



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 07-09187

Appearances

For Government: Francisco Mendez, Esquire, Department Counsel
For Applicant: *Pro Se*

May 21, 2008

Decision

MALONE, Matthew E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant has failed to mitigate the security concerns raised by the government's information about her finances and personal conduct. Accordingly, her request for a security clearance is denied.

On January 5, 2005, Applicant submitted a Security Clearance Application (SF 86) to request or renew 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 28, 2007, DOHA issued to Applicant a Statement of Reasons (SOR). The SOR specified the basis for DOHA's decision – facts which raise security concerns addressed in the Directive under Guideline F (financial considerations) and Guideline E (personal conduct) of the Revised Adjudicative

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

Guidelines (AG).² More specifically, the government alleged that Applicant owed \$39,521 for 17 delinquent debts (SOR ¶¶ 1.a - 1.q). It also alleged Applicant deliberately falsified her SF 86 by answering “no” to question 35 (property repossessions in the last seven years), question 38 (delinquencies greater than 180 days past due in the last seven years), and question 39 (currently more than 90 days past due on any debt) (SOR ¶¶ 2.a - 2.c). On December 17, 2007, Applicant answered the SOR and admitted without explanation all of the allegations therein. She requested a decision without a hearing.

On January 8, 2008, DOHA Department Counsel submitted a file of relevant materials (FORM)³ in support of the government’s preliminary decision. Applicant received the FORM on February 18, 2008, and was given 30 days to file a response to the FORM. She submitted nothing before the deadline, and the case was assigned to me on May 2, 2008.

Findings of Fact

Applicant’s admissions in response to the SOR are admitted as fact. After a thorough review of the pleadings, Applicant’s response to the SOR, and the government’s FORM and the exhibits therein, I make the following additional findings of fact.

Applicant is 29 years old and has been employed by a defense contractor since December 2004. Since April 2000, she has worked for 13 different employers as an “applications packager.” Her current job title is “package scripter,” but there is no description of what type of work this involves. Applicant separated from her husband on or about January 1, 2004, after being married since June 2001. She was previously investigated for a security clearance for a job she had with the Federal Bureau of Investigations (FBI) in 1996 and 1997. (FORM, Item 4)

After Applicant submitted her SF 86, government investigators obtained two reports of her credit history (FORM, Items 5 and 6), which showed Applicant owed approximately \$40,000 for 16 delinquent debts (SOR ¶¶ 1.a - 1.o, 1.q) accrued between

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 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 See Directive, Enclosure 3, Section E3.1.7. The FORM included ten documents (Items 1 - 10) proffered in support of the government’s case. I have specifically not considered Items 9 and 10, as they pertain to criminal conduct not alleged in this case. Department Counsel proffered that the information “undercuts any potential mitigation Applicant may submit in response to this FORM.” (FORM, page 4) However, that assertion does not provide a sufficient basis for admissibility under the Directive or the Federal Rules of Evidence (FRE), which serve as a guide in these proceedings (Directive, E3.1.19). Because there is no showing here that the criminal conduct involved “deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust was a matter of financial misconduct” (AG ¶ 19(d)), it is excluded as irrelevant (FRE 401 and 402) and unduly prejudicial and inflammatory (FRE 403).

2003 and 2006. One of the debts listed is for an unpaid auto loan for which a vehicle was repossessed. As of January 2003, there was a balance past due of \$2,587 on a \$23,000 loan. Credit reports obtained by DOHA adjudicators (FORM, Items 7 and 8) revealed an additional unpaid debt for \$82 (SOR ¶ 1.p) accrued in 2007, and showed Applicant still owed the debts reflected in earlier reports.

When Applicant submitted her SF 86 in 2005, she answered “no” to all of the questions about her finances in the past seven years. (FORM, Item 4) She has not explained why she failed to disclose her debts greater than 90 or 180 days past due, or that her car was repossessed in 2003.

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).⁴ Decisions must also reflect consideration of the factors 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 E (personal conduct) at AG ¶ 15 and Guideline F (financial considerations) at AG ¶ 18.

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁵ 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

⁴ Directive. 6.3.

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

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.⁶ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. Therefore, the government 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.⁷

Analysis

Financial Considerations.

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

[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.

Applicant has admitted without explanation all of the SOR allegations. Accordingly, there are no controverted issues of fact. Further, the government presented sufficient reliable information to support the allegations in SOR ¶¶ 1.a - 1.q that Applicant has, since 2003, accrued 17 delinquent debts totaling about \$40,100. According to a January 2008 credit bureau report, the debts appeared to be still unpaid. These facts support 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).⁸

The government satisfied its burden of producing sufficient reliable evidence to support the SOR. In response, Applicant has submitted no information that would

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

⁸ Department Counsel urges application of the disqualifying conditions at AG ¶ 19(b) (indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt) and AG ¶ 19(e) (consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis). (FORM, page 4) However, because no statement was taken from Applicant either by investigators or through interrogatories, there is no information about how these debts arose, about her current income (e.g., a Personal Financial Statement), or about what, if anything, she is doing about the debts. Accordingly, there is no basis for application of AG ¶¶ 19(b) and 19(e).

support application of any of the mitigating conditions under this guideline. Accordingly, she has not mitigated the security concerns about his finances.

Personal Conduct.

As stated in AG ¶ 15, “[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.” The Applicant admitted without explanation the allegations in SOR ¶¶ 2.a - 2.c that she deliberately falsified her SF 86 when she answered “no” to SF 86 questions 35 (repossessions), 38 (debts greater than 180 days delinquent) and 39 (debts greater than 90 days past due), respectively. At the time she signed her SF 86, thereby certifying that her answers were true, she had owed for more than 180 days approximately \$19,000 for the debts listed in SOR ¶¶ 1.a, 1.b, 1.g, 1.l, 1.m, 1.n, and 1.o (reference in SOR ¶¶ 2.ab and 2.c to the debt in SOR ¶ 1.p is concluded for Applicant as that debt was accrued nearly two years after the SF 86 was submitted). She had also had a car repossessed in 2003, as alleged in SOR ¶ 1.l.

Applicant's debts are significant and required a positive response to questions 35, 38, and 39. Absent some explanation by Applicant (which she has not provided) to show mistake or some other information probative of her intent at the time she signed the SF 86, it must be concluded she knowingly and willfully falsified her answers in the SF 86 as alleged in SOR ¶¶ 2.a - 2.c. The facts and circumstances presented here require application of the disqualifying condition listed at AG ¶ 16(a) (deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities).

The government satisfied its burden of producing sufficient reliable evidence to support the SOR. In response, Applicant has submitted no information that would support application of any of the mitigating conditions under this guideline. Accordingly, she has not mitigated the security concerns about her personal conduct.

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). Aside from information about her age, education, and employment history contained in her SF 86, there is nothing on which to base application of any of these factors. At 29 years old, she is presumed to be a mature adult. However, there is no available information about her current finances, the reasons she has not paid the listed debts, why she will not incur delinquencies in the

future, or why she apparently falsified her SF 86. A fair and commonsense assessment⁹ of all of available information bearing on Applicant's finances and candor shows there are doubts about her ability or willingness to protect the government's interests. Because the protection of the national interest is paramount in these determinations, these 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, Financial Considerations: AGAINST APPLICANT

Subparagraphs 1.a - 1.q: Against Applicant

Paragraph 2, Personal Conduct: AGAINST APPLICANT

Subparagraphs 2.a - 2.c: Against Applicant

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

⁹ See footnote 4, *supra*.

¹⁰ See footnote 7, *supra*.