



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



In the matter of:)
)
) ISCR Case No. 08-09326
)
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel

For Applicant: *Pro Se*

August 12, 2009

Decision

O'BRIEN, Rita C., Administrative Judge:

Based upon 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.

Applicant requested a security clearance by submitting an Electronic Questionnaire for Investigations Processing (e-QIP) on October 25, 2007. 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 February 3, 2009, DOHA issued to Applicant a Statement of Reasons (SOR), which specified the basis for its decision – security concerns addressed in the Directive under Guideline F (Financial Considerations) of the Revised Adjudicative Guidelines (AG).² In her signed and notarized Answer to the SOR, Applicant admitted to all the allegations except those at ¶¶1.a., 1.c., 1.l. – 1.n., and 1.p. She also requested a hearing before an administrative judge.

Department Counsel was prepared to proceed on March 23, 2009, and the case was assigned to me on March 25, 2009. DOHA issued a Notice of Hearing on April 2, 2009, and I convened the hearing as scheduled on April 28, 2009. During the hearing, the government offered seven exhibits, marked as Government Exhibits (GE) 1 through 7, which were admitted without objection.³ Applicant testified, and offered nine exhibits. Applicant did not present witnesses. Applicant's Exhibits (AE) were marked as A through I, and admitted without objection. I held the record open to allow Applicant to submit additional documentation. Department Counsel forwarded, without objection, Applicant's timely submission of six additional documents, admitted as AE J through O. DOHA received the transcript on May 7, 2009.

Findings of Fact

Applicant's admissions in her response to the SOR are admitted herein as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the record evidence, I make the following additional findings of fact.

Applicant, 29 years old, attended university from 1998 to 2005. She completed the requirements for a bachelor's degree in social science.⁴ She intends to pursue a graduate degree, which will be funded by her employer. She is single and does not have

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

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. The Revised Adjudicative Guidelines supersede the guidelines listed in Enclosure 2 to the Directive, and they apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

³ The Contents section of the transcript mistakenly identifies Government Exhibits 4 through 7. The correct identification can be found at Tr. 15-19.

⁴ Applicant's degree will be awarded officially when she pays approximately \$1,000 she owes to the university. This is a separate debt not alleged in the SOR (Tr. 30, 69-71).

children. She has worked as an administrative assistant for a defense contractor for approximately one year. This is the first time she has applied for a security clearance (GE 1, 2; AE J; Tr. 6-7, 30-31).

Applicant held primarily clerical and sales positions between 2000 and 2003. Most of her delinquencies started accruing in 2003. She worked during her breaks while attending college, and also served as a tutor with Americorps for six months in 2001. She was unemployed five months in 2003 and six months in 2004. She held a position in the office automation department of a defense department agency from 2004 to 2006. When she worked for temporary agencies in 2006 and 2007, one agency sometimes failed to pay the employees, and sometimes wrote paychecks with insufficient funds. Following unemployment from September 2007 to March 2008, she attained her current position.

Applicant's Social Security earnings statement of October 2008 shows that most of the years between 2000 and 2007, her annual income varied from \$3,800 to \$7,467. Her highest earning years were 2004 (\$15,000); 2005 (\$39,000), and 2006 (\$29,900). Her income in 2007 declined to \$3,380. Applicant occasionally provides financial assistance of \$200 to \$300 to her parents (GE 1; AE I; Tr. 33, 47, 65).

Applicant's current annual income is \$52,000. When she completed DOHA interrogatories in November 2008, Applicant earned a net monthly income of \$3,200.⁵ After expenses of \$2,590 per month, and debt payments of \$1,100 per month, Applicant had a negative monthly remainder of \$480. She testified that, as of the hearing date, her net monthly remainder has increased to approximately \$100. The positive remainder resulted from the fact that she is no longer paying the monthly amount on the debt alleged in 1.a., until the company provides her with the correct current balance, as she requested. In addition, Applicant's parents provided her with a car, which has no outstanding balance. Her current car expense is now \$175, rather than the \$490 expense listed in the personal financial statement. Applicant has \$220 in her bank accounts. She has not participated in financial counseling. She has not opened new credit card accounts in the past eight years (GE 3; AE J; Tr. 35-37, 49-52, 62-65).

