



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



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| In the matter of: |) | |
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| ----- |) | |
| SSN: ----- |) | ISCR Case No. 08-10225 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Ray T. Blank, Jr., Esquire, Department Counsel
For Applicant: *Pro Se*

March 23, 2010

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 11, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for her work for 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 to obtain clarification of and/or additional information about potentially disqualifying information in her background. After reviewing the results of the background investigation, as well as Applicant's response to the interrogatories, DOHA adjudicators were unable to make a preliminary affirmative

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

finding² that it is clearly consistent with the national interest to allow him access to classified information. On July 6, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which, if established, raise security concerns addressed in the revised adjudicative guidelines³ under Guideline F (financial considerations) and Guideline E (personal conduct).

On July 29, 2009, Applicant responded to the SOR and requested a hearing. The case was assigned to me on September 1, 2009, and I convened a hearing on November 20, 2009. The parties appeared as scheduled. The government presented five exhibits, which were admitted without objection as Government Exhibits (Gx.) 1 - 5. Applicant and one witness testified on her behalf. She also presented 14 documents that were admitted without objection as Applicant's Exhibits (Ax.) A - N. The record remained open after the hearing to give Applicant time to submit additional relevant information. The record closed on December 3, 2009, when I received Applicant's post-hearing submission. It has been admitted into the record without objection as Ax. O. DOHA received the transcript of hearing (Tr.) on December 4, 2009.

Findings of Fact

The government alleged under Guideline F that Applicant owes approximately \$14,453 for 18 delinquent debts (SOR ¶¶ 1.a - 1.r) that, as of April 14, 2009, remained unpaid. In her July 29, 2009, response to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.b - 1.k, 1.n - 1.r, but denied the others.

The government also alleged, under Guideline E, that in response to e-QIP question 27, she deliberately omitted that she owed a \$1,346 judgment, also alleged at SOR ¶ 1.g (SOR ¶ 2.a); and that in response to e-QIP question 28.a and 28.b, she deliberately omitted the other 17 debts alleged in the SOR (SOR ¶ 2.b). Applicant did not respond to the allegations in SOR ¶¶ 2.a and 2.b when she responded to the SOR in July 2009. However, at the hearing, I asked Applicant for her response to these allegations. Based on her comments and on her responses to my questions, I entered denials for her in response to SOR ¶¶ 2.a and 2.b. In addition to the facts established through her admissions to allegations about her finances, I have made the following findings of relevant fact.

Applicant is 43 years old. Since May 2006, she has worked as a security guard for a defense contractor. Applicant has three children ages 26, 25, and 19. Until late 2009, at least one of her children and a grandchild lived with her, and she provided most of their support. All of her children are now on their own. She has been married twice. Her first marriage began in 1987 and ended through divorce in 1993. Her

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

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 take precedence over the guidelines listed in Enclosure 2 to the Directive.

youngest child was born of that marriage, but she has received only sporadic child support payments from the child's father. She re-married in 1994, but again divorced in 2003. (Gx. 1; Tr. 75 - 76)

Between April 2005 and May 2006, Applicant was either unemployed or she found work through temporary agencies who did not provide her any benefits. In 2005 and 2006, Applicant went to the emergency room and was admitted to the hospital several times for heart palpitations and anxiety attacks. She eventually received the proper medications and her health has been fine for the past three years. (Tr. 72 - 74) However, at the time she required this medical treatment she had no health insurance. She was also a single mother still responsible for supporting her daughter and grandchild. (Tr. 54 - 56) As a result, she incurred more than \$14,000 in unpaid medical bills. About \$5,200 was alleged in the SOR, but she also owes another \$9,000 for a judgement obtained by a hospital against her. (Gx. 3)⁴

Applicant also incurred another \$9,200 in unpaid credit cards and other accounts. However, much of this debt arose before she had her medical problems, but when she was working in another state. She explained that as a single mother working shifts, she also had to pay child care and had to use credit cards to make ends meet. (Tr. 57 - 58)

As alleged in SOR ¶¶ 1.k and 1.l, Applicant owes CapOne bank about \$3,000 for delinquent credit cards. She was aware of this delinquency as early as 2005, and she tried to reach a settlement agreement with that creditor to no avail. (Tr. 57) In 2004, Applicant defaulted on a bank loan. The bank obtained a civil judgment against her for \$1,346. She knew at the time that she was being sued for the defaulted loan. (Tr. 65). Applicant has also tried to resolve her debts through credit counseling or debt consolidation and repayment companies. However, she could not afford the recommended monthly payments and it was recommended that she file for bankruptcy. (Tr. 62)

When Applicant submitted her e-QIP in March 2008, she was aware that she owed at least one unpaid judgment and the CapOne credit card delinquency, all of which she had incurred within the previous seven years. However, she did not list any of her past due debts in response to any of the e-QIP questions regarding her finances. (Gx. 1) When asked why she omitted her debts, she testified that, because she had not looked at a recent credit report, she was unsure what to list. (Tr. 68 - 69)

Since August 2009, Applicant has been making what payments she can on several of her debts. She has reached an agreement with four of her medical creditors to have between \$30 and \$50 taken directly from her bank account each month. However, she has not paid or otherwise resolved the larger debts that are the subject of the civil judgments against her. The debts listed at SOR ¶¶ 1.a, 1.f, 1.m and 1.o have been paid. (Answer to SOR; Ax. B; Ax. D; Gx. 3) Her monthly finances reflect that she has about \$200 remaining each month after paying all of her expenses and making the

⁴ It is unknown why the government did not include this debt in the SOR.

debt payments directly from her bank account. (Gx. 2; Tr. 69 - 71) In March 2009, she consulted a bankruptcy attorney about possibly filing for Chapter 7 liquidation; however, as of the hearing she had not yet filed.

