



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



In the matter of:)
)
) ISCR Case No. 09-00815
)
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Jr., Esquire, Department Counsel

For Applicant: *Pro se*

July 26, 2010

Decision

O'BRIEN, Rita C., Administrative Judge:

Based upon 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 April 4, 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 4) 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 finding that it is clearly consistent with the national interest to grant Applicant's request.¹

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

On December 23, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) (Item 1) that specified the basis for its decision: security concerns addressed in the Directive under Guideline F (Financial Considerations) of the Adjudicative Guidelines (AG). Applicant signed her Answer to the SOR on February 9, 2010, and requested a decision without a hearing. In her Answer to the SOR, Applicant admitted each of the 12 allegations under Guideline F. On March 22, 2010, DOHA Department Counsel submitted a file of relevant materials (FORM)² in support of the government's preliminary decision. Applicant was given 30 days from the date she received the FORM to file a response, but did not respond. The case was assigned to me on July 7, 2010, for an administrative decision based on the record.

Findings of Fact

Applicant's admissions in response to the SOR are incorporated herein 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 is 33 years old. She earned a bachelors degree in 2000. She is single and has no children. She has been employed as a Windows system administrator since April 2008. (Items 4, 5)

During her subject interview in June 2008, Applicant stated that her financial problems began in late 2001 when she lived with her boyfriend. She was employed but he was not. Without Applicant's knowledge, he used her credit cards and amassed large balances on them. He died in 2002, and Applicant was unable to pay the bills that he had created. Applicant was unemployed for approximately nine months at about the same time, between 2002 and 2003. (Item 5)

Applicant retained a loan consolidation company and consolidated several student loans. She pays \$135 per month on student loans. The SOR lists student loans amounting to approximately \$22,000. It is unclear from the record whether these are additional student loans, or the ones on which Applicant is making monthly payments. During her interview, Applicant stated that she had no knowledge of nine of the delinquent debts listed in her credit report. There is no record evidence that she filed disputes with the credit reporting agencies in regard to these debts. Applicant stated at her security interview that she wants to resolve her debts. (Item 5)

Applicant's annual gross salary is \$66,349. The personal financial statement (PFS) that she completed in June 2009 shows a monthly net income of \$3,473. After paying expenses of \$3,020, her monthly net remainder is \$453. She did not list payments on any debts in her PFS. Applicant disclosed her debts on her security clearance application. (Items 4, 5)

² See Directive, Enclosure 3, Section E3.1.7. The FORM included 7 documents (Items 1 - 7) proffered in support of the government's case.

The 12 SOR debts total \$93,388. Applicant's oldest delinquency dates from 2001. In June 2009, she did not have sufficient funds to pay her debts, and was living "paycheck to paycheck." Other than her monthly payment on some student loans, Applicant has made no arrangements to pay any of the listed debts. (Items 5, 6, 7)

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 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 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 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

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.

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

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's history of failing to meet her financial obligations began in 2001. Her nine-year history of failing to pay numerous debts supports 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, I considered the six conditions that can potentially mitigate security concerns, and conclude that the following five 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;
- (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; and
- (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 substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's failure to resolve her debts did not occur in the distant past, because the debts are still delinquent. Although she stated in 2008 that she wished to resolve her debts, she has made no effort to do so. Her failure to make any effort to deal with her legitimate obligations casts doubt on her reliability and trustworthiness. AG ¶ 20(a) cannot be applied.

AG ¶ 20(b) is relevant because Applicant debts stemmed, in part, from the actions of her boyfriend in using her credit cards without her authorization, a circumstance that she could not predict or control. In addition, Applicant was unemployed for approximately nine months at about the same time. Although unemployment can be mitigating, I cannot determine whether it is mitigating in Applicant's case, because I cannot deduce from the written record if this event was within Applicant's control. To claim mitigation under AG ¶ 20(b), an applicant must also act responsibly under the circumstances. Applicant presented no evidence that she took steps to stop her boyfriend from using her cards, or disputed any of the unauthorized charges with the credit reporting agencies. Applicant failed to act responsibly, and only partial mitigation is available under AG ¶ 20(b).

Applicant receives some mitigation under AG ¶ 20(c) because she has consolidated some student loans, However, she has not set up a payment plan for any other debts, nor brought her substantial debt load under control, despite having more than \$400 in discretionary funds each month. For the same reasons, mitigation is unavailable under AG ¶ 20(d), which requires a good-faith effort to resolve debts. Finally, Applicant claims that numerous credit card debts were incurred through the actions of her boyfriend, implying that she believes she is not liable for them. However, she provided no evidence that she contacted the credit reporting agencies to dispute these credit card debts, nor the debts that she did not recognize during her security interview. AG ¶ 20(e) cannot be applied. I conclude that the partial mitigation available under AG ¶ 20(b) and (c) is insufficient to mitigate the security concerns regarding financial considerations.

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) 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.

Applicant is presumed to be a mature, responsible adult. She accrued significant debt over the past nine years: the SOR lists debts that total more than \$93,000. Applicant claims she is unable to pay them because of insufficient funds, despite having approximately \$400 remaining each month in discretionary funds. Applicant has not indicated that she sought financial counseling, and has no payment plans in place. Her lack of effort to resolve her legitimate financial obligations raises questions as to her good judgment and reliability, and her suitability to be granted access to classified information.

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 about her ability or willingness to protect the government's interests. Because protection of the national interest is paramount in these determinations, such doubts must be resolved in favor of the government.⁷

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.l.	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

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