



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



In the matter of:)	
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SSN: -----)	ISCR Case No. 08-02424
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel
For Applicant: *Pro Se*

March 26, 2009

Decision

MALONE, Matthew E., Administrative Judge:

Based upon a review of the pleadings, the government’s exhibits (Gx.), Applicant’s exhibits (Ax.), and Applicant’s testimony, her request for a security clearance is granted.

On May 8, 2007, Applicant submitted a Questionnaire for Sensitive Positions (SF 86) 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 October 14, 2008, DOHA issued to Applicant a

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

Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the Revised Adjudicative Guidelines (AG)² under Guideline F (financial considerations).

Applicant timely responded to the SOR and requested a hearing. The case was assigned to me on February 2, 2009, and I convened a hearing on February 25, 2009. The parties appeared as scheduled. The government presented seven exhibits included in the record without objection as Gx. 1 - 7. Applicant testified and submitted five exhibits admitted without objection as Ax. A - E. DOHA received the transcript of hearing (Tr.) on March 3, 2009. Additionally, I left the record open after the hearing (Tr. 62) to receive additional relevant information. The record closed on March 10, 2009, when I received Applicant's post-hearing submission, which has been admitted without objection as Ax. F.

Findings of Fact

The government alleged in the SOR that Applicant owes approximately \$23,666 in delinquent debt. More specifically, it was alleged she owes for three delinquent credit card accounts of \$7,581 (SOR ¶ 1.a), \$4,800 (SOR ¶ 1.b), and \$9,758 (SOR ¶ 1.c), as well as a \$1,500 delinquent tax debt to the IRS (SOR ¶ 1.d). In response, Applicant admitted the SOR ¶¶ 1.b and 1.c allegations and denied the others. After reviewing the pleadings, the transcript, and the parties' exhibits, I have made the following findings of relevant fact.

Applicant is 37 years old and works as a human resources assistant for a defense contractor.³ Applicant attended a university in her home state between September 1994 and December 1999. She received a bachelor's degree in English, with a minor in drama. (Tr. 8) More than 20 personal and professional references provided at hearing attest to Applicant's integrity, honesty, reliability and willingness to work hard. She is held in high regard by friends and co-workers, and by management and the government customers her company supports. (Ax. E)

Applicant's wallet was stolen while she was at college on or about July 8, 1997. Applicant had left her backpack in a classroom, but when she retrieved it, her wallet and credit cards were missing. (Ax. A) Applicant later figured out who had taken it, but received no useful assistance from campus police. (Gx. 3; Tr. 39, 47) Before she could cancel the cards, several hundred dollars in clothes, restaurant bills, and other purchases had been charged to the accounts. (Tr. 47 - 48, 50 - 51) Eventually, the credit card companies agreed that she was not liable for the charges resulting from the theft. However, the relief she received from at least one of the debts became a benefit that was taxable as income. Applicant subsequently incurred a \$1,500 debt to the Internal Revenue Service (IRS). (Tr. 43 - 44)

² The Revised Adjudicative Guidelines were approved by the President on December 29, 2005, and were implemented by the Department of Defense on September 1, 2006. Pending official revision of the Directive, they supercede the guidelines listed in Enclosure 2 to the Directive.

³ She also works for the U.S. Army part-time as a "civilian on the battlefield" role player, but does not require a clearance for that job.

Applicant thought this matter was concluded in her favor as of about 2003. However, any records she had concerning the theft and her efforts to resolve the resulting debts was lost when her home was damaged by Hurricane Katrina in 2005. (Tr. 40; Ax. F)⁴ She had responded in 2003 or 2004 to overdue notices from at least one creditor, but after advising them the debts were not hers, she heard nothing further about any such delinquencies until she was interviewed by a government investigator in September 2007. (Gx. 3)

