



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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SSN: -----) ISCR Case No. 07-08405
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Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Esquire, Department Counsel
For Applicant: *Pro Se*

April 2, 2008

Decision

MALONE, Matthew E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's request for a security clearance is denied.

On October 16, 2006, Applicant submitted an Questionnaire for Sensitive Positions (SF 86) to request a security clearance for her employment with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to grant Applicant's request. On October 10, 2007, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the Revised Adjudicative Guidelines (AG)² under Guideline F (financial considerations).

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

² Adjudication of this case is controlled by the Revised Adjudicative Guidelines, approved by the President on December 29, 2005, which were implemented by the Department of Defense on September 1, 2006. Pending official revision of the Directive, the Revised Adjudicative Guidelines supercede the guidelines listed in

Applicant timely responded to the SOR and requested a hearing. The case was assigned to an administrative judge on December 27, 2007. On January 4, 2008, the case was re-assigned to me, and I scheduled a hearing to be held on January 23, 2008. The parties appeared as scheduled. The government presented four exhibits (Gx. 1 - 4). Applicant testified in her own behalf. DOHA received the transcript (Tr.) on January 31, 2008. Additionally, I left the record open to allow Applicant to submit additional relevant information; however, she failed to make any post-hearing submission and the record closed on February 15, 2008.³

Procedural Issues

1. Applicant did not receive DOHA's Notice of Hearing, which is dated January 7, 2008, until January 15, 2008, less than 15 days before the hearing date. At the hearing, she waived her right to 15 days of advance notice as provided by Section E3.1.8 of Enclosure 3 to the Directive. (Tr. 17 - 19)

2. At hearing, Department Counsel moved to amend SOR ¶ 1.d to conform to the evidence of record.⁴ Specifically, the proposed amendment substituted the words "Park Dans/ Allied for MCI" in place of the words "an unknown medical provider." The motion was supported by the information in Gx. 4, page 2, and Applicant did not object to the government's request. Accordingly, I granted the motion. (Tr. 10 - 12, 37 - 42)

Findings of Fact

Under Guideline F, the government alleged in SOR ¶¶ 1.a - 1.q that Applicant was delinquent on 17 debts totaling \$11,234. Eight of the debts (SOR ¶¶ 1.a - 1.d, 1.i, 1.j, 1.m, 1.n) had been referred to collection agencies, four had been enforced through judgments against Applicant (SOR ¶¶ 1.e - 1.h), and the remaining five had been charged off as business losses (SOR ¶¶ 1.k, 1.l, 1.o - 1.q).

Applicant responded to the SOR on November 8, 2007, and admitted all of the SOR allegations, but did not say if she wanted a hearing or not. On December 7, 2007, apparently in response to DOHA's request she specify her intentions, she submitted a revised answer whereby she admitted owing a total of \$3,691 for the debts listed in SOR ¶¶ 1.a - 1.c, 1.e, 1.f, and 1.k - 1.p (the total for these debts as alleged in the SOR was \$3,114). She denied owing \$7,543 for the debts listed in SOR ¶¶ 1.g - 1.j, and 1.q (the total for these debts as alleged in the SOR was \$6,447). At hearing, she admitted owing the debt listed in SOR ¶ 1.d as amended. After a thorough review of the pleadings, transcript, and exhibits, I make the following additional findings of fact.

Enclosure 2 to the Directive, and they apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

³ Tr. 71 - 72, 75 - 77, 109 - 110.

⁴ See, Section E3.1.17 of the Directive's Enclosure 3.

Applicant is 43 years old and has been employed by a defense contractor since October 2006 as an assembly operator. She previously worked as a production worker for an optical cable manufacturer from October 2003 until October 2006. Prior to that, she was unemployed due to a lay off from July 2002 until October 2003. (Gx. 1; Tr. 86 - 88)

Applicant was married from December 1986 until obtaining a divorce in January 2002. Of the 15 years they were together, Applicant's husband abused drugs, particularly crack cocaine, for at least 12 years. They have four children together, ages 23, 20, 19, and 18, all of whom still live with Applicant. Applicant's 20-year-old son is mentally challenged and is still in high school, as are her two youngest children. Her ex-husband provides no support, was a financial and emotional drain on the family, was recently released from jail, and is out of work. (Tr. 48, 80 - 83, 102 - 103)

During and after the marriage, Applicant incurred several delinquent debts. She has often had to borrow from her mother to make ends meet. She estimates she has received from her mother about \$15,000 over the past 13 years, and she tries to pay her back every month. Applicant also uses about half her tax refund each year to repay her mother. (Tr. 83 - 85) Applicant also liquidated her 401(k) account from her previous employer in late 2007 because she was behind on her mortgage for August through October 2007. In January 2008, she finished repaying the arrearage in addition to her regular monthly payments. (Tr. 65 - 68)

Of the debts listed in the SOR, Applicant has repaid the debts in SOR ¶¶ 1.g - 1.j, and 1.q. She also claims to have made repayment arrangements with her remaining creditors, but has not provided documentation of those arrangements.