The Statement of Reasons alleges 15 debts. Applicant's exhibits show the current status of the alleged debts as follows:

- **Bank credit card/judgment** (allegation 1.a.): Payment Plan. Applicant contends that this is a duplicate of the debt cited at 1.o. The debt is being collected through a law firm. Applicant contacted the firm in November 2008 and set up a payment plan of \$200 per month. She provided evidence that she paid a total of \$750 in November and

⁵ As of January 2009, she no longer has the additional \$200 per month from a part-time job, which reduces her net monthly income to approximately \$3,000.

December. Applicant testified that she paid additional amounts on this debt through garnishment of approximately \$1,600 to \$1,700, but the creditor has been unable to provide records related to the total she has paid through garnishment. She intends to pay the debt in full (GE 2, 5, 7; AE G; Tr. 33-37, 39).

- **Hospital debt** (allegation 1.b.): Payment Plan. Applicant was involved in a car accident and was admitted to the hospital. The accident occurred when she was employed but did not have health insurance. Applicant set up a payment plan in late 2008, and pays \$200 per month by automatic withdrawal from her bank account. She expects the debt to be satisfied in 2010 (GE 2; AE A; Tr. 37-39).
- **Cable company debt** (allegation 1.c.): Paid. Applicant contacted the cable company and confirmed that she had a zero balance for her 2007 account in another state. She obtained a printout showing her bill for that residence was \$368.47 and that she paid account in full by November 2007. She has an account now with the same company and it is current (GE 1, 2, 4; AE B; Tr. 39).
- **Student loans debt to federal government** (allegations 1.d – 1.j.): Payment Plan. Applicant fell behind in her student loan payments when she was unemployed and/or underemployed. In October 2008, she established a payment plan of \$400 per month. The balance in April 2009 was \$38,187, which she had reduced from the \$39,914 owed in October 2008. AE L shows Applicant's payments, starting in October 2008, which are automatically deducted from her checking account (Answer; GE 2, 4; AE C, J, L; Tr. 39-41).
- **Student loan owed to bank** (allegation 1.k.): Payment Plan. Applicant accepts this debt as her own, and agrees with the balance alleged. She contacted the creditor in regard to this student loan and set up a payment plan of \$100 per month, which was verified by a coworker who witnessed the arrangements (GE 2, 4; AE J, K; Tr. 41- 43, 55-56).
- **Credit card debt** (allegation 1.l.): Paid. Applicant, believing the \$12,500 balance listed in her credit bureau report was incorrect, repeatedly contacted the creditor. Ultimately, the company confirmed that the correct balance was approximately \$1,900. Applicant then obtained a settlement in the amount of \$385, which she paid in May 2009 (GE 2; AE D, J, N; Tr. 43-45).
- **Store credit card** (allegation 1.m.): Paid. On November 17, 2008, Applicant obtained a settlement offer for \$1,137.02 on an original

balance of \$2,279. She paid the debt on November 20, 2008, and provided supporting documentation (GE 2, 4; AE E; Tr. 45).

- **Jewelry store debt** (allegation 1.n.): Paid. Applicant paid the balance on this debt in November 2008 and provided supporting documentation (GE 2; AE F, J, M; Tr. 45-46).
- **Bank credit card** – (allegation 1.o.) – Payment plan. See allegation 1.a, above.

Applicant's college friend, who later became her co-worker, submitted a character reference letter attesting to Applicant's academic abilities, dedication to performance on her job within a federal agency, and her volunteer work with military members. Another co-worker, who is currently a research fellow and formerly an Air Force member of 30 years, discussed the trustworthiness Applicant displayed when working with private employee information, and the integrity and honesty she demonstrated when supporting defense projects (AE 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).⁶ Decisions must also reflect consideration of the “whole person” factors listed in ¶ 2(a) of the Guidelines.

