



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



In the matter of:

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ISCR Case No. 08-03604

Applicant for Security Clearance

Appearances

For Government: Emilio Jaksetic, Esquire, Department Counsel

For Applicant: *Pro se*

July 15, 2009

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the case file, pleadings, exhibits, and testimony, 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.

Applicant requested a security clearance by submitting an Electronic Questionnaire for Investigations Processing (e-QIP) signed on January 17, 2008. 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 August 12, 2008, DOHA issued to Applicant a Statement of Reasons (SOR) that specified the basis for its decision: security concerns addressed in the Directive under Guideline F (Financial Considerations) of the Revised Adjudicative Guidelines (AG).² In her Answer to the SOR, signed and notarized on September 11, 2008, Applicant denied all the allegations.³ She also requested a hearing before an administrative judge.

Department Counsel was prepared to proceed on February 20, 2009, and the case was assigned to me February 26, 2009. DOHA issued a Notice of Hearing on April 9, 2009, and I convened the hearing as scheduled on May 12, 2009.

During the hearing, the government offered six exhibits, marked as Government Exhibits (GE) 1 through 6, which were admitted. Applicant testified and offered six exhibits, which were admitted as Applicant's Exhibits (AE) A through F. I held the record open to allow Applicant to submit additional documents. Applicant did not submit further documentation. DOHA received the transcript on May 18, 2009.

Findings of 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, 68 years old, holds a bachelor's degree in political science. She is divorced and has no children. Applicant was a career civil servant, working as a foreign service officer from 1969 to 1992. She held a high-level security clearance during that time. From 1992 to approximately 2003, she was self-employed. Since then, she has worked as a consultant for federal contractors and currently holds the position of senior

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

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.

³ Applicant's Answer included five attachments, which will be identified as Answer document: 1 – Applicant letter dated September 11, 2008; 2 - Applicant letter dated April 10, 2008; 3 – Personal Financial Statement dated April 11, 2008; 4 – Letters to credit reporting agencies dated June 10, 2008; 5 – Secure facility visit request dated March 28, 2006.

consultant. She was nominated for a mentorship award because of her consistent help and support to junior staff at her employment (GE 2; AE C; Tr. 36-37).

Between 1992 and 2003, Applicant was a small-business owner. She established her businesses using online services, without the aid of an attorney. She operated three businesses: Business A dealt with food aid and food security; Business B worked on issues of human rights and internally displaced persons; and Business C was an effort at entrepreneurship and involved with network marketing. The legal form of each business changed over time. Applicant testified that Business A was initially established as a small Subchapter S corporation. Her attorney and certified public accountant (CPA) advised her that the business was not producing sufficient money and she should change it to a limited liability corporation (LLC), which she did. Ultimately, it was again changed in form to a sole proprietorship (Tr. 81-82; 86). Businesses B and C were initially small Subchapter S corporations, and later sole proprietorships (Tr. 82-83; 86). The record is silent as to when Applicant changed the legal form of each company.

After the events of September 11, 2001, Applicant lost clients, her businesses failed, and in December 2001, she ceased operation. For about one and one-half years after the failure, she was unable to obtain work as a consultant, had little income, and relied on her federal pension (Tr. 76; 106). She did not have the funds to pay the debts of her businesses. When she consulted with her attorney in 2002, he advised her not to file for bankruptcy (Tr. 74). He also advised her not to pay the debts, because the creditors eventually would write them off (Tr. 46; 77). Her understanding was that this “would happen automatically” (Tr. 76).

The attorney wrote to Applicant's creditors advising that she did not have the funds to pay the debts or to establish payment plans. He also contacted the creditors verbally. The attorney then wrote to Applicant, informing her of his actions. She could not provide a copy of his letter. The attorney also did not provide Applicant with documentation about his contacts. Applicant did not pay the business debts. At about the same time, she became ill, and she turned her attention elsewhere: “And so no, I put the whole matter behind me at that point and never thought about it again to tell you the truth.” (Tr. 74–79; 84).

