



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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SSN: -----) ISCR Case No. 09-01453
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Applicant for Security Clearance)

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel
For Applicant: *Pro Se*

November 27, 2009

Decision

MALONE, Matthew E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant’s request for eligibility for a security clearance is granted.

On October 10, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for her job with a defense contractor. After reviewing the results of Applicant’s background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) sent interrogatories to Applicant to obtain clarification of and/or additional information about adverse information in her background.¹ Based on the results of the background investigation, including Applicant’s response to the interrogatories, DOHA adjudicators

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

were unable to make a preliminary affirmative finding² that it is clearly consistent with the national interest to continue Applicant's access to classified information. On June 17, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the Revised Adjudicative Guidelines (AG)³ under Guideline F (financial considerations).

On July 9, 2009, Applicant responded to the SOR and requested a decision without a hearing. On July 22, 2009, Department Counsel prepared a File of Relevant Material (FORM)⁴ in support of the government's preliminary decision. Applicant received the FORM on August 20, 2009, and was given 30 days to file a response to the FORM. She did not timely respond to the FORM by the September 19, 2009, deadline. The case was assigned to me on November 10, 2009.

Findings of Fact

The government alleged Applicant owed approximately \$61,900 for two delinquent debts listed in SOR ¶¶ 1.a and 1.b. In response to the SOR, Applicant admitted these allegations and provided a lengthy explanation of her financial history and current financial condition. In addition to the facts entered in the record through Applicant's admissions, I make the following findings of relevant fact.

Applicant is a 35-year-old mechanical engineer, who has held her current job as a structural analyst since September 2007. She and her husband have been married since October 1998 and they have five children. (FORM, Item 5) After they married, they moved to where Applicant was raised, because they thought it would be a good place to raise children. Unfortunately, there were few job opportunities for them, and what work they could find did not pay them near what they had earned before the move. At the time they got married, Applicant and her husband earned in excess of \$72,000 annually. After they moved, their income dropped to about \$21,000. (FORM, Item 6)

Applicant and her husband struggled to make ends meet between 1998 and 2003, as she stayed at home to care for their children and worked occasional part-time jobs. In 2003, they considered moving to an area with more job opportunities, but when his salary increased to about \$35,000, they decided to stay. However, they were never able to get ahead. In December 2005, her husband's pay as a financial planner converted from salary plus a commission to just commission. For the next 22 months, they made a total of \$45,705, for an average monthly income of about \$2,077. However, their income was uneven in that in 13 of those months, their income was less than

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 supercede the guidelines listed in Enclosure 2 to the Directive.

⁴ See Directive, Enclosure 3, Section E3.1.7. The FORM included eight documents (Items 1 - 8) proffered in support of the government's case.

\$1,500. Between October 2007 (just after Applicant began her current job) and February 2008, Applicant's husband earned a total of about \$1,680. Thereafter, he reverted to a straight salary job. Between February 2008 and May 2009, he earned about \$36,687, for a more consistent monthly average salary of about \$2,293. (FORM, Item 6)

To meet expenses and pay bills, Applicant and her husband used credit cards and other forms of personal credit to make ends meet. Credit reports obtained by government investigators in October 2008 (FORM, Item 8) and by DOHA adjudicators in March 2009 (FORM, Item 7) listed a delinquent credit card with a balance due of \$12,532, which was placed for collection in October 2008. Applicant resolved that debt through a settlement agreement in December 2008. (FORM, Item 6) The credit reports also showed a delinquent home equity account with a balance due of \$5,770, which was referred for collection in August 2008. Applicant paid off that debt in March 2009. (FORM, Item 6)

Still unresolved are two more delinquent accounts listed in the credit reports. One appears to be another home equity-related account with a balance due of \$20,492 (SOR ¶ 1.b). The other is a delinquent credit card account with a current balance due of about \$41,449 (SOR ¶ 1.a). Both have been referred to collection agencies. On April 30, 2008, Applicant and her husband completed a 13-week financial counseling course. (FORM, Item 6) In addition to receiving instruction on personal financial management, they were advised through that course to pay their smaller debts one at a time so that they were completely resolved before tackling their larger debts. As to the remaining delinquencies, Applicant avers she and her husband intend to be debt free by the end of 2010, but she did not provide a schedule of payments that will accomplish that goal.