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 Guideline F (financial considerations).

A security clearance decision is intended only to resolve the questions of whether it is clearly consistent with the national interest⁷ 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

⁶ Directive. 6.3.

⁷ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

burden of persuasion.⁸ 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 requisite judgment, reliability and trustworthiness of one who will protect the national interests as her 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.⁹

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.

Applicant accumulated numerous debts, including one judgment and many that were referred for collection, and was unable to pay them for a number of years. Applicant's credit bureau reports, her response to interrogatories, and her hearing testimony establish that AG ¶19a (*inability or unwillingness to satisfy debts*) and AG ¶19c (*a history of not meeting financial obligations*) apply. There is no evidence that her debts resulted from frivolous spending, alcoholism, gambling or deceptive practices.

The Financial Considerations guideline also contains factors that can mitigate security concerns. Mitigating conditions AG ¶ 20b, AG ¶ 20d and ¶ AG 20e are relevant to the facts of this case.

AG ¶ 20b (*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*

⁸ See *Egan*, 484 U.S. at 528, 531.

⁹ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

acted responsibly under the circumstances) applies. Applicant's income fluctuated significantly over the past several years. She was unemployed for several periods between 2003 and 2008. For the years 2000 to 2003, she was underemployed, earning between \$2,975 and \$7,500, and in 2007, her annual income was \$3,380. During the past year, she earned a substantially larger annual income, which allowed her to overcome the financial constraints of previous years. She acted responsibly by taking steps to resolve her debts once her salary increased. Applicant paid the balances owed on the cable company, jewelry store, and department store accounts. She established payment plans for her bank credit card, hospital bill, and federal and private student loans. Based on these actions, I find AG ¶ 20d (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies.

AG ¶ 20e (*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 substantiate the basis of the dispute or provides evidence of actions to resolve the issue*) also applies. Applicant disputed the \$12,500 credit card debt alleged at allegation 1.i. Through her persistent efforts and contacts with the company involved, Applicant demonstrated that, in fact, she owed only \$1,900, a small fraction of the amount listed in her credit bureau report. Applicant provided evidence of this reduced balance, which she intends to pay. Applicant also disputed the total amount she owes on the debt alleged in allegation 1.a. She made several payments on her plan while awaiting validation of the current amount owed. I find for Applicant on Guideline F, Financial Considerations.

Whole Person Analysis

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. An administrative judge should consider the nine adjudicative process factors listed at 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) 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.

AG ¶ 2(c) requires that the ultimate determination whether to grant a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole person concept. Under each guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant accrued significant debt over the past six years, especially for a young person. The largest single debt resulted from her efforts to complete her bachelor's degree, a laudable goal that she did attain. Her financial problems stemmed primarily from college expenses, combined with unemployment and underemployment. Now that she has attained a steady job, at a substantially higher salary, she has taken steps to resolve her delinquencies: she paid several debts, and set up payment plans for the larger debts. She also demonstrated persistence in working with another creditor on a debt she disputed, and eliminated a \$10,000 error in the balance. She eliminated a significant negative monthly remainder, and now shows a small positive cash flow at the end of the month. Applicant's conduct demonstrates maturity, and her documented efforts show a sincere intent to meet her financial obligations. A fair and commonsense assessment of the available information bearing on Applicant's suitability for a security clearance shows she has satisfied the doubts about her ability or willingness to protect the government's interests.

Overall, the record evidence satisfies the doubts raised about Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from the cited adjudicative guideline.

Formal Findings

Paragraph 1, Guideline F	For Applicant
Subparagraphs 1.a. – 1.p.	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is granted.

RITA C. O'BRIEN
Administrative Judge