



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



In the matter of:)	
)	
)	ISCR Case No. 08-03130
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Stephanie C. Hess, Esquire, Department Counsel

For Applicant: *Pro se*

May 29, 2009

Decision

O'BRIEN, Rita C., Administrative Judge:

Based upon a review of the case file, pleadings, and exhibits, I conclude that Applicant has not mitigated the security concerns raised under the guideline for financial considerations. Accordingly, her request for a security clearance is denied.

On October 31, 2007, Applicant signed a Questionnaire for Sensitive Positions, Standard Form (SF) 86. The application (Item 6) was submitted on November 14, 2007 to request a security clearance. 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 June 12, 2008, DOHA issued to Applicant a Statement of Reasons (SOR) (Item 1), that specified the basis for its decision: security concerns addressed in the

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

Directive under Guideline F (Financial Considerations) of the Revised Adjudicative Guidelines (AG).

Applicant received the SOR on July 15, 2008 (Item 2). She responded on July 30, 2008, and requested a decision without a hearing (Item 3). Her Answer was incomplete, and on August 6, 2008, DOHA requested that she submit a complete response (Item 4). Applicant forwarded a second Answer, dated August 25, 2008 (Item 5). In her second Answer to the SOR, Applicant admitted all allegations except 1.e.² On February 18, 2009, DOHA Department Counsel submitted a file of relevant materials (FORM)³ in support of the government's preliminary decision. Other than the documents already identified, the FORM contained Applicant's response to DOHA interrogatories (Item 7), and three credit bureau reports (Items 8, 9 and 10). Applicant was given 30 days from the date she received the FORM to file a response, but did not respond. The case was assigned to me on May 15, 2009, for an administrative decision based on the record.

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 FORM, I make the following additional findings of fact.

Applicant, 30 years old, is employed by a defense contractor. According to information she provided in her security clearance application, she is unmarried, and has a nine-year-old son and a two-year-old daughter. The application contained no information on her educational background. Applicant worked as a customer service representative from 1998 to 2001, and a collections representative for a telephone company from 2001 to 2003. She also was employed as an invoicing representative for one year, and a warehouseman for two years from 2004 to 2006. She held a position for approximately seven months in 2007 as a shipping and receiving clerk, before starting her current employment as an inventory specialist in October 2007. Applicant was unemployed for six months in 2003 (Item 6).

Applicant's gross monthly income includes earnings of \$2,960, and child support of \$276, for a total of \$3,236. After deductions of \$1,830, her net monthly income is \$2,107. Appellant's monthly expenses are \$2,415. This figure does not include her rent of \$875, because her boyfriend now pays their mortgage (Items 3; 7). After expenses, Applicant's monthly net remainder is negative \$307. When Applicant's car payment of \$533 is deducted, her monthly expenses exceed her income by approximately \$841

² Applicant attached to her Answer four documents supporting her claim that she paid several alleged debts. I will identify these documents as Answer document 1 (re allegation 1.e.); Answer document 2 (re allegation 1.a.); Answer document 3 (re allegation 1.h.); and Answer document 4 (not related to debts alleged in the SOR).

³ See Directive, Enclosure 3, Section E3.1.7. The FORM included 10 documents (Items 1 - 10) proffered in support of the government's case.

(Item 7). Applicant noted that she lives “with my boyfriend and the mortgage is paid by him as well as the water. We have a baby together so he helps with the bills” (Item 3). She did not indicate how much he contributes to her financial support.

The eleven SOR debts amount to \$9,726. Applicant provided evidence that she satisfied five of the alleged debts:

- 1.b. (medical debt of \$133, see Answer document 2)
- 1.e. (cable debt of \$172; see Answer document 1)
- 1.h. (medical debt of \$154; see Item 7 and Answer document 3)
- 1.i. (collection debt of \$1,119; confirmation number X4A2456259)
- 1.j. (collection debt of \$788; confirmation number 2698291)

The paid debts total \$2,366. When these debts are excluded from the SOR total, Applicant's unpaid debt amounts to \$7,360.

