



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



In the matter of:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 08-00024

Appearances

For Government: D. Michael Lyles, Esquire, Department Counsel
For Applicant: *Pro Se*

February 9, 2009

Decision

MALONE, Matthew E., Administrative Judge:

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

On April 2, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for her job 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 allow Applicant access to classified information. On August 12, 2008, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which

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

raise security concerns addressed in the Revised Adjudicative Guidelines (AG)² under Guideline E (personal conduct) and Guideline F (financial considerations).

Applicant timely responded to the SOR and requested a hearing. The case was assigned to me on November 13, 2008, and I convened a hearing on December 17, 2008. The parties appeared as scheduled. The government presented four exhibits (Gx. 1 - 3). Applicant testified and presented one witness. She also submitted six exhibits (Ax. A - F). Additionally, I have included a single-page document in the record as Judicial Exhibit (Jx.) I. DOHA received the transcript of hearing (Tr.) on December 29, 2008.

Findings of Fact

The government alleged in the SOR that Applicant owes approximately \$51,904 for the balance on a foreclosed \$259,543 mortgage. (SOR ¶ 1.a). The government also alleged she “failed to candidly answer the Financial Interrogatories mailed to [her] and to provide complete and detailed answers including a personal financial statement as requested by the Government detailing [her] financial status and [her] ability to pay [her] debts and household expenses as they come due.” (SOR ¶ 2.a) In response, Applicant denied all of the SOR allegations and provided with her answer information about the SOR ¶ 1.a allegation. After reviewing the pleadings, the transcript, and the parties’ exhibits, I have made the following findings of relevant fact.

Applicant is 30 years old and has been employed by a large defense contractor since June 2001. She has held several different positions with her employer, and she has moved three times (from Virginia to Georgia in July 2002; from Georgia to Florida in May 2005; from Florida back to Georgia in October 2006). Applicant attended college from August 1997 until May 2001, when she received a B.S. in Computer Science. She is currently working on her M.S. in Computer Science. Between January 2000 and June 2000, Applicant worked as a college intern for her current employer. Her most recent performance appraisal reflects excellent work and potential for continued advancement in a demanding environment. (Gx. 1; Tr. 6)

Applicant presented her mother as a witness. She testified that, in December 2002, she answered a newspaper ad, which presented an opportunity to buy five townhouses she could own as rental properties. (Tr. 57) The ad offered owner financing, which was attractive to her because she would not have to qualify for a loan. In February 2003, Applicant’s mother entered into an agreement to buy the properties from a married couple to whom Applicant’s mother was to make payments directly.³ She made payments as agreed for three months. Thereafter, she was contacted by the bank creditor listed in SOR ¶ 1.a and was informed they now held the mortgage on her

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.

³ Jx. I is one of the contracts of sale she signed. (Tr. 54 - 57)

townhouses. She then sent her payments to the bank as required. Applicant's mother was soon unable to rent the properties for a variety of reasons. The properties were located in a bad neighborhood which would not support the rent she needed to charge. Also, some of the properties were damaged by storms that rendered them uninhabitable for a long periods of time. Concurrently, she was unable to refinance due to falling property values and soon ran out of funds to pay the mortgages. The properties went to foreclosure and were sold at auction in June 2005. According to Applicant's mother, the properties were sold for at least what was owed in arrears. (Tr. 64) For tax purposes, the Internal Revenue Service (IRS) was notified the properties had been abandoned or acquired by another party and that the debts were cancelled. The resulting benefit to Applicant's mother became taxable income for the 2005 tax year. (Tr. 35 - 43; Ax. A; Gx. 3; Answer to SOR)

When Applicant's mother entered into the agreement to purchase the townhouses, the sellers required a co-signer to guarantee performance on the obligations. Applicant's mother signed Applicant's name to the contracts without Applicant's knowledge or permission. (Jx. I) She did not inform Applicant of her plans to buy the townhouses. Applicant only became aware of her mother's ownership of rental properties sometime after the deal was done. (Ax. A; Tr. 37, 50 - 51, 81, 97 - 98) As a result of her mother's actions, the loans and, ultimately, their delinquent status were reported in Applicant's credit history. The tax effects of the debt cancellation also affected Applicant's income tax reporting requirements for 2005. However, Applicant's mother is the only party with a remaining IRS obligation. (Answer to SOR; Gx. 3; Tr. It is unclear how Applicant's personal information (e.g., her social security number, address, employer, etc.) was obtained by the creditor, as both Applicant and her mother denied having provided it to anyone as part of this transaction. (Tr. 54, 82)

