



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



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| In the matter of |) | |
| |) | |
| |) | ISCR Case No. 08-06593 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel

For Applicant: *Pro se*

March 23, 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 mitigated the security concerns raised under the guideline for financial considerations. Accordingly, her request for a security clearance is granted.

On February 26, 2008, Applicant submitted a security clearance application (Standard Form 86) to request a security clearance required as part

of her employment with a defense contractor (Item 5). 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 December 10, 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). Applicant received the SOR (Item 1) on January 7, 2009 (Item 3). She signed her Answer to the SOR (Item 4) on January 13, 2009, in which she denied allegations 1.c., 1.k., 1.l., 1.n., and 1.o., and admitted all other allegations. She requested an administrative decision without a hearing.

On January 30, 2009, DOHA Department Counsel submitted a file of relevant material (FORM)² in support of the government's preliminary decision. Applicant was given 30 days from the date she received the FORM to file a response. The file does not contain a response from Applicant. The case was assigned to me on March 3, 2009.

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 submitted by the Government, I make the following additional findings of fact.

Applicant is 43 years old. She married in 1991 and divorced in 1995. She receives \$85 per month in child support for her son, who is now 14 years old. She received a Masters degree in 2006. Between 2000 and 2002, she worked as a secretary to a school principal. She also worked as a 5th grade teacher for six months from 2001 to 2002. From January to May 2002, she was unemployed. She held a temporary clerical position between January 2003 and January 2004. Applicant was unemployed from January to May 2004. Between 2005 and 2007, she performed clerical work for two different defense contracting companies, working on-site at the same federal agency. She again became unemployed from May 2007 to January 2008. At that point, she began working for her present employer, and completed her security clearance application in February 2008 (all facts from Item 5).

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

² See Directive, Enclosure 3, § E3.1.7. The FORM included eight documents (Items 1-8) proffered in support of the government's case.

A number of events affected Applicant's financial status. She maintained a department store credit card (allegation 1.m.) in the late 1980s, but after her divorce in 1995, debt started to accumulate on the card (Item 6). It became delinquent in 2001 (Item 8). Applicant also suffered an accident in August 2006, which resulted in the total loss of her car. Needing transportation, she rented a car for three months. She was unable to pay for both the rental and the payments on her damaged car. She contacted the loan company to request adding the balance on the damaged car to a new loan for a replacement car, but the loan company refused. Finally, Applicant had "a lot of medical bills or debts that was (*sic*) incurred while employed with no medical insurance." (Item 4). She provided no further evidence about her medical condition, but did add a hand-written note to her credit bureau report indicating that she was treated at a hospital in 2005 for a blood clot (Item 6, page 21).

When Applicant became unemployed in May 2007, she was able to keep up with her bills for several months. When she could no longer pay her bills, she and her son became homeless from August 2007 to January 2008 (Item 6). They lived in motels and with a friend during this time period (Item 5). Applicant also lived with a friend during part of her unemployed period in 2004 (Item 1).

Applicant now earns an hourly wage of \$11.60. According to her wage statement dated July 27, 2008, her gross weekly pay is \$590; after deductions, her net weekly pay is \$451, or approximately \$1800 per month. She receives \$85.62 per week (\$342 per month) in child support, which brings her net monthly income to \$2,142. Based on these figures, her net annual income is approximately \$25,700. As of August 2008, Applicant's monthly expenses for rent, food, utilities, car payment, and miscellaneous expenses (tithe and daily lunch) amount to \$2,150. She pays \$375 per month on one debt, leaving a negative monthly remainder of \$351 (Item 6). As of August 2008, she was unable to pay on any other delinquencies (Item 4, page 4) and her "main priority at this time is trying to keep my family out of the streets by paying my rent..." (Item 6, page 3).

