



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



In the matter of:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 08-08263

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: Pro Se

August 21, 2009

Decision

MALONE, Matthew E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and transcript, Applicant's 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. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a set of interrogatories¹ regarding information in her background. Based on the results of the background investigation and her response to the interrogatories, DOHA adjudicators were unable to make a preliminary affirmative finding² that it is clearly consistent with the national interest to grant Applicant's request

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

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

for access to classified information. On February 20, 2009, 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 May 7, 2009. I convened a hearing on June 10, 2009, at which the parties appeared as scheduled. The government presented five exhibits (Gx. 1 - 5), which were admitted without objection. Applicant testified, proffered five exhibits (Ax. A - E), which were admitted without objection, and presented one witness. DOHA received the transcript of hearing (Tr.) on June 30, 2009.

Findings of Fact

Under Guideline F, the government alleged Applicant owes approximately \$50,107 for 20 delinquent or past due financial obligations. (SOR ¶¶ 1.a - 1.t) Applicant admitted SOR ¶¶ 1.g and 1.i, but denied the other 18 allegations. In addition to the facts established through her admissions, and after reviewing the pleadings, the transcript, and exhibits, I have made the following findings of relevant fact.

Applicant is 31 years old. She has been employed by a defense contractor since January 2008. She served in the U.S. Army from October 1997 until December 2003. Applicant was administratively separated from the Army with an honorable discharge after her marital separation and pending divorce left her as a single parent with no options for child care should she be deployed away from home. Applicant and her husband met while both were serving in the Army. They were married in June 2000 and their divorce was finalized in October 2004. They have one child, who was born in 2002. Her ex-husband, who was physically and verbally abusive during their marriage, has never paid any child support. (Gx. 1; Gx. 2; Tr. 54)

At the time of their separation, they were both assigned to an overseas Army post. When they separated in late 2003, and once Applicant was "chaptered out" of the military, she and their child returned to the United States. She left most of their marital assets, such as a car, furniture and appliances, with her ex-husband. From January 2004 until October 2005, Applicant worked in a variety of jobs before being hired as a corrections officer. She worked in that job until January 2008, when a former Army supervisor recruited her to join the company where she now works. That supervisor is now her civilian supervisor. He regards Applicant as his best worker and speaks very highly of her reliability, trustworthiness, and overall character. Several other co-workers and associates have echoed his sentiments and observations. (Gx. 1; Gx. 2; Ax. C; Tr. 82 - 87)

When Applicant was asked to complete her e-QIP in January 2008, she obtained a copy of her credit report. She was surprised to see several delinquent and past due accounts attributed to her in the report. She listed all of them in response to financial

³ The revised Adjudicative Guidelines were approved by the President on December 29, 2005, and were implemented by the Department of Defense on September 1, 2006.

questions in the e-QIP. Many of the debts were incurred with her ex-husband. Their divorce decree ordered Applicant and her ex-husband to finalize an agreement about the division of assets and liabilities. However, after they separated, he was deployed to Iraq three times and was unavailable. He has since left the Army, but he is unemployed and has not made himself available to work this out. Applicant has been trying, since early 2008, to resolve debts for which she is liable and/or to correct entries in her credit history that are not properly attributable to her. (Tr. 62 - 63)

Of the debts alleged in the SOR, Applicant has established she is not liable for and/or is trying to resolve, the following:

- SOR ¶ 1.b (Ford Credit, \$7,642): This debt is for a car financed in both her and her ex-husband's names. The car remained with him overseas when the marriage ended and she has no information about what happened to it. Nonetheless, she has been trying for more than a year to negotiate a settlement. (Tr. 41 - 42; Ax. A; Ax. D; Gx. 2)

- SOR ¶¶ 1.c and 1.d (two Sprint accounts totaling approximately \$1,423): Applicant has never had a Sprint account. These debts have been deleted from her credit history. (Tr. 43 - 44; Ax. A; Ax. D; Gx. 2)

- SOR ¶ 1.f (Washington Gas Light, \$825): Applicant has never had an account with this creditor and the debt has been removed from her credit history. (Tr. 44 - 45; Gx. 2; Ax. A; Ax. D)

