



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 08-12174
)	
Applicant for Security Clearance)	

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel

For Applicant: *Pro se*

June 22, 2009

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the case file, pleadings, and exhibits, I conclude that Applicant has not mitigated the security concerns raised under the guideline for financial considerations. Accordingly, her request for a security clearance is denied.

Statement of the Case

On August 26, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to request a security clearance required as part of her employment with a defense contractor (Item 5). 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 13, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) (Item 1), that specified the basis for its decision: security concerns addressed in

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

the Directive under Guideline F (Financial Considerations) of the Revised Adjudicative Guidelines (AG).

Applicant received the SOR on February 23, 2009. She signed a notarized Answer on March 20, 2009, and requested a decision without a hearing. In her Answer, Applicant admitted to all allegations in the SOR. On April 1, 2009, DOHA Department Counsel submitted a file of relevant materials (FORM)² in support of the government's preliminary decision to deny Applicant's request to be granted a security clearance. Applicant was given 30 days from the date she received the FORM to respond. The file does not include a response from the Applicant. The case was assigned to me on June 12, 2009, for an administrative decision based on the record.

Findings of Fact

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

Applicant, 32 years old, married in February 2000 and separated in about January 2008. As a result, she is now the sole provider for herself and her 19-month-old child. She attended community college from 1997 to 1999, but did not earn a degree. She did receive a Phlebotomy Technician certificate from a vocational center in 2004. Since 2000, she has been employed by a defense contractor. On her security clearance application, she indicated her position title as "supply chain" (Items 4; 5).

The SOR alleges debts that amount to approximately \$12,000. Ten of the 16 SOR allegations relate to medical debts, totaling \$987. These debts became delinquent between 2002 and 2007 (Item 6). Applicant's largest debt, \$9,951, stems from repossession of her car. She states that this car was in her name "because of credit," but that her former husband was the primary user, and "he let [it] go back on purpose." As of September 2008, this account had been charged off (Item 7). The SOR also includes two communications accounts (cell phone and cable service), which became delinquent in 2004 and 2006, respectively, and three charge accounts, which became delinquent in 2007 and 2008 (Items 1; 4; 6; 7).

Applicant's Answer contains limited information about the cause of her delinquencies. She refers to a divorce "which has left me unable to afford all of the bill[s] which was just left on me to handle all by myself." (Item 4). She did not provide the date of her divorce. In her Answer, Applicant also refers to surgery and related therapy, but does not explain the time frame, the cost, or the effect of this medical situation on her finances. She notes in her Answer that she expected these medical debts to be paid by her insurance company, but fails to offer any further explanation. The record is also

² See Directive, Enclosure 3, Section E3.1.7. The FORM included eight documents (Items 1 - 8) proffered in support of the government's case.

silent as to Applicant's annual income or monthly net remainder after meeting expenses and debts.

Applicant filed a Chapter 7 bankruptcy petition in March 2009 “to try and get from under some of the debts that I have incurred and left with over the past years.” (Items 4; 8). Before filing the petition, Applicant was required to obtain credit counseling. The petition indicates that she received this information, as well as assistance with creating a budget analysis (Item 8). The document does not provide information about Applicant's assets or liabilities, but does list the creditors included in the petition. Four creditors listed in the SOR are included in the bankruptcy (allegations 1.d., 1.m., 1.o., and 1.p.). The petition also lists four medical creditors, but it cannot be determined whether or not they are the medical creditors listed in the SOR.

Policies

Each security clearance decision must be a fair, impartial, and common-sense 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).³ Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the “whole person” concept. 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 whether it is clearly consistent with the national interest⁴ 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.⁵ 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

³ Directive. 6.3.

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

⁵ See *Egan*, 484 U.S. at 528, 531.

requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or his 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.⁶

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.

The evidence contained in the FORM shows that Applicant’s debts, amounting to approximately \$12,000, started becoming delinquent in 2002, and have remained unpaid. There is no evidence that Applicant engaged in frivolous spending, that she failed to pay taxes, or that her debts are linked to gambling, drugs or alcohol. However, her seven-year history of failing to meet her financial obligations does support application of disqualifying conditions AG ¶19 (a) (*inability or unwillingness to satisfy debts*) and AG ¶19 (c) (*a history of not meeting financial obligations*).

Under AG ¶ 20, the following conditions that can potentially mitigate security concerns are relevant:

(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;

(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;

⁶ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

As of the date the SOR was issued, Applicant had numerous debts. Although they started accruing in 2002, they are not in the distant past, because her debts remained unpaid. Although Applicant is presently attempting to resolve her debts through bankruptcy; however, without further information, such as her income and expenses, it is impossible to know whether she will be able to remain debt-free in the future. Moreover, the fact that Applicant did not respond to her delinquencies until she received the SOR casts doubt on her good judgment. AG ¶ 20(a) cannot be applied.

AG ¶ 20(b) is relevant because Applicant has been separated since 2008, and has been going through a divorce, a condition that she could not have predicted. Consequently, she has been the sole support of herself and her child for more than one year. However, most of her debts became delinquent between 2002 and 2007, while she was married. Therefore, it appears that her divorce was not the primary factor that caused her delinquencies. To be applicable, this mitigating condition requires that the person act responsibly under the circumstances. The record provides no facts on which to base a determination that Applicant acted responsibly. AG ¶ 20(b) does not apply.

Applicant's bankruptcy petition (Item 8) indicates that she received financial counseling, implicating AG ¶ 20(c). However, no information is available in the record to determine what type of counseling she received, if she benefited from it, if she adhered to any budget that she may have developed to fulfill the pre-bankruptcy requirement, or if she received any other counseling that would help her to avoid a similar situation in the future. AG ¶ 20(c) cannot be applied.

Mitigation is also unavailable under AG ¶ 20(d). The record contains no evidence that Applicant paid any of the debts in the SOR since they became delinquent, including the relatively small medical debts. Applicant seeks to resolve her debts through bankruptcy. Although this is a legitimate avenue for dealing with unresolved debt, it does not demonstrate a track record of paying and resolving legitimate financial obligations.⁷ The extent to which the SOR debt will be resolved is unclear, because only four of the SOR debts can be identified in the petition. In addition, the bankruptcy process is not complete; at this point, it is unknown whether or not it will be discharged.⁸ Finally, Applicant filed the petition shortly after she received the SOR, indicating that she was responding to the security process, rather than initiating a good-faith effort to meet her legitimate financial obligations. None of the mitigating conditions apply. I find against the Applicant on Guideline F.

⁷ See ISCR Case No. 02-06703 (App. Bd. Feb 25, 2004).

⁸ See ISCR Case No. 02-21045 (App. Bd. Dec. 28, 2004).

Whole Person Concept

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. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited Guideline. I have also reviewed the record before me in the context of the whole-person factors listed in 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) 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 Applicant is 46 years old and presumed to be a mature, responsible adult.

Applicant accrued approximately \$12,000 in delinquent debt, starting in 2002. She filed a Chapter 7 bankruptcy petition in March 2009, about one month after she received the SOR. However, between 2002 and 2009, she took no steps to resolve her delinquencies. A fair and common-sense assessment of the available information bearing on Applicant's suitability for a security clearance shows she has not satisfied the doubts raised by her failure to respond to her legitimate financial obligations. 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 as follows:

Paragraph 1, Guideline F:	Against Applicant
Subparagraphs 1.a. – 1.p.	Against Applicant

Conclusion

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

RITA C. O'BRIEN
Administrative Judge

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