Applicant currently makes about \$14 an hour, and her take home pay each month is about \$2,000. She anticipates being eligible to earn the maximum \$17 hourly rate by June 2008. Each month, she pays \$440 for her mortgage, \$360 for her car loan, and another \$500 on insurance and utilities. After food and other expenses, she has about \$500 remaining each month. Applicant's check for her December car payment bounced. (Tr. 47, 90 - 97)

Applicant and her children still live in the house she and her husband bought in 1995 for \$46,000. She estimates it is worth about \$75,000 today. She would like to use the equity in her house to get money to pay her debts, but her credit rating is too low.

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the Revised Adjudicative Guidelines (AG).⁵ Decisions must also reflect consideration of the factors

⁵ Directive. 6.3.

listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole person” concept, these factor 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. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guideline F (financial considerations) at AG ¶ 18.

A security clearance decision is intended 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. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgement, 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.

The security concern about Applicant's finances, as stated in AG ¶ 18, is that

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*; Revised Adjudicative Guidelines, ¶ 2(b).

[f]ailure 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.

The government presented sufficient information to support the allegations in SOR ¶¶ 1.a - 1.q that Applicant was responsible for seven delinquent debts totaling \$11,234. Most of the debts reflected in the credit reports submitted by the government were incurred in or before 2002. Available information about Applicant's finances supports application of the disqualifying conditions listed in AG ¶ 19(a) (inability or unwillingness to satisfy debts) and AG ¶ 19(c) (a history of not meeting financial obligations).

In response to the government's information, Applicant showed she has paid the debts listed in SOR ¶¶ 1.g - 1.j, and 1.q totaling \$6,447, or more than half the total debt listed in the SOR. She also established that most of her past delinquent debts were left over from her marriage to a drug abuser who has failed to support his family, and were exacerbated by a year of unemployment in 2002 and 2003. Accordingly, I have considered the mitigating conditions at AG ¶ 20(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 AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts). As to her repayment efforts, it appears Applicant has been trying to repay or otherwise resolve her debts over the years and AG ¶20(d) applies here. As to AG ¶ 20(b), although Applicant is entitled to some mitigation here, the benefit is reduced by the passage of more than five years since her marriage ended, and by her continued employment since 2003.

Also to be considered here is evidence of her own poor financial management. Despite apparently having a significant positive cash flow each month, Applicant failed to pay her mortgage for several months last year, bounced a check for her car payment in December 2007, and still relies on help from her mother to help make ends meet. Further, I have considered here claims that she has made repayment arrangements with her remaining creditors. However, despite being afforded extra time after the hearing, she provided no supporting documentation of the agreements or of any payments made. On balance, I conclude Applicant has failed to mitigate the security concerns about her finances.

Whole Person Concept.

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guideline F. I have also reviewed the record before me in the context of the whole person factors listed in AG ¶ 2(a). Applicant is a mature adult who has had to support her family through adverse circumstances. However, despite progress made in resolving her past due debts, available information about Applicant's

finances present an unacceptable risk to the national interest were she to be granted access to classified information at this time. Without tangible signs of payment or other resolution of his debts, a fair and commonsense assessment⁹ of all of the information bearing on Applicant's finances shows there are still doubts about her ability to protect the government's interests as her own. Much of the information that would support a conclusion that her finances are improving – future pay raises, use of tax refunds to repay her debts, and the existence of settlement agreements with her remaining creditors – is speculative at best. As such, doubts remain about her current finances and her ability to avoid such problems in the future. Because the protection of the national interest is paramount in these determinations, such doubts must be resolved in favor of the national interest.¹⁰

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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	For Applicant

⁹ See footnote 5, *supra*.

¹⁰ See footnote 8, *supra*.

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

MATTHEW E. MALONE
Administrative Judge