In March 2002, Applicant discovered that the debts of her businesses were listed on her credit bureau report as her personal debts, under her social security number, instead of under her business tax identification number (GE 3; AE A; Tr. 52). She had understood that she was not personally liable for these business debts (Tr. 43; 83). Between 2002 and 2005, she wrote to the credit reporting agencies approximately once per year asking that the debts be removed. She did not provide evidence of these contacts. The credit reports were not corrected and Applicant did not follow up (Tr. 94). She also testified that she was “tired” and “bored with it.” (Tr. 52-53). In about 2005, she became concerned about the debts when she realized she would be completing a security clearance application for a position with a federal contractor (Tr. 80). In April

2008, after she received financial interrogatories from DOHA, she wrote to the three credit reporting agencies (AE D). She sent the same letters to the American Fair Credit Association and the Bureau of Consumer Protection of the Federal Trade Commission asking them to correct her credit bureau reports (AE F). She contacted the same organizations again in May 2009 (AE D).

Applicant has not sought financial counseling or professional legal help in relation to the debts, nor worked with creditors or collection agencies who have contacted her.

MR. JAKSETIC: Have any of the creditors or any collection agency acting on behalf of the creditors asked you to make payment on any of the debts in the last two years?

APPLICANT: Since I haven't talked to any of them, I don't know. And have people sent letters suggesting they would cut \$5,000 or \$10,000 off of this or that, yes. But I -- I didn't respond to those.

MR. JAKSETIC: Okay. To the best of your recollection, when was the last time you spoke with any creditor that's covered by the SOR debts or any collection agency acting on behalf of a creditor?

APPLICANT: 2002.

MR. JAKSETIC: And you have received correspondence suggesting that you pay less than the full amount?

APPLICANT: Yes.

MR. JAKSETIC: And you have not followed up on those?

APPLICANT: That is correct. On a couple I did send my copies of my statements that the information was incorrect and blah, blah, blah, but --

MR. JAKSETIC: But basically you have not pursued any discussion about settling the debts, correct?

APPLICANT: That is correct. (Tr. 56-57).

In her Answer, Applicant noted that she was a victim of identity theft in 2001. Although she originally stated at the hearing that all the SOR allegations stem from her business debts (Tr. 43; 73), she later testified that she does not recognize allegation 1.f. because it relates to a type of credit card that she has never had. She believes that the

debt stems from the theft of her identity. That allegation is the only one that is connected with identity theft. (Tr. 89-91).

Applicant testified that her Personal Financial Statement of April 2008 is essentially accurate as to her current income and expenses.⁴ Her net monthly income as a consultant is \$7,650, for a net annual income of approximately \$91,800.⁵ She also receives a federal pension of approximately \$45,000 per year, which is about \$32,500 after deductions. Her net income from both sources is \$10,400 per month or approximately \$125,000 annually. With monthly expenses of \$3,770, she has approximately \$6,330 remaining each month. Applicant listed no debts in her personal financial statement because she pays cash for her purchases and no longer uses credit cards (Tr. 92). She did not list payments on any delinquent debts. She occasionally provides approximately \$400 per month to a niece who is physically ill (GE 3;Tr. 62-72).

The Statement of Reasons alleges 10 debts, totaling approximately \$22,400. Three debts range from \$110 to \$216; one debt is \$597. The remaining debts range from \$1,120 to \$9,063. The debts became delinquent between 2001 and 2003 (GE 4, 5 and 6). Applicant has not incurred new debts, has no credit cards, and has no outstanding long-term loans (GE 6; AE A, F; Tr. 92).

Policies

Each security clearance decision must be a fair, impartial, and common-sense 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).⁶ 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 under a Guideline does not determine 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 Guideline F (Financial Considerations).

⁴ The single change Applicant noted is that she no longer has the \$10,000 in investments, which she lost in the stock market (Tr. 72).

⁵ It is unclear from the record whether Applicant’s position as a consultant is full-time. She mentioned working three to six months at a time (Tr. 34) but described her employment income as annual (Tr 69).

⁶ Directive. 6.3.

