



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



In the matter of:)
)
) ISCR Case No. 07-11482
)
)
Applicant for Security Clearance)

Appearances

For Government: Kathryn D. MacKinnon, Esquire, Deputy Chief Department Counsel

For Applicant: *Pro Se*

December 19, 2008

Decision

O'BRIEN, Rita C., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the security concerns raised by under the guidelines for financial considerations. Accordingly, her request for a security clearance is granted.

Applicant requested a security clearance by submitting an Electronic Questionnaire for Investigations Processing (e-QIP) on July 30, 2006. 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.

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

On March 13, 2008, DOHA issued to Applicant a Statement of Reasons (SOR), which specified the basis for its decision: security concerns addressed in the Directive under Guidelines F (Financial Considerations) of the Revised Adjudicative Guidelines (AG).²

Applicant received the SOR on April 28, 2008. She signed her Answer on June 2, 2008. In response to a request from DOHA that she clarify her Answer, she submitted a second answer on July 11, 2008, in which she admitted to all allegations in the Statement of Reasons except the following: ¶¶ 1.b., 1.d. through 1.f. and 1.p. through 1.u. She also requested a hearing before an administrative judge.

Department Counsel was prepared to proceed on August 29, 2008, and the case was assigned to me on September 3, 2008. DOHA issued a Notice of Hearing on October 23, 2008 and I convened the hearing as scheduled on November 13, 2008.

During the hearing, the government offered nine exhibits, which were marked as Government Exhibit (GE) 1 through 9 and admitted without objection. Applicant testified, presented the testimony of three witnesses, and offered five exhibits, which were marked as Applicant's Exhibit (AE) A through E and received without objection. I held the record open to allow Applicant to submit additional documentation. She timely submitted three documents, which were forwarded without objection by Department Counsel. The documents were admitted as AE F, G and H on November 26, 2008, and the record closed on that day. DOHA received the transcript (Tr) on November 21, 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 Statement of Reasons, and the record evidence, I make the following additional findings of fact.

Applicant, 39 years old, graduated high school and completed one year of college. She married in 1993, and is currently separated. She and her husband have two daughters, 15 and 22 years of age, and two sons, 14 and 16 years old. Three of the children live with Applicant, and one is married and lives on her own (Tr. 67; 95). Two are special-needs children (Answer). Applicant has worked for the same federal government agency for the past 18 years, 10 years as a government employee, and 8 years as an independent contractor (Tr 26). She began in a secretarial position and progressed to her current position in Information Technology. Her first security clearance was granted approximately eight years ago.

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. The Revised Adjudicative Guidelines supersede 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.

Applicant's gross income in 2007 was \$58,000 (Tr 73). Her net monthly income is \$3200, or approximately \$39,000 annually. Her monthly expenses (rent, utilities, car payment, communications, insurance, school expenses, food and clothing) amount to approximately \$1,600. Until two weeks before the hearing, she also paid \$300 per month toward a federal tax lien and had no monthly remaining income after she met her expenses. She now has \$300 per month available since she has completed paying the tax lien. She plans to use the money to pay her remaining debts (Tr 63-71).

While Applicant and her husband were living together, she did not have problems with delinquent debt. She was able to obtain a truck loan in her own name in 2003, and was pre-approved for a home loan in 2004 (Tr 76 - 78). However, during the period 1994 to 2005, Applicant's husband physically abused and threatened her. She left several times, living in five different locations since 1995 (Tr 74). She reconciled each time because her husband threatened Applicant with death, or bodily harm to her or her mother, if she left (Tr 60-61).

Applicant obtained the first Protective Order against her husband in June 2005 (AE C). The second and third Protective Orders were obtained in November 2005 by Applicant and her daughter when Applicant's husband fought with them and threw his daughter down a flight of stairs (AE D and E; Tr 33-35). He then disappeared, taking the younger children with him. Applicant contacted the police who forced him to return the children. Her husband was incarcerated for two weeks (Tr 79). Since Applicant and her husband's final separation in 2005, Applicant has been the sole support of the children, as she has been unable to locate him to obtain child support. The necessity to support her children without financial help from her husband has resulted in numerous debts becoming delinquent.

