



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 14-02140
)	
Applicant for Security Clearance)	

Appearances

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

02/26/2015

Decision

MALONE, Matthew E., Administrative Judge:

Applicant’s financial problems arose from circumstances beyond her control and are not indicative of her judgment and reliability. Although she still struggles to resolve her past debts, Applicant has not incurred any new liabilities, she has paid those debts that are within her means to pay, and she has successfully disputed several debts listed on her credit reports. Her current finances allow her to meet her current obligations and do not present a security concern. Her request for eligibility for access to classified information is granted.

Statement of the Case

On December 17, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain eligibility for access to 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.¹ On July 11, 2014, DOD adjudicators issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed under the adjudicative guidelines² for financial considerations (Guideline F).

Applicant timely responded to the SOR (Answer) and requested a decision without a hearing. On August 25, 2014, Department Counsel for the Defense Office of Hearings and Appeals (DOHA) timely requested a hearing. The case was assigned to an administrative judge, who scheduled a hearing for October 23, 2014; however, Applicant was granted a continuance on October 16, 2014.

The case was transferred to me on November 18, 2014, and I convened a hearing on December 17, 2014. Department Counsel presented Government Exhibits (Gx.) 1 - 3.³ Applicant testified and proffered Applicant's Exhibits (Ax.) A and B, and I held the record open after the hearing to receive from Applicant additional relevant information. The record closed on December 22, 2014, when I received Ax. C - E. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on January 2, 2015.

Findings of Fact

Under Guideline F,⁴ the Government alleged that Applicant owes \$25,948 for 15 delinquent or past-due debts (SOR 1.a - 1.o). Applicant admitted, with explanations, SOR 1.a - 1.c, 1.f, 1.g, and 1.i - 1.m. She denied, with explanations, SOR 1.d, 1.e, 1.h, 1.n and 1.o. In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is 40 years old and is employed as materials planner at a defense contractor, where she has worked since November 2013. Applicant earned a bachelor's degree in 1997, and she worked in sales and customer service jobs. Beginning in 2007, Applicant was laid off and rehired at least three times. Until she was hired for her current job, Applicant was either unemployed or significantly underemployed. In her current position, Applicant has established an excellent reputation for superior performance, professionalism, and integrity. Her superiors have praised her for being

¹ Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive), as amended.

² 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).

³ A list of the Government's exhibits is included in the record as Hearing Exhibit (Hx.) 1.

⁴ The original SOR alleged 15 unpaid debts, but erroneously presented them under Guideline E (Personal Conduct). Department Counsel moved to amend the SOR to change the security guideline at issue from Guideline E to Guideline F (Financial Considerations). I granted the motion, which is included as Hx. 2. (Tr. 10 - 12)

dedicated to her work and motivated to perform at a high level. (Answer; Gx. 1; Gx. 3; Ax. D; Ax. E; Tr. 9 - 13, 51 - 54)

Applicant has been married twice. Her first marriage began in 1997 and ended by divorce in 2000. Applicant and her current husband have been married since December 2007. (Answer; Gx. 1; Tr. 45 - 46)

When Applicant submitted her EQIP, she disclosed most of the debts alleged in the SOR. Credit reports obtained by the Government further documented all of the debts alleged. However, Applicant has challenged the validity of the debts at SOR 1.d, 1.g, 1.h, 1.j, and 1.l. Also, the creditor listed in SOR 1.e filed suit to enforce a debt claimed against Applicant, but she prevailed and the suit was dismissed as without basis. Applicant is also disputing the debt alleged at SOR 1.c as the result of a fraudulent automated withdrawal of funds from her bank account. Finally, Applicant has paid the debts at SOR 1.n and 1.o. (Answer; Gx. 3; Ax. A - C; Tr. 36 - 44, 58 - 65)

During periods of unemployment, Applicant received unemployment benefits, but was unable to meet all of her obligations. For example, she lost a car to repossession in 2009 after paying her car loan as required for about three years. She believes the remaining debt after resale of the vehicle is the debt alleged at SOR 1.a, but she has never been contacted by the creditor for collection and questions the accuracy of the reported balance due. (Answer; Gx. 2; Gx. 3; Tr. 33 - 34, 55 - 58)

Applicant's current husband is a disabled Navy veteran and receives a monthly disability payment. However, his ability to contribute to the household income is limited because most of his money is used to pay for medical co-payments and prescription medications. As the principle earner in the household, Applicant's monthly take-home pay is about \$2,200. After paying rent and other regular expenses, she has less than \$200 remaining each month. (Answer; Gx. 3; Tr. 44 - 47, 68 - 71)

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

⁵ See 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. 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 any reasonable doubt about an applicant's suitability for access in favor of the Government.⁸

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

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

⁷ See *Egan*, 484 U.S. at 528, 531.

⁸ See *Egan*; AG ¶ 2(b).

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 clearly requires an emphasis on Applicant's inability to pay rather than any suggestion of her unwillingness to resolve her debts.

I also conclude that the record supports 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

(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.

Applicant paid the debts at SOR 1.n and 1.o. She also successfully disputed the debts at SOR 1.d, 1.e, 1.g, 1.h, 1.j, and 1.l. The debt at SOR 1.a is the most significant remaining debt attributable to her; however, she paid her car loan as required for several years before defaulting when she was unemployed. She has been unable to identify the exact amount owed and the creditor does not appear to be pursuing this five-year-old debt. Much of her financial difficulty arose when she was repeatedly laid off and was either unemployed or underemployed for six years before obtaining her current job. Applicant's current salary and her husband's medical expenses salary leave her little with which to resolve her remaining debts, but she has demonstrated a willingness to resolve those debts within her means to do so.

Applicant's failure to pay her outstanding debts is not an accurate reflection of her judgment and reliability, and there is little likelihood she would resort to improper or illegal conduct to resolve her debts. 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 has been candid about her debts, and she has dealt with her financial difficulties in a way that reflects positively on her judgment and reliability. The information about her character and reliability also supports a conclusion that Applicant is a mature, responsible individual who can be trusted with sensitive information. On

balance, she has mitigated the security concerns raised by the Government's information.

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.o: For Applicant

Conclusion

It is clearly consistent with the national interest for Applicant to be eligible for access to classified information. Applicant's request for a security clearance is granted.

MATTHEW E. MALONE
Administrative Judge