



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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SSN: -----) ISCR Case No. 08-08943
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Applicant for Security Clearance)

Appearances

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

August 31, 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 denied.

On February 15, 2008, Applicant submitted a Questionnaire for National Security Positions (SF 86) to obtain a security clearance required for her job as a long distance truck driver on Department of Defense contracts. In her SF 86, she disclosed numerous past due and delinquent debts. 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 for a security clearance. On February 12, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts

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

which, if proven, raise security concerns addressed in the revised Adjudicative Guidelines (AG)² 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, and I convened a hearing in this matter on June 9, 2009, at which the parties appeared as scheduled. The government presented three exhibits (Gx. 1 - 3), which were included in the record without objection. Applicant testified on her own behalf. I left the record open after the hearing to give Applicant time to submit additional relevant evidence. However, she did not submit anything and the record closed on June 23, 2009. DOHA received the transcript of hearing (Tr.) on June 25, 2009.

Findings of Fact

The government alleged in the SOR that Applicant owes approximately \$47,436 for 28 delinquent debts (SOR ¶¶ 1.a - 1.t, 1.v - 1.cc), and that her mortgage was foreclosed in 2008 (SOR ¶ 1.u). Applicant admitted all of the SOR allegations, except for SOR ¶ 1.b, and SOR ¶¶ 1.y - 1.aa. As to her denials, she disputed that those debts were hers and submitted, with her Answer to the SOR a letter supporting her claim regarding SOR ¶ 1.b. However, she presented no information to support her claims regarding SOR ¶¶ 1.y - 1.cc. In addition to the facts established through Applicant's admissions, after reviewing the pleadings, the transcript, and exhibits, I have made the following findings of relevant fact.

Applicant is 49 years old. She has worked as a long distance truck driver for over 20 years. She is single but has been married twice – from 1976 until 1982 and from 1982 until 1984. Both marriages ended in divorce, and Applicant has one adult child from the first marriage. (Gx. 1; Tr. 48 - 49)

Since June 2009, Applicant has worked directly for a company driving a company-owned truck. She and her co-driver³ are paid by the mile, but expenses such as fuel and maintenance costs are borne by the company. She estimates she can earn about \$32,000 annually through this arrangement. From 1987 until about August 2006, however, she partnered with her live-in boyfriend, who owned the truck. He was paid by the contracting company and deducted expenses (fuel, maintenance, insurance, food and living expenses). They shared the remaining income. After they split up in August 2006, he took the truck with him. She became ill and was unemployed with no continuing health care until January 2007. At that time, she and a new boyfriend partnered to drive his truck. She estimates that from January 2007 until June 2009, when she split up with him, they grossed about \$200,000 annually, but after expenses, they split about \$50,000 in net income. However, Applicant's boyfriend was unwilling to help her resolve any of the debts she had before they met. (Tr. 30 - 33, 35 - 36)

² 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. Pending official revision of the Directive, they supercede the guidelines listed in Enclosure 2 to the Directive.

³ DoD contracts for transportation of sensitive cargo require two-person teams at all times. (Tr. 29 - 30)

The largest of Applicant's delinquent debts is a federal income tax lien (SOR ¶ 1.a) filed against her for a tax year "back in the early 2000s." (Tr. 54) She owes the IRS \$15,369 (Gx. 2) after her claim of expenses against her income was disallowed. Only her boyfriend, who owned the truck to which the expenses were tied, was allowed to claim that deduction. (Tr. 45 - 46)

Applicant's car was repossessed in 2007 (SOR ¶ 1.i) and she still owes \$11,000 for the remainder after resale. (Gx. 2) Applicant's medical bills (SOR ¶¶ 1.k - 1.n) accrued between August 2006 and January 2007. They totaled about \$8,060. (Gx. 2) The remaining debts listed in the SOR are for personal credit cards, retail store accounts, and unpaid utilities, cable television, and cell phones. (Gx. 2) Although five of her debts (SOR ¶¶ 1.n, 1.x, 1.z, 1.bb, and 1.cc) are for less than \$200 each, she has not paid or otherwise attempted to resolve any of them since being interviewed by a government investigator about her finances in July 2008. (Tr. 40 - 41)

Applicant asserted at hearing that, before she and her first boyfriend broke up in 2006, she was able to pay her bills and meet her credit obligations. (Tr. 23) However, the government's information shows that she was delinquent on a number of debts as far back as 2003. (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 policy 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

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

⁵ Directive. 6.3.

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).

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 the allegations in SOR ¶¶ 1.a - 1.p. The facts thus established show that Applicant owes approximately \$47,000 in delinquent debts dating back to at least 2003. 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*).

Applicant denied owing SOR ¶ 1.b, and SOR ¶¶ 1.y - 1.aa. She was able to support her claim regarding SOR ¶ 1.b, but she did not present any information regarding SOR ¶¶ 1.y - 1.aa. Even had she established that she did not owe those debts, they comprise less than 3% of her total debt. Applicant's personal circumstances require some consideration of the mitigating condition at 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*

⁶ See *Egan*, 484 U.S. at 528, 531.

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

or separation), and the individual acted responsibly under the circumstances). Nonetheless, she did not present any information to show that she has acted to resolve her past due obligations or that she will, in the foreseeable future, be able to pay or otherwise resolve her debts. Applicant's testimony is insufficient to support application of any of the Guideline F mitigating conditions. She has not mitigated the security concerns about her financial problems.

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 49 years old and presumed to be a mature adult. There is no available information about her reliability or trustworthiness that would support a prediction that she is likely to improve her finances so as to avoid more financial problems in the future. 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 ability or willingness to protect the government's interests as her own. 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:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c - 1.cc:	Against Applicant

Conclusion

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

MATTHEW E. MALONE
Administrative Judge

⁸ See footnote 5, *supra*.

⁹ See footnote 7, *supra*.