Applicant's supervisor, a friend and a co-worker testified that Applicant is an outstanding and dependable worker. Each of the witnesses was aware of Applicant's financial problems and described her as a caring mother who has been struggling to do her best under difficult circumstances (Tr. 88-98).

In 2001, Applicant's husband filed a Chapter 13 bankruptcy petition in an effort to save his house. He was told his income alone would be insufficient to meet the payment plan. He asked Applicant to join the petition, which she did. Her understanding was that the bankruptcy was his, and her credit would not be affected because no debts of hers were listed in the petition (Tr 43). Subsequently, she contacted the mortgage company and obtained a modification to their mortgage loan, so that the bankruptcy was not necessary. Applicant's husband voluntarily dismissed the bankruptcy petition. She denies that it was dismissed for failure to confirm the plan, as stated in the petition (GE 5).

Applicant's husband refused to allow her to drive the one car they owned. As her credit was good, Applicant purchased a truck. Her husband wanted to drive it and it caused frequent arguments. To resolve the conflict, Applicant purposefully allowed two payments to lapse so that the company would take back the truck. Applicant testified,

They came and got the truck. Once he found out that they came and got the truck back, he put a gun to my head and threatened to kill me if I didn't get the truck back (Tr 29-30).

.Applicant made the payments and the truck was returned. When she left after this incident, she left the truck. Her husband said he would keep up the loan payments, but failed to do so. The truck was ultimately repossessed, leaving a deficiency (allegation 1.o.).

In 2007, Applicant contacted a credit counseling service, which developed a plan to pay nine debts with a monthly payment of \$141 per month (GE 3). She did not begin the plan because she could not afford both the proposed payment, her other monthly expenses, and her \$300 per month payment to satisfy the federal tax lien (Tr. 51). Applicant does not use credit cards (Tr 72).

The current status of the alleged debts is as follows:

allegation 1.a. - 1.j. - medical debts - co-pays for doctor visits as well as several hospital visits; unpaid (Tr 57-59)

allegation 1.k. - 1. n. and 1.r. - utilities - Applicant's husband remained in house after Applicant left with children; he promised to pay these utilities that were in Applicant's name but failed to do so; unpaid (Tr 56)

allegation 1.o. - truck loan - deficiency balance after truck Applicant purchased was repossessed when her husband failed to maintain payments; unpaid (Tr 29-30; 55-56)

allegation 1.p. - Federal tax lien - Paid/ AE G

allegation 1.q - MD state tax lien - Applicant disputes; has contacted the state tax office but the dispute has not been resolved (Tr 52-54);

allegation 1.s. - retail goods debt - Applicant disputed debt in the past and it was removed from her credit report; Government agrees Applicant does not owe debt (Tr 73)

allegation 1.t. and 1.u. - Chapter 13 bankruptcy filing and dismissal - see discussion at page 3.

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).³ Decisions must also reflect consideration of the "whole person" factors listed in ¶ 2(a) of the Guidelines.

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.

³ Directive. 6.3.

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).

A security clearance decision is intended only to resolve the questions of whether it is clearly consistent with the national interest⁴ 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.⁵ 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 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.⁶

Analysis

Guideline F (Financial Considerations)

AG ¶18 expresses the security concern pertaining to financial considerations:

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 over-extended 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.

Disqualifying condition AG ¶19a (*inability or unwillingness to satisfy debts*) applies. Applicant had good credit while she lived with her husband, but when she was forced to leave him, she was unable to keep up with the debts on a single salary. AG ¶19c (*a history*

⁴ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵ See *Egan*, 484 U.S. at 528, 531.

⁶ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

of not meeting financial obligations) also applies. Applicant's credit bureau reports show that she has had delinquencies, primarily since 2005 when she left her husband for the last time (GE 2), demonstrating a history of failing to meet financial obligations. There is no evidence of other disqualifying conditions such as frivolous spending, or debts related to alcoholism, gambling or deceptive practices.

The Financial Considerations guideline also contains factors that can mitigate security concerns. Mitigating conditions AG ¶ 20b and AG ¶ 20e apply, and AG ¶ 20c and AG ¶ 20d apply in part.