Applicant's debts became delinquent between 2003 and 2007 (Item 10). However, her 2009 credit bureau report shows medical debts totaling approximately \$4,246 that did not appear on her earlier credit bureau reports. It also indicates that, compared to the amounts alleged in the SOR, Applicant's debt listed at allegation 1.f. has increased by more than \$300, and the debt alleged at 1.k. has increased by approximately \$70 (Items 8 through 10).

Applicant states in her Answer that she is a hard worker and has received letters of appreciation and recognition from her employers. She did not submit performance evaluations or character references. Applicant also noted that she does not “have a criminal background and haven’t been in any trouble.” Applicant noted in her Answers, without further explanation, that “I may have not made the best choice when I was younger, but I’m older and wiser now.” She also stated that, “I know I’m the one who made the mistakes and I will have to suffer the consequences.” (Item 5). Applicant did not indicate that she experienced major events that affected her ability to pay her debts such as medical emergencies, divorce or unexpected financial setbacks.

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 Guidelines, commonly referred to as the “whole person” concept. 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

⁴ Directive. 6.3.

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 F (financial considerations) and Guideline E (Personal Conduct).

A security clearance decision is intended only 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 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 judgment, reliability and trustworthiness of one who will protect the national interests as her 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

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.

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

⁶ See *Egan*, 484 U.S. at 528, 531.

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

The evidence contained in the FORM shows that Applicant has been accruing delinquencies since 2003. She currently owes past-due debt of \$7,360, and new debt of \$4,246. Her six-year history of failing to meet her financial obligations supports application of disqualifying conditions AG ¶19 (a) (*inability or unwillingness to satisfy debts*) and AG ¶19 (c) (*a history of not meeting financial obligations*).

Under AG ¶ 20, the following conditions that can potentially mitigate security concerns are relevant:

(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;

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

Applicant's delinquent debts are numerous, and did not occur in the distant past, because many of them are still delinquent. In addition, Applicant made no effort between 2003 and 2007 to deal with her overdue debts. Finally, the new debts that have appeared on her most recent credit bureau report indicate that delinquencies are likely to recur in the future. Her conduct casts doubt on her reliability and good judgment, and AG ¶ 20(a) cannot be applied.

It is commendable that Applicant paid five of the SOR debts. But it must be noted that two were paid in April 2008, around the time Applicant received the DOHA Interrogatories, and two were paid in August 2008, after she had received the SOR. The timing of the payments raises the question as to whether they were simply a response to the security process, rather than a good-faith effort. In addition, the greater part of Applicant's delinquent debt remains outstanding. Her recent credit bureau report shows that additional debts have become delinquent within the past few months, after the security process was underway. The record includes no evidence that Applicant has a plan in place to resolve either the remaining SOR debts or the new delinquencies. AG ¶ 20(d) does not apply. I find against the Applicant under Guideline F.

Whole Person Concept

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. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited Guideline. I have also reviewed the record before me in the context of the whole-person factors listed in 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.

Applicant has accrued more than \$9,000 in delinquencies since 2003. The record contains no evidence that, between 2003 and 2007, she took any steps to resolve it. In 2008, after Applicant received the DOHA Interrogatories, she paid more than \$2,000. While it is commendable that she has resolved some portion of her debt, the fact that she did not make an effort to resolve her debts until prodded by the security clearance process raises doubts about her judgment and reliability. Given the fact that she has a substantial amount of delinquent debt remaining, and that she has accrued new debt, I cannot confidently predict that Applicant's financial problems will be resolved. A fair and common-sense assessment of the available information bearing on Applicant's suitability for a security clearance shows she has not satisfied the doubts about her ability or willingness to protect the government's interests. Because protection of the national interest is paramount in these determinations, such doubts must be resolved in favor of the government.⁸

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 as follows:

Paragraph 1, Guideline F:	AGAINST Applicant
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c. – 1.d.	Against Applicant
Subparagraph 1.e.	For Applicant
Subparagraphs 1.f. – 1.g.	Against Applicant
Subparagraph 1.h. – 1.j.	For Applicant
Subparagraphs 1.k. – 1.l.	Against Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge

⁸ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).