While Applicant became aware her mother had purchased rental properties soon after the transactions, she was not aware her mother had obligated her as a co-signer to the mortgages. In 2004, Applicant was turned down for a personal loan when a credit check showed she was in default on five mortgages. Her mother told her what happened only when Applicant confronted her about the matter. (Tr. 44, 70) Applicant has disputed the information in her credit report about the defaulted mortgages. She also obtained information from the creditor showing she was no longer listed on three of the accounts. (Attachments to SOR Answer; Tr. 75 - 77)

Applicant has held a security clearance since 2001. In October 2006, during in-processing at her current job site, she spoke with the local Facility Security Officer (FSO) about a variety of topics related to her suitability for access to classified information. She disclosed the adverse information about her mother's actions and their impact on her credit. In April 2007, she submitted an e-QIP for a periodic update of her clearance. She disclosed the fact she was listed as a co-signer on delinquent properties her mother had acquired. (Gx. 1) In November 2007, her FSO came to her and suggested Applicant provide more detailed information about what had happened. She subsequently included with her e-QIP a letter explaining what had happened. (Gx. 1; Tr. 70 - 72; Ax. A)

A few months later, Applicant was interviewed by a government investigator about information in her background. The adverse information about the defaulted mortgages on her credit report was discussed. (Tr. 72 - 73)⁴ In April 2008, after reviewing the results of Applicant's background investigation, a DOHA adjudicator sent to Applicant written interrogatories seeking additional information about one of her mother's defaulted mortgage accounts in the amount of \$51,904 attributed to Applicant in a credit report obtained by government investigators.

Applicant insists she timely responded to the interrogatories as required, but she did not retain a copy of her response. In support of her claim, she points to Gx. 2, which consists of documents sent to her by the IRS in May 2008. She asserted that she sent in response to the interrogatories those IRS documents, as well as other documents, which she also attached to her SOR Answer. She also claimed she spoke by telephone with the adjudicator handling her case seeking guidance about what she needed to submit. (Tr. 73 - 87) Applicant also testified she spoke with the adjudicator after the SOR was issued, and that the adjudicator acknowledged at that time having received her response to the interrogatories. (Tr. 100 - 101) In support of the SOR allegation that Applicant "failed to candidly answer the Financial Interrogatories mailed to [her]," the government submitted a blank version of the interrogatory. (Gx. 2) However, it was also uncontested that the information in Gx. 3 was received from the Applicant as part of her response to interrogatories. (Tr. 22 - 24, 92 - 93) Accordingly, I find as fact that the Applicant responded to the interrogatories sent to her by a DOHA adjudicator.

Aside from the adverse effect of her mother's actions on her credit rating, Applicant's finances are sound. She has been financially independent since high school (Tr. 44 - 45), relying on student loans to fund her college and post-graduate education. Available information (Gx. 4 and Ax. D) shows she has paid those loans as agreed. While her credit history also reflects occasional credit problems in the past 10 years, those appear to have been resolved satisfactorily. Applicant is a two-time homeowner and has a modest positive monthly cashflow, but her expenses include repayment of credit obligations, all of which are current. (Ax. C) Finally, she has been proactive in her efforts to resolve her mother's malfeasance (Tr. 74 - 77; Attachments to SOR Answer).

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 Revised Adjudicative Guidelines (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the "whole person" concept, those factors are:

⁴ No summary or other record of that interview was produced.

⁵ Directive. 6.3.

(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 AG ¶ 15 (Guideline E - Personal Conduct) and AG ¶ 18 (Guideline F - Financial Considerations).

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. 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

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).

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.

The government presented sufficient information to support the allegation in SOR ¶ 1.a. Information obtained during the most recent investigation of her suitability for access to classified information showed there was a delinquent mortgage account totaling \$51,904 attributable to Applicant. The information also showed the account was delinquent as of 2005 and was still unpaid as of June 2007. Accordingly, the record requires application of the disqualifying conditions listed at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*).