I find that AG ¶ 20b applies (*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*). Applicant tried to maintain her family in the face of a physically and mentally abusive husband who threatened her and her mother, and threw his own daughter down a flight of stairs. After obtaining a total of three Protective Orders against him, Applicant finally felt that she had to leave for her own safety and that of her children. Once the family was safe, she was faced with supporting five people on her own salary, as her husband could not be found and did not contribute child support. Despite these hardships, she has acted responsibly, maintaining her employment, keeping her family together and making efforts to deal with her debts.

In addition, although numerous debts are in Applicant's name, they are delinquent because of her husband's actions, which she could not control. He forced her to retrieve the truck she returned to the dealer (allegation 1.o.), and when she allowed him to keep it, he failed to make the payments. As to the debts at allegations 1.k., 1.l., 1.m., 1.n., they were utilities that her husband failed to pay after she left him, and allowed him to remain in the house. Although these debts were in Applicant's name, it was her husband who was using the house and the truck. Yet, given his past abuse, she could not force him to pay them. The debts amount to approximately \$7,500.

AG ¶ 20(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*) applies partially. Applicant contacted a financial counseling service in October 2007, long before the SOR was issued. In the payment plan, she included nine debts, all of which would have been paid by the end of 2009 (GE 3). However, Applicant did not have a sufficient monthly remainder to pay the \$141 per month that would have been required, and she could not carry out the plan. I find some mitigation under AG ¶ 20(c) because even though the payment plan was not workable, Applicant made a good-faith effort to find a way to resolve her debts.

AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies. Applicant provided documentation (AE G) that she paid the federal tax lien of \$7,898 (allegation 1.p.). Applicant now has \$300 per month available that formerly was applied to that debt, and hopes to set up a new plan with the credit counseling service using that money to pay the remaining debts (Tr 41).

AG ¶ 20(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*) also applies. Applicant disputes the debts for state taxes and retail goods and has contacted both creditors. Although she has been unable to resolve the state tax lien at this point, she did contact the credit reporting agency about the incorrect retail goods debt, and it was removed from her credit report. In addition, it does not appear on her current credit report (GE 4). I find, and government agrees, that Applicant does not owe this debt (Tr 73).

Whole Person Analysis

Under the whole person concept, an administrative judge must evaluate the Applicant's security eligibility by considering the totality of the Applicant's conduct and all the circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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) 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole person concept. Under each guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant previously had solid credit as shown by her ability to obtain a truck loan and pre-approval for a home loan. Her landlords attest to her reliability as a tenant (AE A and B). Her witnesses confirm her strong work ethic and responsibility. Applicant has been employed by the same agency for 18 years, demonstrating a stable work history. To keep herself and her children safe, she left her abusive husband. But supporting herself and four children, including two special-needs children, on her single salary, was not possible without incurring delinquencies. A significant portion of her debt was beyond her control, including \$7,500 that is due to her husband's actions. She has paid the \$7,898 tax lien, does not owe the debt for retail goods, and does not use credit cards. Applicant has had a difficult time over the past 10 years, and has demonstrated strong character in the face of significant hardship. Her trustworthiness and reliability are not at issue.

Overall, the record evidence satisfies the doubts raised about Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the

security concerns arising from the cited adjudicative guideline.

Formal Findings

Paragraph 1, Guideline F	For Applicant
Subparagraph 1.a.:	For Applicant
Subparagraph 1.b.:	For Applicant
Subparagraph 1.c.:	For Applicant
Subparagraph 1.d.:	For Applicant
Subparagraph 1.e.:	For Applicant
Subparagraph 1.f.:	For Applicant
Subparagraph 1.g.:	For Applicant
Subparagraph 1.h.:	For Applicant
Subparagraph 1.i.:	For Applicant
Subparagraph 1.j.:	For Applicant
Subparagraph 1.k.:	For Applicant
Subparagraph 1.l.:	For Applicant
Subparagraph 1.m.:	For Applicant
Subparagraph 1.n.:	For Applicant
Subparagraph 1.o.:	For Applicant
Subparagraph 1.p.:	For Applicant
Subparagraph 1.q.:	For Applicant
Subparagraph 1.r.:	For Applicant
Subparagraph 1.s.:	For Applicant
Subparagraph 1.t.:	For Applicant
Subparagraph 1.u.:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is granted.

RITA C. O'BRIEN
Administrative Judge