Applicant enjoys a solid personal reputation among her coworkers and friends. Her immediate supervisor recommended she be given a clearance based on his daily observation of her excellent work performance. Others have praised her generosity and good character. (Ax. A) Her manager also testified that Applicant is one of her best employees. (Tr. 48 - 53)

Policies

Each security clearance 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 (AG). 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 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) and AG ¶ 15, Guideline E (personal conduct) .

A security clearance decision is intended only 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 prove

⁵ Directive. 6.3.

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

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.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 to classified information in favor of the government.⁸

Analysis

Financial Considerations

The security concern about Applicant's finances, as stated in AG ¶ 18, is that:

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 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 - 1.r; that is, that Applicant accrued almost \$14,453 in delinquent personal debt beginning around 2003, when she defaulted on her CapOne credit card account. Since then, she has had at least two civil judgments (only one of which was included in the SOR) entered against her and she has been unable to pay several medical bills she incurred in 2005 and 2006. Applicant established that she has paid the debts at SOR ¶¶ 1.a, 1.f, 1.m and 1.o, which total about \$2,111. Accordingly, those allegations are resolved for Applicant. Nonetheless, the record supports those allegations and 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*). As to AG ¶ 19(a), the facts reflect an inability rather than an unwillingness to pay, as shown by her modest monthly payments to at least four of her unpaid accounts.

By contrast, available information shows that Applicant has incurred her delinquent debts as a result of several years of sporadic employment, being unemployed for most of 2005, a divorce in 2003 that left her as the sole provider for two of her children who were still living with her, and unforeseen medical expenses in 2005 and 2006 while she did not have medical insurance. Applicant has not engaged in any tangible financial counseling, but she has managed to reach agreements with some of

⁷ See *Egan*, 484 U.S. at 528, 531.

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

her creditors to make modest payments, but this approach will not result in any significant resolution of her debts for several years. She has not yet begun to resolve her larger debts, including the two large debts being enforced through civil judgments against her. Available information supports consideration of the mitigating conditions 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 or separation), and the individual acted responsibly under the circumstances*); and AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Applicant is not expected to be completely debt free. Indeed, given her modest means and the events that have either caused her debts or hindered her ability to pay them, it is not surprising that most her debt remains unpaid. I recognize that such events were not caused by Applicant, and that she is paying what she can, but at some point an individual's circumstances pose an unacceptable risk when deciding whether to allow that person access to classified information. Such is the case here. I conclude that the security concerns about her unpaid debts are not mitigated.

Personal Conduct

The government alleged (SOR ¶¶ 2.a and 2.b) that Applicant deliberately falsified her answers to two questions in her e-QIP that asked her to disclose if she had any unpaid judgments or if she had any debts more than 180 or 90 days past due. The security concern raised by these allegations, as stated at AG ¶ 15, is that:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The Applicant denied both allegations, thereby placing on the government the burden of “presenting witnesses and other information to establish facts that have been controverted.” (Directive, E3.1.14)

Aside from the e-QIP (Gx. 1) that shows she did not list any past-due debts, there is no information that directly shows that Applicant intentionally provided false answers as alleged. However, the totality of available information supports a conclusion that she did so. Applicant specifically knew that she had been sued by the creditor alleged in SOR ¶ 1.g, and that she was delinquent on her CapOne account as early as 2005. It can also be reasonably inferred that she knew when she completed her e-QIP that she was at least 90 days past due on her medical bills. In light of all of the information about her debts, and without any other information (that she has not provided) to explain why she answered “no” to the questions at issue, Applicant's claim that she did not disclose any of her debts because she had not seen a credit report is insufficient. Based on all of the foregoing, I conclude that the disqualifying condition at

AG ¶ 16(a) (*deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities*) applies. At the very least, she could have answered “yes” to any one of the questions about her finances, thereby putting the government on notice that her finances might be a concern.

By contrast, Applicant presented no information that shows she tried to correct her omission before the hearing, or that her answers were given according to erroneous advice from an otherwise qualified source. Accordingly, the mitigating conditions at AG ¶ 17(a) (*the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts*) and AG ¶ 17(b) (*the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully*) do not apply.

I have also considered the mitigating condition at AG ¶ 17(c) (*the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*). Applicant's falsification appears to be an isolated event, and it is unlikely that Applicant would again withhold such information from the government. However, her explanations of why she answered the questions as she did leave me with doubts about her candor and her judgment. Therefore, I conclude she has failed to mitigate the security concerns about her personal conduct.

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 in the context of the whole person factors listed in AG ¶ 2(a). Applicant is 43 years old and presumed to be a mature, responsible adult. According to her two supervisors and several other references, she is a generous, hardworking person who has done her best to meet her family obligations despite difficult circumstances. However, the positive information about Applicant is insufficient to overcome the adverse information about her debts and falsifications. A fair, commonsense⁹ evaluation of this record shows that concerns remain about Applicant's finances and her trustworthiness, thus perpetuating the doubts raised by the government's information 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 for the government.¹⁰

⁹ See footnote 5, *supra*.

¹⁰ See footnote 8, *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:

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| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraph 1.a: | For Applicant |
| Subparagraphs 1.b - 1.e: | Against Applicant |
| Subparagraph 1.f: | For Applicant |
| Subparagraphs 1.g - 1.l: | Against Applicant |
| Subparagraph 1.m: | For Applicant |
| Subparagraph 1.n: | Against Applicant |
| Subparagraph 1.o: | For Applicant |
| Subparagraphs 1.p - 1.r: | Against Applicant |
| Paragraph 2, Guideline E: | AGAINST APPLICANT |
| Subparagraphs 2.a - 2.b: | Against Applicant |

Conclusion

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

MATTHEW E. MALONE
Administrative Judge