A personal financial statement (PFS) Applicant submitted in response to DOHA interrogatories in May 2009, showed she and her husband earn about \$5,195 each month after deductions and monthly expenses. They also have about \$16,900 in savings plus about \$18,291 in her husband's retirement account. The PFS also reflected that they have about \$3,000 remaining each month after all expenses and their mortgage are paid. (FORM, Item 6)

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).⁵ 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 factor are:

- (1) The nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable

⁵ Directive. 6.3.

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 concern and adjudicative factors under AG ¶ 18 (Guideline F - financial considerations).

A security clearance decision is intended 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 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.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 in favor of the government.⁸

Analysis

Financial Considerations

The government presented sufficient information in the FORM to establish that Applicant has a history of financial problems reflected through delinquent credit card accounts and unpaid mortgage and home equity accounts. The debts listed in the SOR have been delinquent and unresolved for several years. Further, Applicant has acknowledged that she and her husband used credit cards to excess for several years to compensate for their inability to make ends meet. The two remaining debts total more than \$61,000 and there is no information that shows the debts have been paid or

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

⁷ See *Egan*, 484 U.S. at 528, 531.

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

otherwise resolved. The government's information raises a security concern about Applicant's finances addressed in AG ¶ 18, as follows:

[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.

More specifically, 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*). In response, Applicant has presented information showing that Applicant's financial status has improved over the past two years through increased income for her and her husband. They have increased their savings and retirement accounts, they have a significant positive monthly cash flow, and they appear to be living within their means. Applicant also established that, several months before receiving DOHA interrogatories and before the SOR was issued, she was already paying or acting to resolve several delinquent debts other than those alleged in the SOR. Further, she and her husband sought credit counseling to improve their ability to get out of debt and to improve their overall financial health. Accordingly, the mitigating conditions at AG ¶ 20(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*) and AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) apply.

Available information also shows that the debts alleged did not result from recent conduct or circumstances. Despite struggling to make ends meet from about 1998 through 2008, Applicant and her husband experienced a distinct period of difficulty between December 2005 and February 2008 due to uneven and insufficient income. Together with the aforementioned information about Applicant's current financial health and actions to resolve her past debts, the record also supports application of the mitigating condition at AG ¶ 20(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*).

As to application 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 or separation), and the individual acted responsibly under the circumstances*), beginning in 1998, the adverse financial impacts resulting from Applicant's decision to move back to where she was raised to start a family could not be foreseen. In hindsight, their decision not to move in 2003 despite having experienced protracted financial problems, appears to have been an instance of poor judgment. However, they were understandably reluctant to move their children and her husband had received a raise that convinced them to stay. Later, their income suffered when his pay was converted to a commission-only basis. These facts, combined with the information about their actions to resolve their debts once their income stabilized and increased, support application of

AG ¶ 20(b). Applicant's remaining debt is significant. However, the amount of actual debt is not always dispositive of whether an applicant should be disqualified under this guideline. Here, there is significant cash flow, increased savings, no indication of current delinquencies or use of credit cards, and a record of Applicant's proactive attempts to resolve her remaining delinquencies. On balance, I conclude Applicant has mitigated the security concerns raised by the government's information about her finances.

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, a 35-year-old engineer and mother of five, is presumed to be a mature, responsible adult. She and her husband have been married for more than 10 years, and their financial problems have arisen from poor decisions born of their attempts to raise their family in a location they valued for that purpose, but where, because of insufficient job opportunities, they struggled to make ends meet. Despite no available information about Applicant's job performance or standing in the community, the record evidence of her recent efforts to pay down her debts and to improve her finances reflects favorably on her character and reliability. Despite significant remaining debt, her proactive repayment efforts and her improved financial health make it likely she will continue to resolve her debts and avoid similar problems in the future. A fair and commonsense assessment⁹ of all available information bearing on Applicant's finances shows she has sufficiently addressed the government's doubts about her suitability for access to classified information.

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:	FOR APPLICANT
Subparagraphs 1.a - 1.b:	For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the national interest to grant Applicant's request for a security clearance. Eligibility for access to classified information is granted.

MATTHEW E. MALONE
Administrative Judge

⁹ See footnote 5, *supra*.