 1.c - 1.e, and 1.p - 1.t.⁴ She denied, with explanations, the remaining SOR allegations. Based on all available information, I make the following findings of fact.

Applicant is 39 years old and has worked as an accountant or bookkeeper for various employers since about 2004. She has worked in a similar capacity for her current employer since May 2013. (Gx. 1)

Applicant has been married twice. She married her first husband in January 2002, and they divorced in December 2007. They had one child, now age 12. Applicant married her current husband in December 2012. Together, they have two children under the age of three. (Gx. 1)

¹ Required by the Regulation, as amended, and by the Directive, as amended.

² The adjudicative guidelines were implemented by DOD on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

³ Directive, E3.1.7.

⁴ In accordance with Directive E3.1.17, Department Counsel moved at hearing to amend the SOR 1.t allegation to reflect a balance past-due of \$5,555. Without objection, I granted the motion. Applicant was given additional time after the hearing to submit information about that debt; however, no post-hearing submission was received. (Tr. 73 - 75)

When Applicant submitted her EQIP, she disclosed several delinquent or past-due debts comprised mostly of medical bills and student loans. She also disclosed that she had three delinquent credit card accounts and a car repossession from a defaulted auto leasing agreement. A credit report obtained subsequent to her application documented the debts alleged in the SOR. Of her total debt, her medical bills and student loans make up about 83 percent of the total debt at issue here. (Gx. 1; Gx. 3)

Applicant's financial problems arose from a combination of periodic unemployment, lack of medical benefits, and unforeseen medical problems for her, her husband and one of their children. Additionally, her first husband has not met his child support obligations. Applicant's second pregnancy was difficult and required more than the usual medical attention. Applicant had little medical coverage in 2012, and, until she was hired by her current employer, she had insufficient health care coverage. After the child was born, she only had short-term disability benefits for time off from work. Additionally, that child has required surgery for macro-facial issues and for other congenital health issues. Finally, late in 2013, as Applicant was trying to repay her debts, her second husband was diagnosed with type 1 diabetes. His condition causes severe pain in his legs and feet. He has lost significant time at work because his job requires him to be on his feet most of the day and he could not work a full schedule. As a result, his income dropped by about \$10,000. However, he and his employer recently worked out a more flexible schedule under accommodations delineated in the Family and Medical Leave Act (FMLA). Applicant's husband's need for intermittent rest and meal periods during the day is now part of a full-time schedule that will allow him to earn the income he had before he became ill. Applicant's health care benefits will be adjusted in the fall of 2014, when she can make changes during "open season" that will cover all the expenses for her children and her husband. (Answer; Gx. 1; Gx. 2; Ax. D; Tr. 14 - 57)

Applicant has taken college courses at two different schools – one between August 1994 and May 1998, the other between July 2005 and February 2007. She financed all of her studies through student loans. The debts alleged at SOR 1.j - 1.o, which now total \$2,512, are past-due student loans for tuition at her first school. The debts alleged at SOR 1.f - 1.i, which now total \$34,912, are past-due student loans for tuition at the second school. Her monthly payments lapsed when she and her husband encountered the medical issues discussed above. However, Applicant established that she is once again in good standing, having completed loan rehabilitation programs with both lenders. (Gx. 1 - 3; Ax. A - C; Tr. 57 - 59)

As to her credit cards, Applicant has been making regular payments on the debts at SOR 1.b and SOR 1.d since August 2013. Her intention is to continue to pay down these debts as she also repays her student loans. When her husband's income increases, she will begin repaying her medical bills (SOR 1.e and 1.p - 1.r) before moving on to resolve her remaining credit card debts (SOR 1.a, 1.s and 1.t). (Answer; Ax. A; Ax. C; Tr. 64 - 67)

Applicant and her family live completely within their means. With their current medical expenses and her husband's reduced income, they have little money remaining each month after expenses. They use only one 14-year-old car that is paid for, and they do not use credit cards for expenses outside their monthly necessities. (Answer; Gx. 2; Tr. 68 - 69)

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 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

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.

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 has been 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; and

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

The mitigating condition at AG ¶ 20(a) does not apply. Applicant's financial problems continue, in that she is still repaying her debts and other debts remain unaddressed. However, the mitigating condition at AG ¶ 20(b) applies, because her debts arose from a combination of circumstances beyond her control. To her credit, she has been in contact with her creditors and has been able to rehabilitate her student loans. She also has a track record of payments to two of her past-due credit card accounts. Her response to her financial problems suggest that her efforts at resolving her debts will continue. In the same vein, her efforts have earned some consideration

under AG ¶ 20(d). Applicant has done everything possible given the resources she has to repay her past-due debts. Her financial difficulties are not the result of poor judgment or careless management of her money. On balance, I conclude she has presented sufficient information to mitigate the Government's concerns under this guideline.

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's response to her financial problems supports a presumption that she is mature and responsible. She demonstrated a good command of her finances and the challenges she and her husband face as they try to overcome their debts. Although she still has a significant amount of debt to resolve, the presence of unpaid debts does not end this inquiry. I also have assigned a great deal of weight to her demonstrated good judgment and resolve in this matter. A fair and commonsense assessment of all available information shows that Applicant's finances no longer present an unacceptable security concern.

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.t:	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