Available information about Applicant's character, reliability and trustworthiness is overwhelmingly positive. The sources for that information range from lifelong associates to co-workers over the past two years. (Ax. E) Applicant's position in response to the government's allegations is that she is not responsible for any of the debts listed in the SOR. She denied SOR ¶ 1.a because it has been charged off as a business loss. She denied SOR ¶ 1.d because it was a result of the charge off of SOR ¶ 1.a. She admitted SOR ¶¶ 1.b and 1.c, but only because the accounts were not listed as charge offs and still active on her credit report. She also acknowledged that there was already a balance due on the card listed in SOR ¶ 1.c when it was stolen, but she transferred that balance to a different card and paid it off by 2003. The balance remaining is what others charged when they stole her cards. Nonetheless, she maintains she does not owe the debts alleged because they were charged by the people who stole her wallet. (Answer to SOR; Gx. 2; Gx. 3; Tr. 41 - 43)

Applicant's current personal finances are sound. She has a positive cash flow in excess of \$1,000 each month. She does not use credit cards and does not buy anything she cannot pay for outright. For example, she paid her rent under her current lease for the next year up front. As to the IRS debt, Applicant decided to pay it rather than contest the matter. (Ax. C; Ax. F; Tr. 35 - 36) Her bank account shows she had at least \$3,500 in savings and \$1,940 in checking at the end of February 2009. (Ax. F)

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:

- (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

⁴ Reference to the National Oceanographic and Atmospheric Administration (NOAA)'s National Hurricane Center website (<http://www.katrina.noaa.gov>) shows the path of Hurricane Katrina passed directly over Applicant's hometown during the first 24 hours after landfall.

⁵ Directive. 6.3.

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 ¶ 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

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

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).

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 - 1,d; that is, that there are four debts attributed to Applicant that have been unpaid for several years. Applicant admitted two of the allegations, thus relieving the government of its burden of proving them as fact. Her denial of the debts at SOR ¶¶ 1.a and 1.d required the government to present reliable evidence to support those allegations. I conclude the record supports those allegations and 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, the burden shifted to Applicant to present sufficient information to show the debts were not hers or to mitigate the security concerns raised by the government's information. Applicant's response to the government's information has been hampered by the passage of time and the intervening natural disaster that destroyed her records. It is apparent that she cannot prove a negative – that she does not owe the debts listed – without tangible documentation. I have reviewed the information about her character contained in Ax. E. I also assessed her demeanor and credibility at the hearing. Applicant's testimony and her response to questions on cross-examination and from the bench were given in a straightforward manner without any apparent attempt to mislead or to avoid responsibility. I find that her version of events, combined with all of the information bearing on this issue, is plausible and supports a specific finding that the debts alleged are not Applicant's responsibility. I further conclude that the combination of the police report and her credible testimony about the origin of the debts is sufficient to show the debts attributable to her by the credit reports in the record arose through circumstances beyond her control. I also conclude she has a basis for disputing the validity of the debts. Finally, Applicant is not currently in any financial difficulty and she manages her finances prudently. She lives well within her means and has sufficient positive cashflow to avoid future financial problems.

All of the foregoing supports application of the mitigating conditions at AG ¶ 20(a) (*the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*), 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(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.

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). Available information portrays Applicant as a mature, responsible and diligent 37-year-old defense contractor employee. She is well-regarded by her friends and co-workers, most of whom specifically commented on her reputation for honesty and reliability. The persuasive value of the information she presented to refute the government's allegations and to mitigate the adverse security concerns raised by the government's evidence relies on the credibility of her testimony. Security determinations require applicants to bear a heavy burden in response to the government's concerns. Reliance on a credibility assessment and on circumstantial evidence to find that it is clearly consistent with the national interest to grant access to classified information should be the exception rather than the rule. I believe this case is such an exception. Applicant has been candid and forthcoming about her finances, and there has been no financial or other misconduct on her part. A fair and commonsense evaluation of this record shows that the security concerns raised by Applicant's credit history are mitigated, and her finances do not put her at risk of acting contrary to the national interest. 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 - 1.d:	For Applicant

Conclusion

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

MATTHEW E. MALONE
Administrative Judge