- SOR ¶ 1.g (University of Phoenix for #61): This is a debt for unpaid tuition for on-line college courses Applicant took while assigned overseas. The account was paid through Applicant's GI Bill benefits. The debt has been removed from her credit history. (Ax. A; Ax. D; Gx. 2; Tr. 46 - 48)

- SOR ¶ 1.h (Verizon, \$242): Applicant had an account with this creditor, but she asserts it was paid. She has disputed the validity of this debt, which the creditor is not actively collecting, and it has been deleted from her credit history. (Tr. 48; Gx. 2; Ax. A; Ax. D)

- SOR ¶ 1.i (AFNI-Bloom for \$1,021): This is a collection account for a now-defunct mobile phone carrier. Applicant brought her account current in 2007. Because the company no longer exists, she has been unable to have the account deleted from her credit history. (Gx. 2; Ax. B; Ax. D; Tr. 34 - 35, 48 - 49)

- SOR ¶¶ 1.j and 1.k (two AaronRents accounts totaling approximately \$3,043): Applicant has never had an account with this creditor and the debts have been removed from her credit history. (Tr. 34, 48 - 49; Ax. A; Ax. D)

- SOR ¶ 1.m (USA Discounters, \$3,049): This debt is for furniture she and her ex-husband financed. He retained the furniture at their overseas assignment when they separated. She does not know what happened to the furniture.

Nonetheless, she has been trying to negotiate a settlement with this creditor. (Tr. 35 - 36; Ax. A; Gx. 2)

- SOR ¶ 1.n (civil judgment in favor of Henderson Webb, Inc., for unpaid rent totaling \$756): Applicant never failed to pay rent while living in the apartment complex in question. She completed the full term of the lease before vacating the apartment. The clerk's office at the courthouse where this judgment was entered now says there is no record of any judgment against Applicant. This debt has been removed from her credit report. (Tr. 54 - 56; Gx. 2; Ax. A; Ax. D; Gx. 2)

- SOR ¶ 1.o (Zenith Acquisition / ArcCertegey for \$110): Applicant has been unable to find out what this debt is for and has received no information confirming the debt is hers. (Tr. 58; Gx. 2; Ax. A)

- SOR ¶ 1.p (Beneficial / HFC for \$7,022): This is a loan her ex-husband obtained using both their names. It has been paid. It has been deleted from her credit history. (Tr. 58 - 59; Gx. 2; Ax. A; Ax. D)

- SOR ¶ 1.q (NCO Med Clr for \$447): This is a collection account for a medical debt; however, even during two brief periods of unemployment after she left the Army, Applicant has had medical insurance. This debt has been removed from her credit history. (Tr. 59 - 60; Ax. A; Ax. D)

- SOR ¶ 1.r (Pioneer ML GA for \$3,305): This is another loan her ex-husband obtained using both their names. Applicant does not know if this debt has been paid. It has been deleted from her credit history. (Tr. 60; Gx. 2; Ax. A; Ax. D)

- SOR ¶ 1.s (United Compuc for \$170): Applicant does not remember what this debt was for. It has been removed from her credit history. (Tr. 60; Gx. 2; Ax. A; Ax. D)

Of the remaining debts alleged in the SOR, Applicant has acknowledged she is liable for them, but that she has either paid them or is working with the creditors to resolve them. Applicant disputes the amount of the debt in SOR ¶ 1.a (Ashford at Atwood for \$4,909). This is a debt for unpaid rent after Applicant broke her lease early to keep her ex-husband from finding her. Applicant insists she owes only about \$1,400. (Tr. 37 - 40; Gx. 2; Ax. A; Ax. E) The debt alleged in ¶ SOR 1.e (Woodland Grove for \$6,010) is also for unpaid rent. Applicant co-signed a lease for her mother in 2007. However, her mother became unable to work and defaulted on the lease when she moved out. Applicant has a settlement offer pending with the collection agency handling the account. (Tr. 33, 44 - 46; Gx. 2; Ax. A; Ax. E)