In response, Applicant presented sufficient information to show the debt was not hers. She also presented sufficient information (her mother's testimony, the documents attached to her answer to the SOR, and the documents in Gx. 3, which were submitted in response to the DOHA interrogatories) to show that the debt in ¶ SOR 1.a is being resolved and that there is a legitimate dispute about the debt. Further, the record shows that Applicant lives well within her means and has not engaged in irresponsible spending or excessive use of her personal credit. Her current credit history contains no other adverse entries; to the contrary, it reflects a sound use of personal credit and of paying her debts. The foregoing supports application of the mitigating conditions at 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*) (emphasis added), AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) (emphasis added), and 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*). On balance, Applicant presented available information sufficient to show she is unlikely to act contrary to the national interest to get money to repay the alleged debt. Available information is sufficient to mitigate the alleged security concerns about Applicant's finances.

Personal Conduct.

The security concern about Applicant's personal conduct, as expressed in AG ¶ 15, is

[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.

Applicant denied the SOR ¶ 2.a allegation that she had “failed to candidly answer the Financial Interrogatories mailed to [her] and to provide complete and detailed answers including a personal financial statement as requested by the Government detailing [her] financial status and [her] ability to pay [her] debts and household expenses as they come due.” Accordingly, the burden was on the government to present sufficient credible information to prove that allegation. (Directive, E3.1.14) Failure to respond to the interrogatories would have required application of the adjudicative factor at AG ¶ 15(b) (*refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination*). It may also be disqualifying if Applicant deliberately falsified any statement she made to the government regarding relevant and material information about her suitability to hold a clearance. (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*); AG ¶ 16(b) (*deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative*)).

At the beginning of the hearing, I asked Department Counsel if the SOR ¶ 2.a allegation was that Applicant did not respond to the interrogatories or that her answer was untruthful. Department Counsel stated that it was both - that Applicant had failed to answer the interrogatory and that her non-answer was untruthful. (Tr. 20 - 22) Intuitively, this makes no sense. It is not possible to falsify a statement that has not been made. The allegation is also flawed, because it does not specify what information was false. For example, there is no allegation that Applicant stated one thing during her background investigation but either failed to disclose that information or gave an inconsistent version in response to the government’s interrogatories. Nonetheless, the weight of the government’s own information bearing on the issue of whether Applicant responded to the interrogatories (Gx. 3 and the testimony at Tr. 22 - 24) shows she did comply with the government’s request for information. The government’s reliance on Gx. 2 (a blank version of the interrogatory purported to have been issued to Applicant) is not conclusive of anything, while it is uncontested that the contents of Gx. 3 were part of her response to the interrogatories. Assuming (*solely* for the purpose of discussion) that Applicant did not respond to the interrogatories, there is no indication that DOHA adjudicators contacted Applicant or her employer to indicate that processing of her clearance could be terminated.⁹

⁹ As contemplated by DOHA Operating Instruction (OI) 18, Section 4.4 (*Written Interrogatories*) and Section 4.5 (*Second Chance*).

As to whether what was submitted was truthful, the government did not present any information that showed what Applicant submitted in connection with this matter was false or misleading. To the contrary, available information, including Applicant's credible testimony (Tr. 73 - 74) about her interactions with the DOHA adjudicator as Applicant was preparing her response, shows Applicant has readily and candidly disclosed the adverse information at each stage of the re-investigation of her clearance. She had even disclosed that information to her FSO before she filled out her e-QIP (Gx. 1) It is unlikely, therefore, that she would suddenly decide not to comply with a request for adverse information she had already disclosed to her employer and had discussed with a government investigator during her background investigation. On balance, I conclude the government failed to establish either that Applicant did not respond or that she has made any false statements 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 30 years old and is a mature, responsible adult. She is a successful, independent single mother who put herself through school, has been paying off her student loans as required since 2001, and who shows potential for continued advancement with the company where she has worked for nearly eight years. She has been candid and forthcoming about her finances at all stages of this matter, and there has been no misconduct on her part. A fair and commonsense evaluation of this record shows that the security concerns raised by information showing Applicant may have owed one debt has been refuted. Her finances do not put her at risk of acting contrary to the national interest, and the stated concerns about her personal conduct were unfounded. Any doubts about Applicant's suitability for access to classified information have been satisfied.

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

Subparagraph 1.a: For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.a: For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the national interest to continue Applicant's access to classified information. Request for security clearance is granted.

MATTHEW E. MALONE
Administrative Judge