Applicant admits to ten of the SOR debts, which total almost \$14,000. She denies the remaining debts, which total \$357 (Items 1, 4, 7, and 8). Although Applicant admitted allegations 1.c., 1.k., 1.l., and 1.n., she placed a question mark after each admission. The government, in its FORM, construed these "hesitant admissions" as denials (FORM, page 2), and I concur. Applicant unequivocally denied allegation 1.o., a \$28 debt to a book club, which she has paid (Item 4). Most of the debts alleged in the SOR remain unpaid. However, Applicant has been paying on her auto loan (allegation 1.j.) since obtaining employment in January 2008 and is "working toward getting that current" (Item 6). She has reduced the delinquency from \$734 in February 2008 (Item 8) to \$187, or one month overdue, as of December 2008 (Item 7). Applicant also made a payment of \$100 in February 2008 on her student loan (allegation 1.h.) (Item

6). No new delinquencies have occurred since she returned to work a little more than one year ago (Item 7).

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).³ 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 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) at AG ¶ 18.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁴ 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.⁵ 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 judgment, reliability and trustworthiness to 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.⁶

³ Directive 6.3

⁴ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵ See *Egan*, 484 U.S. at 528, 531.

⁶ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

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 evidence in the FORM 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*). By her own admission, Applicant has been unable to pay her debts, which have been accumulating since 2002, indicating a history of failure to meet financial obligations.

The financial considerations guideline contains factors that can potentially mitigate security concerns. The relevant mitigating condition is 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*).

Applicant experienced a series of events that were beyond her control and left her unable to handle the family debts. After her divorce in 1995, she supported herself and her one-year-old baby. She received only \$85 per week in child support (Items 5 and 6), but managed to support her family. Her debts did not become delinquent for several years (Item 7). But other events affected her ability to remain solvent. Applicant had numerous medical debts, including hospitalization for a blood clot in 2005. Although her medical expenses were incurred while she was working, she was not covered by health insurance. Her auto accident in 2006 deprived her of a car, requiring her expend her limited resources to pay for both her car loan and a rental car. Finally, she was unemployed on three separate occasions: from January to May 2002; again from January to May 2004, and finally, from May 2007 to January 2008. The last unemployment resulted in Applicant and her son becoming homeless for six months. Twice while she was unemployed, she moved in with friends (Item 5,

pages 1 and 2). During these periods of unemployment, half of the debts became delinquent: allegations 1.c. and 1.g. in 2002; allegation 1.l. in 2004; and allegations 1.h., 1.j., 1.k., 1.n. and 1.o. between 2007 and 2008. The remaining delinquencies accrued in 2005 and 2006, while she was under-employed as a contractor clerical worker.

Applicant acted responsibly during these unforeseen events. She moved in with friends when her unemployment deprived her of funds for housing. She stayed employed as much as possible, accepting clerical work although it represented under-employment for her education level. She has not been able to pay many of her debts, but she has not incurred new debts since gaining employment in 2008. I find that she has been spending her limited income responsibly to pay basic living expenses in order to keep her family "out of the streets" in the face of numerous hardships that she could not control. AG ¶ 20 (b) applies.

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 is 43 years old and her actions to support herself and her son show that she is a mature, responsible adult. In struggling to keep her family afloat since her divorce, she experienced three periods of unemployment between 2002 and 2008. Eight of her debts became delinquent during these periods. The remaining debts became delinquent while she was under-employed as a clerical worker in 2005 and 2006. Her failure to resolve her debts stems not from drug or alcohol abuse, gambling, or excessive spending, but from the fact that she has been either unemployed or under-employed, earning a salary that allows her to meet only basic living expenses. Applicant has shown no indications of dishonesty or untrustworthiness. She was forthright with the government in admitting her debts on her security clearance application, and her

trustworthiness is not at issue. A fair and common-sense assessment of the available information bearing on Applicant's suitability for a security clearance shows she has satisfied the doubts about her ability and willingness to protect the government's interests. Accordingly, I find it is clearly consistent with the national interest to grant Applicant access to classified information.

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:

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| Paragraph 1, Guideline F: | FOR Applicant |
| Subparagraph 1.a. - 1.p. | For Applicant |

Conclusion

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

RITA C. O'BRIEN
Administrative Judge