The debt listed at SOR ¶ 1.i (Toyota Mtr for \$9,130) is the remainder after resale of a car Applicant had voluntarily repossessed. In 2006, she financed at a high interest rate the purchase of a used car for \$16,000. After about a year, she realized she would not be able to pay the note as agreed. She has been negotiating with the creditor to establish a repayment plan for a lesser amount in satisfaction of the loan. (Tr. 51 - 53, 79 - 80; Gx. 2) Finally, the debt listed at SOR ¶ 1.t (ROI for \$642) is an unpaid medical

bill for treatment she received at a hospital in the state where she was living before she took her current job. Applicant has made arrangements to pay this debt. (Tr. 60 - 61; Gx. 2; Gx. 5)

Applicant's current finances are sound, as shown by a positive monthly cash flow of about \$1,000 after expenses and debt payments. She has sent her child to live with her mother pending resolution of this matter. As a result, her current expenses include about \$700 she sends her mother to care for the child. However, Applicant has cut her monthly rent by \$450 and her food and other expenses by about \$100 each month. (Tr. 64 - 68) She is meeting all of her current obligations and is living well within her means; however, her ability to repay her debts sooner has been hampered by unexpected expenses related to the deaths of two family members in 2008, two brief periods of unemployment, the costs of her divorce, and a November 2007 burglary in which she lost several personal belongings and about \$1,100 with which she intended to pay the rent. Applicant also sought financial counseling in May 2008. (Gx. 2)

Policies

A security clearance decision is intended 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. Each decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁵ and consideration of the pertinent criteria and adjudication policies in the revised Adjudicative Guidelines. 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, by itself, conclusive. 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).

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

⁵ Directive. 6.3.

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 government presented sufficient information to show, as alleged in SOR ¶¶ 1.a - 1.t, that Applicant owed \$50,107 for 20 delinquent or past due financial obligations. The debts were unpaid or past due for up to five years. The resulting 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.

More specifically, the record requires application of the disqualifying conditions listed at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*).

By contrast, Applicant has shown that many of the debts alleged were either not hers, were likely her ex-husband's responsibility when her marriage ended, or have been resolved. Applicant also established that she was acting to resolve her financial problems long before DOHA adjudicators issued the SOR. As of the hearing, Applicant had paid, resolved, or successfully disputed as invalid all but four of the debts alleged (SOR ¶¶ 1.a, 1.e, 1.i, and 1.t) totaling \$20,691. Of these debts, she likely owes only about \$1,400 for SOR ¶ 1.a and will be able to settle for less than 50% the remaining debts. Combined with her reduction of expenses to free up funds to pay her past obligations, and her current positive cash flow, her remaining debts are not likely to cause her to act contrary to the national interest to resolve his past delinquencies.

⁶ See *Egan*, 484 U.S. at 528, 531.

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

Until she began the clearance application process, Applicant was unaware of the full extent of debt attributed to her in her credit history. However, she fully disclosed in her e-QIP all of the adverse financial information she found when she took it upon herself to get a credit report so she could accurately complete that document. Thereafter, she aggressively went about the task of disputing inaccurate information and resolving her obligations, a process that began about a year before the SOR was issued. Applicant also sought financial counseling and has, more recently, greatly reduced her monthly expenses while she resolves her debts. Applicant actually is responsible for about 40% of the more than \$50,000 debt alleged in the SOR. Further, it is reasonable to conclude that she will be able to pay or resolve her remaining debt in the next two years.

All of the foregoing requires application of the mitigating conditions 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*) (emphasis added), 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*), and AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). On balance, Applicant's information is sufficient to mitigate the Guideline F security concerns established by this record.

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). Applicant is a 31-year-old single mother. Through the actions she has taken to resolve her financial problems, and through her solid performance at work, has demonstrated she is a mature, responsible adult. Her financial problems represent only a brief portion of her background, and she did not intentionally or knowingly mismanage her finances. There has been no misconduct here. Applicant has been forthright and candid about the adverse information about her finances, and her testimony about her finances was credible. In view of the good health of her current financial circumstances, it is unlikely she will experience such problems in the future or that she will act contrary to the national interest to resolve her remaining delinquencies. A fair and commonsense assessment⁸ of all available information bearing on Applicant's finances shows she has mitigated the security concerns raised by the government's information.

⁸ See footnote 5, *supra*.

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

Subparagraphs 1.a - 1.t: For Applicant

Conclusion

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

MATTHEW E. MALONE
Administrative Judge