



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



In the matter of:)	
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SSN: -----)	ISCR Case No. 08-08679
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)	
Applicant for Security Clearance)	

Appearances

For Government: Robert Coacher, Esquire, Department Counsel
For Applicant: *Pro Se*

June 26, 2009

Decision

MALONE, Matthew E., Administrative Judge:

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

On March 3, 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 senior administrative assistant. After reviewing the results of Applicant's 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 continue Applicant's access to classified information. On January 26, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns

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

addressed in the Revised Adjudicative Guidelines (AG)² under Guideline F (financial considerations).

On February 23, 2009, Applicant responded to the SOR, admitted without explanation all of the SOR allegations, and requested a decision without a hearing. On March 26, 2009, Department Counsel prepared a File of Relevant Material (FORM)³ in support of the government's preliminary decision. Applicant received the FORM on April 13, 2009, and was given 30 days to file a response to the FORM. She did not timely respond to the FORM by the May 13, 2009, deadline. The case was assigned to me on June 17, 2009.

Findings of Fact

The government alleged Applicant owed approximately \$18,325 for nine delinquent debts listed in SOR ¶¶ 1.a - 1.i. In response to the SOR, Applicant admitted all of these allegations. In addition to the facts entered in the record through Applicant's admissions, I make the following findings of relevant fact.

Applicant is a 40-year-old high school graduate, who has held her current job since July 2005. Before then, she did administrative work for about 11 months through a temporary agency. From about January 2000 until about September 2004, Applicant was a stay-at-home mother and helped with the paperwork for her husband's construction company. (FORM, Item 4). Applicant and her husband were married in September 1994. It is apparent from the record that they have a child or children, but she did not list them in her e-QIP. In her response to interrogatories, Applicant stated that she and her husband had separated. However, it is not known when this happened and there is no available information about the current status of their marriage. Nor has Applicant provided any information about financial arrangements such as spousal/child support or asset and liability allocation. (FORM, Items 4 and 5)

Credit bureau reports obtained during Applicant's background investigation (FORM, Items 7 and 8) showed that Applicant was delinquent or seriously past due on at least 14 debts. Applicant's response to interrogatories showed that, between January and November 2008, she had paid or otherwise resolved at least five of those accounts totaling about \$3,476. However, the same credit reports and Applicant's response to interrogatories show that she still owes the nine debts listed in the SOR.

Applicant provided a personal financial statement in October 2008, which shows that she has about \$300 remaining each month after expenses. However, her expenses do not include payments to any of the remaining delinquencies. There is no information

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. Pending official revision of the Directive, the Revised Adjudicative Guidelines supercede the guidelines listed in Enclosure 2 to the Directive.

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

showing Applicant has sought assistance from a financial counselor or that she has engaged in any systematic effort to repay the debts. Nor is there any information that shows how Applicant accrued the debts, which include three unpaid medical accounts (SOR ¶¶ 1.b - 1.d), an unpaid satellite TV account (SOR ¶ 1.a), an unpaid car loan (SOR ¶ 1.l), and four other personal credit accounts (SOR ¶¶ 1.e - 1.h).

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).⁴ 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 concern and adjudicative factors 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

⁴ Directive. 6.3.

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁶ See *Egan*, 484 U.S. at 528, 531.

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 the allegations in the SOR ¶¶ 1.a - 1.i. Further, Applicant admitted she owes more than \$18,000 for nine delinquent debts. The debts at issue have been unpaid or past due since as long ago as December 2005. Available information 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*).

In response, Applicant has presented information that shows Applicant had already acted to pay or resolve some of her delinquent debts several months before receiving DOHA interrogatories and before the SOR was issued. Accordingly, AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies. However, available information also shows she has little money left over each month after paying regular expenses, which do not include payment to her remaining debts. Because Applicant did not submit any information about when and under what circumstances the debts arose, neither 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*) or 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*) is applicable. Also, there is no information regarding financial counseling or other actions taken by Applicant to ensure her finances will not be a problem in the future. Thus, AG ¶ 20(c) is not applicable. Finally, because it does not appear that Applicant is disputing the validity of any of the debts alleged, 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*

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

substantiate the basis of the dispute or provides evidence of actions to resolve the issue) does not apply. On balance, Applicant has failed to meet her burden of presenting sufficient information to mitigate the security concerns established by the government's information about her finances.

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 40 years old and presumed to be a mature adult. However, the weight of the information presented shows she has failed to meet her financial obligations over the past several years. There is no information in this record about any other facet of her background that sufficiently counters the adverse information underlying the security concerns about her finances. A fair and commonsense assessment⁸ of all available information bearing on Applicant's finances shows she has failed to address satisfactorily the government's doubts about her suitability for access to classified information. Because protection of the national interest is paramount in these determinations, such doubts must be resolved in favor of the government.⁹

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:	AGAINST APPLICANT
Subparagraphs 1.a - 1.l:	Against Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest to grant Applicant's request for a security clearance. Eligibility for access to classified information is denied.

MATTHEW E. MALONE
Administrative Judge

⁸ See footnote 4, *supra*.

⁹ See footnote 7, *supra*.