



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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SSN: -----) ISCR Case No. 08-07472
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Applicant for Security Clearance)

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel
For Applicant: *Pro Se*

February 27, 2009

Decision

MALONE, Matthew E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant's request for eligibility for a security clearance is denied.

On March 28, 2008, Applicant submitted a Questionnaire for Sensitive Positions (SF 86) to obtain a security clearance required for her job with a defense contractor, for whom she works as a truck driver. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) issued to Applicant written interrogatories¹ regarding adverse financial information in her background. After Applicant responded to the interrogatories, DOHA adjudicators were unable to make a preliminary affirmative finding² that it is clearly consistent with the national interest to continue Applicant's access to classified information. On October 24,

¹ As authorized by the DoD Directive 5220.6 (Directive), Section E3.1.2.2.

² Required by Executive Order 10865, as amended, and by the Directive, Section E3.1.1.

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 decision without a hearing. On January 16, 2009, Department Counsel prepared a File of Relevant Material (FORM)⁴ in support of the government's preliminary decision. Applicant received the FORM on February 1, 2009, and timely responded to it. The case was assigned to me on February 20, 2009.

Findings of Fact

The government alleged Applicant and her husband filed for Chapter 7 bankruptcy in August 2008, and that they disclosed liabilities in their petition of approximately \$428,583. (SOR ¶ 1.a) Applicant admitted the allegation without explanation. (Items 1 and 3) In addition to the facts entered in the record through Applicant's admission, I make the following findings of relevant fact.

Applicant is a 61-year-old truck driver for a company doing business with the Department of Defense. She has held this job since March 2008, but was employed as a driver with another company from August 1997 until March 2008. (FORM, Item 7) When Applicant submitted her application for a security clearance, she listed seven delinquent credit card accounts totaling approximately \$115,973. (FORM, Item 7) Credit bureau reports obtained during Applicant's background investigation (FORM, Items 9 and 10) revealed additional delinquent accounts, most of which were opened between 2003 and 2007. Most of her accounts have become past due or delinquent since 2007. The same documents also show Applicant has remained current on other accounts such as her mortgage and car payments.

In response to written interrogatories about her debts, she submitted a copy of a recent pay stub, and a personal financial statement (PFS) showing a net monthly remainder after expenses of about \$1,861. She also submitted a copy of the Chapter 7 bankruptcy petition she and her husband filed on August 22, 2008. In that petition, they declared \$428,583.79 in liabilities against \$254,615 in assets. (FORM, Item 8) It appears from a review of information in the bankruptcy petition, which lists a trade or business name along with certain types of personal property used as collateral for creditors' secured claims, that Applicant and her husband may have been in business for themselves recently. However, it is unclear how, if at all, any of the unpaid debts listed in Schedules E and F were related to possible business ventures. Further, the information presented in the petition about their income versus expenses shows that, as of the bankruptcy filing, Applicant and her husband actually had a negative monthly cashflow. (FORM, Item 8)

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.

⁴ See Directive, Enclosure 3, Section E3.1.7. The FORM included ten documents (Items 1 - 10) proffered in support of the government's case.

According to the DOHA interrogatories, Applicant was interviewed by a government investigator in May 2008. However, there is no information in the record about the results of that interview that may have shed some light on Applicant's circumstances. Nor did Applicant provide any amplifying information with her admission to the single SOR allegation. In response to the FORM, Applicant stated only she had nothing new to add, that she could not afford an attorney to help her, and that she was working to overcome her financial problems. She also alluded to unspecified bad business decisions that (presumably) caused her debts.

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).⁵ 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 factor 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 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

⁵ Directive. 6.3.

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

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 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. Further, Applicant admitted the allegation without explanation. The presence of recent unpaid debt and an apparent inability to pay require application of the disqualifying conditions at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*). Additionally, the sheer volume of debt owed through personal credit card accounts suggests that Applicant may have been irresponsible in her spending habits. Such would require application of the disqualifying condition at AG ¶ 19(b) (*indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt*).

In response, Applicant has provided no information that would support application of any of the mitigating conditions listed under AG ¶ 20. It would have been helpful to have more investigative information about the origin and/or current status of Applicant’s debts. As to her current and future financial prospects, her PFS reflects a significant positive cash flow each month; however, the bankruptcy petition shows a negative monthly cashflow. Regardless, the government established that Applicant has incurred significant unpaid personal debt. This was sufficient to support the government’s preliminary decision to deny Applicant’s request for a clearance. Thus, the burden shifted to the Applicant to present sufficient information to mitigate the security concerns raised by the facts established through the SOR. Applicant had two opportunities to present that information – when she responded to the SOR and/or

⁷ See *Egan*, 484 U.S. at 528, 531.

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

