



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)	
)	
XXXXXXX, XXXXXXXX Xxx)	ISCR Case No. 08-00626
SSN: XXX-XX-XXXX)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel
For Applicant: *Pro se*

March 30, 2009

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 24 October 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F.¹ Applicant answered the SOR 11 December 2008, and requested a decision without hearing. DOHA assigned the case to me 12 March 2009. The record in this case closed 9 March 2009, the day Department Counsel entered no objection to Applicant's response to the government's File of Relevant Material (FORM).

¹DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the Revised Adjudicative Guidelines (RAG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Findings of Fact

Applicant admitted the SOR financial allegations. She is a 55-year-old, thrice divorced, principal quality engineer employed by a U.S. defense contractor since June 2007. She has not previously held an industrial clearance, but had a clearance while she was in the military from 1978 to 1995.

The SOR alleges, Applicant admits, and government exhibits substantiate, 18 delinquent debts totaling over \$16,000. Applicant accrued these debts after filing for chapter 7 bankruptcy protection in July 1995, and receiving a discharge of her dischargeable debts in November 1995.

Applicant married her first husband in February 1976, and they divorced in January 1978. They had no children. She married her second husband in July 1978, just before she entered the military. They had two children together, a boy born in December 1980 and a girl born in December 1983. They divorced in August 1985. She married her third husband in October 1994, retired from the military in January 1995, filed for bankruptcy in July 1995, received her bankruptcy discharge in November 1995, and divorced in May 1996. They had no children.

Applicant served in the military from December 1978 to January 1995. Although the record does not reflect the circumstances under which she achieved retired status, she proved her entitlement to retired benefits, including medical benefits until she reaches age 65. She has established that debts 1.a., b., f., h., l., j., and o. are medical expenses and claims the military medical benefits program should have covered these expenses. However, there is no evidence indicating the providers submitted the claims to the program, indicating Applicant ensured they were submitted to the program, or indicating whether the amounts alleged as past due represent amounts owed by the program or co-payments required to be paid by Applicant. Applicant is encountering difficulty trying to get information from the providers or the medical program.

Applicant proved that debt 1.l was paid no later than January 2008, when the lien holder released the lien. She claims to have paid debt 1.g., but provided no corroboration. She asserts that debt 1.n. is a joint credit card she held with her father, who died in July 2002. She states that she is seeking to have the account removed from her credit report, but it is not clear on what legal basis she can do so. Whether she made the charges or not, she is as legally responsible for the debt as her father (or his estate). She has made additional claims regarding the status of other debts, but provided no corroboration. She alleges that debt 1.c. was due to identity theft. She alleges that the debt at 1.p. is not hers. She alleges that she has paid the debt at 1.q. She proved that she had received a settlement offer from the creditor holding debt 1.d. for a lump-sum payment of half the outstanding balance. She was unable to pay the lump sum, and has been unable to arrange either a reduced balance or a repayment schedule.

Applicant states that debt 1.r. is for repossessed timeshares she bought in 2002.² She claims she “gave” them to her ex-husband when she moved to a different state to take her current job. He allegedly promised to pay the promissory notes on both properties but did not. The record does not reflect which ex-husband she entrusted the properties to, or why he would agree to the arrangement. The properties are listed as Applicant’s individual obligation, she bought them six years after her most recent divorce, and the arrangement with her ex-husband was apparently unwritten. The record contains no evidence of Applicant’s military performance, employment references, or character references.

In her August 2007 subject interview, Applicant acknowledged living beyond her means for several years, largely because of her children. She also acknowledged that she was overwhelmed by her debts, but was determined to satisfy them. In her March 2009 response to the FORM she clarified that her debts were attributable to her divorcing her husband shortly after retiring from the military. He became addicted to pain medication after an accident, and left her and the children, forcing her to cope with two houses, two cars, and four credit cards. She ultimately filed for bankruptcy as above. However, except for the joint card with her father, all the delinquent accounts listed in her credit reports are listed as individual accounts.

Applicant’s response to the FORM appears to conflate the circumstances of her last two divorces in attributing her living beyond her means to circumstances beyond her control. After her divorce from her second husband in August 1985, she was a single mother with two small children to raise. There is no evidence of a child support obligation for the second husband. Debts incurred between August 1985 and October 1994 would appear to have been her sole obligation. The opportunity for joint debt with her third husband was limited to a fairly short period after their October 1994 marriage, and in any event should have been discharged as to her in her November 1995 single debtor bankruptcy discharge. The youngest of Applicant’s children reached the age of majority in 2001. Applicant consulted with a bankruptcy attorney in April 2008. He recommended a chapter 13 repayment plan, but Applicant decided to try to resolve as many debts as she could before proceeding with that course of action.

Policies

The Revised Adjudicative Guidelines (RAG) list factors to be considered in evaluating an Applicant’s suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in RAG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed where a

²The government alleged the amount of this debt as \$2,904, a number found nowhere in the record. The credit report documenting two timeshares (Applicant admitted buying two) shows two repossessed timeshares totaling over \$18,000.

case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline F (Financial Considerations).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter 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 those who must protect national interests as their 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.³

Analysis

The government established a case for disqualification under Guideline F, and Applicant did not mitigate the security concerns. Applicant has an extensive history of financial difficulties, which are ongoing.⁴ She received a complete discharge of her dischargeable debt in November 1995, six months before she was divorced from her third husband. Yet, she has continued to accrue delinquent debt. Right now, her finances are a shambles, and appear likely to remain so for some time.

Applicant meets none of the mitigating factors for financial considerations. Her financial difficulties are both recent and multiple.⁵ She has not established how the debts were due to circumstances beyond her control, and she has not acted responsibly in addressing her debts.⁶ Her credit counseling has been limited to consulting with a bankruptcy attorney, and she has not otherwise brought the problem under control.⁷

³See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁴¶19 (a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations;

⁵¶20 (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

⁶¶20 (b) the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances;

⁷¶20 (c) the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;

Only one of her debts has been paid in a timely, good-faith effort.⁸ Further, given that she has not sought or used effective financial counseling, there is nothing in the record to suggest that Applicant will put her financial problems behind her. I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraph a-k:	Against Applicant
Subparagraph l:	For Applicant
Subparagraph m-s:	Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance denied.

JOHN GRATTAN METZ, JR
Administrative Judge

⁸¶20 (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.