A security clearance decision is intended only to resolve the question of whether it is clearly consistent with the national interest⁷ for an Applicant 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. 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.⁸ 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 to 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.⁹

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.

The facts presented support application of AG ¶19(a) (*inability or unwillingness to satisfy debts*) and AG ¶19(c) (*a history of not meeting financial obligations*). Initially, in 2001, Applicant was unable to satisfy the financial obligations that remained after her

⁷ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁸ See *Egan*, 484 U.S. at 528, 531.

⁹ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

small businesses lost clients following the events of September 11, 2001. Although her financial situation has improved, she is now unwilling to pay the debts because she believes that they were written off, or that she is not personally responsible for them because they are debts of her businesses. AG ¶19(c) also applies because Applicant's debts, which started becoming delinquent around 2002, still appear in her latest credit bureau report, and remained unpaid as of the date of the hearing.

The financial considerations guideline includes factors that can mitigate disqualifying conditions. The following mitigating conditions are relevant:

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;

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;

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

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;

Applicant's debts arose when her independent businesses failed. The failure stemmed from unique circumstances that are unlikely to recur. However, her debts from the business ventures remain, they amount to more than \$22,000, and they are recent, as they currently remain unpaid. That they were written off by the creditors does not, as Applicant seems to believe, absolve her of responsibility for them. Moreover, the fact that she has done little about them, other than occasional letters, reflects poorly on her judgment. AG ¶20(a) does not apply.

The key element in mitigating condition AG ¶20(b) is that the factors that caused the financial problems were beyond an applicant's control. Certainly, the events of September 11, 2001, that led to Applicant's business failure, were unforeseeable and beyond her control. However, to be applicable, this mitigator requires also that the person act responsibly. Applicant did not respond to queries from creditors over the years and has not spoken to any since 2002. In addition, she did not work to resolve

the disputes about her debts. Even though she has a substantial income, she did not retain legal help to assist her to parse out the legal form of each of her business entities between 1993 and 2001, or to determine which debts accrued during those points in time, and which, if any, became Applicant's responsibility when the businesses failed. Consequently, Applicant could not provide documentation to support her claims to the credit reporting agencies, or this agency, that she did not owe the debts she disputed. Applicant did not act responsibly, and mitigating condition AG ¶20(b) cannot be applied.

AG ¶20(e) is relevant. Applicant disputes that she owes these debts because (1) they were "written off" by arrangement between her attorney and the creditors; and/or (2) they are the debts of her defunct businesses and not her personal debts. Applicant testified that her attorney arranged with the creditors to have her debts written off, apparently believing that this meant they were no longer her responsibility. She provided no evidence supporting her claim of arrangements made with creditors.

Applicant also claims that she is not responsible for the debts because she is shielded from liability by the legal form of her businesses. Each of the three businesses existed in various legal forms over time, including as corporations and as sole proprietorships. However, Applicant failed to provide any evidence to show the point in time or the extent to which Applicant may have been protected by the corporate shield against liability. The lack of documentary evidence to support her dispute prevents application of AG 20 ¶20(e). I resolve Guideline F against Applicant.

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 relevant 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) 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.

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 the cited guideline, I considered the potentially disqualifying and mitigating conditions in light of

all the facts and circumstances surrounding this case.

At the time her debts started to become delinquent, Applicant was a mature and experienced adult. Her actions in regard to her debts raise questions as to her good judgment. Since 2002, she has taken minimal actions to resolve the situation. When contacted by creditors, she did not respond. She sent several letters to the credit agencies over the years, but became bored and tired of the issue. She might have some protection because the debts stemmed from her businesses. However, despite an income that would allow her to retain legal assistance, she has not done so, and the question of whether or not she is liable for the business debts remains unanswered. Applicant's conduct indicates a negligent attitude and poor judgment in regard to her finances.

Overall, the record evidence fails to satisfy the doubts raised about Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from the cited guideline.

Formal Findings

Paragraph 1, Guideline F:	AGAINST Applicant
Subparagraphs 1.a through 1.j.:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge