



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



In the matter of:)	
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SSN: -----)	ISCR Case No. 08-05798
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)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Esquire, Department Counsel
For Applicant: *Pro Se*

January 21, 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 January 30, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for her job with a defense contractor, where she works as a fiber optics assembler. (Gx. 1) On May 27, 2008, after reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) sent to Applicant interrogatories to obtain clarification of and/or additional information about adverse information in his background.¹ After reviewing the results of the background investigation, including her response to the interrogatories (Gx. 2), DOHA adjudicators

¹ Authorized by DoD Directive 5220.6, Section E3.1.2.2.

were unable to make a preliminary affirmative finding² that it is clearly consistent with the national interest to allow Applicant access to classified information. On July 25, 2008, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the Revised Adjudicative Guidelines (AG)³ under Guideline F (financial considerations).

Applicant timely responded to the SOR and requested a hearing. The case was assigned to me on September 9, 2008, and I convened a hearing on October 22, 2008. The parties appeared as scheduled. The government presented four exhibits (Gx. 1 - 4). Applicant testified, presented one witness, and submitted four exhibits (Ax. A - D). I also left the record open after the hearing to receive additional relevant information. On October 30, 2008, I received a post-hearing submission, which is included in the record without objection as Ax. E. DOHA received the transcript of hearing (Tr.) on November 6, 2008.

Findings of Fact

The government alleged in the SOR that Applicant owes approximately \$24,675 for 12 delinquent debts (SOR ¶¶ 1.a - 1.l). Applicant admitted with explanation all of the SOR allegations except for SOR ¶ 1.l, about which she claimed to have no knowledge. Applicant also asserted in response to the SOR that some of the debts alleged were duplicate entries resulting from transfer of accounts among collection agencies. I have also made the following findings of relevant fact.

Applicant is 51 years old and has been employed by a defense contractor since January 2006. She and her husband have been married since February 1994. He is a veteran of the United States Air Force who served in Vietnam in 1965. Since 2003, he has been 100% disabled from the effects of Agent Orange. He is confined to a wheel chair after two partial amputations of one foot and he is legally blind.

For 20 years after he left the military, Applicant's husband worked in law enforcement, but usually held additional jobs in the television and electronics repair jobs. His medical problems started with diabetes and he has received medical treatment at various civilian and Veterans Administration (VA) facilities over the past eight years. In 1997, Applicant and her husband opened their own television and electronics repair company. Records indicate the company had several employees, a modest fleet of trucks, and service contracts with several businesses in their area. They used a combination of business credit accounts (for supplies, gas, etc.) and personal credit for purchases not covered by their business credit. Applicant was employed by the business as a bookkeeper and office manager. Her husband ran the business and

² Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

³ 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.

much of his efforts were aimed at creating new business and servicing existing accounts and customers.

In 2003, Applicant's husband's health took a turn for the worse in the form of diabetes. After a partial amputation of his left foot, complications set in causing extensive hospitalization and a six-month recuperation period. Her husband was unable to tend to their business, employees left and the business ultimately failed. Between about 2000 and 2003, Applicant and her husband were able to realize about \$70,000 in annual personal income from the business.

Applicant's husband was evaluated in 2003 by the VA and it was determined that his medical problems resulted from exposure to Agent Orange while he was in Vietnam. He was certified as 100% disabled and has not worked since. However, it took the VA almost 18 months to begin his disability payments. In the meantime, Applicant found work as a corrections officer with the local police department. Because her \$1,560 monthly take home pay was the only household income until sometime in 2005, much of their personal and business credit accounts went unpaid. By the time the VA sent them nearly \$40,000 in past due benefits, the mortgage on their house was nine months past due and in foreclosure. They used the money to bring their mortgage current and to pay off their business creditors and some personal creditors.

When Applicant submitted her e-QIP, she disclosed the existence of several delinquent debts and stated they resulted from the loss of their business. (Gx. 1) Credit reports obtained during Applicant's background investigation (Gx. 3 and 4) attribute to her approximately \$24,675 in delinquent debt for the 12 accounts as listed in the SOR. Of the debts alleged, Applicant asserted the \$1,125 hospital debt listed in SOR 1.a is the subject of an insurance dispute. She claimed the medical care provided was for her husband in 2001 and that the hospital should have submitted TriCare paperwork to receive payment. Applicant spoke with the hospital but has not submitted any claims to TriCare or generated any correspondence regarding this dispute. (Answer to SOR; Tr. 75 - 78)

The debts listed in SOR ¶¶ 1.e - 1.g were for debts left to Applicant and her husband by his late mother's estate. Applicant is working with the creditors to have these items removed from her credit history. (Answer; Gx. 2; Ax. D; Tr. 81 - 82) Also, the debts listed at SOR ¶¶ 1.d and 1.i are the same debt reported by the original creditor and a collection agency. Applicant also claimed the debts listed in SOR ¶¶ 1.b and 1.c are the same account; however, a review of the credit reports in the record shows they have different account numbers and were opened at different times. Finally, in response to the SOR, Applicant denied the debt at SOR ¶ 1.i was hers; however, in response to financial interrogatories in June 2008, she acknowledged that debt as one of those that went unpaid when their business failed. The creditor is a collection agency for an unknown account. (Gx. 2 - 4)

Applicant went to work for her current employer in August 2007. She now brings home \$2,230 each month. Her husband's disability payments total about \$3,166 each month. The house they bought in 1999 is worth about \$175,000, and the balance on their mortgage is about \$117,000. Applicant and her husband would like to sell their

house but the real estate market is not currently in their favor. They would use the proceeds for debt repayment, to move closer to her work site, and to lower their living expenses. A personal financial statement Applicant submitted (Gx. 2) in June 2008, reflects a net monthly cashflow of about \$156. After their regular expense, and their monthly mortgage and two monthly car loan payments totaling more than \$700, the only credit card they are paying is a Sears account at \$20 per month. Applicant and her husband have not obtained any credit counseling or other help to either resolve their debts or to improve their money management skills. They were told by legal advisors at a nearby Air Force base that they should not pay debt consultation companies to negotiate with their creditors. They were also advised to consider filing bankruptcy to resolve their debts. Applicant and her husband do not intend to file bankruptcy, stating they intend to pay their debts. They have not yet reached any repayment or other settlement agreements with their creditors. (Tr. 77 - 84)

Applicant and her husband are active in the Civil Air Patrol as volunteer communications officers. They have been trained in search and rescue procedures, and are qualified under the Federal Emergency Management Agency's (FEMA) first responder training program. References from Applicant's friends and former police department co-workers show she enjoys a positive reputation in the community for integrity and reliability. (Ax. A)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁴ 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 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

⁴ Directive. 6.3.

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 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. 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.⁷

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 all but one of the allegations in SOR ¶ 1. Because SOR 1.i is a duplicate of SOR 1.d, SOR 1.i is concluded for the Applicant. Available information shows approximately \$23,537 in delinquent debt for 11 accounts attributable to Applicant since as far back as 2001. Available information shows Applicant has not paid or otherwise resolved any of the debts in her credit history. A review of her current monthly cashflow after expenses suggests she is unable to pay her debts outright. Accordingly, the record in this case requires application of the disqualifying conditions listed at AG ¶ 19(a) (*inability or*

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).

unwillingness to satisfy debts) and AG ¶ 19(c) (*a history of not meeting financial obligations*).

Available information shows that the actual amount of debt attributable to Applicant is actually about \$21,803. The debt at SOR ¶ 1.a resulted from an insurance error. The debt at SOR ¶ 1.i, as noted above, is a duplicate, and the debts in SOR ¶¶ 1.e - 1.g are from her mother-in-law's estate. Additionally, the credit card debt at ¶ 1.k is currently about \$12,149, but started as a \$4,000 account that grew with interest and collection fees over time. (Tr. 61) That debt constitutes more than half Applicant's total debt. The remaining six debts average about \$1,600 each.

In response, Applicant has demonstrated that her debts became delinquent primarily through the 2003 failure of the small business she and her husband had owned since about 1997. That business failure was precipitated by her husband's health problems that rendered him 100% disabled. Also contributing to their financial problems was an 18-month delay in receipt of VA benefits. Once they received nearly \$40,000 from the VA in 2005, they brought their mortgage out of foreclosure and paid off business and personal accounts. Since then, Applicant has taken little or no action to resolve her remaining debts. She claimed at hearing that she has contacted some of her creditors and that she has relied on legal advice to avoid debt consulting companies. However, she also did not heed legal advice to file bankruptcy and there is no corroborative information showing she has entered into any substantive negotiations with any of her creditors or that she has sought other help in resolving her debts. Nor is there any documentation of payments made, despite being allowed time for post-hearing submissions. Ax. E consisted solely of past tax records related to their small business, but did not shed any additional light on efforts to repay the debts alleged in the SOR.

Of the Guideline F mitigating conditions under AG ¶ 20, Applicant benefits from the mitigating condition 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*). Applicant and her husband have incurred no new delinquencies since they received their VA benefits. Their current finances are sound and they live well within their means.

The record also supports application of 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*), which directly addresses Applicant's experience with a failed business and her husband's illness. The second prong of this adjudicative factor is supported by the fact Applicant and her husband used the money they received from the VA to settle what debts they could. As already noted, their current finances are sound and they have not incurred new delinquencies since 2005. On balance, I conclude Applicant's financial difficulties and the ongoing presence of unpaid debt are not likely to cause her to act illegally or in any way contrary to the national interest to generate funds to resolve her debts. The Guideline F security concerns are resolved for the Applicant.

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). There has been no misconduct here. Applicant is a mature adult who had to assume the role of primary income earner when her husband became disabled. She attempted unsuccessfully to salvage their business in 2003, but found work as soon as she could to support them both. While she has been unable to resolve their debts, she and her husband have not spent more than they have; nor have they resorted to excessive use of their personal credit. The circumstances that gave rise to her financial problems are not likely to recur or cause further delinquencies.

Positive information about Applicant's character and reliability is sufficient to show that the adverse information about her finances cannot be used as a means to pressure or coerce her into acting contrary to the national interest. A fair and commonsense evaluation of this record shows that the security concerns about Applicant's finances 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.l:	For Applicant

Conclusion

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

MATTHEW E. MALONE
Administrative Judge