



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



In the matter of:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 09-01785

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: *Pro se*

May 24, 2010

Decision

MALONE, Matthew E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and transcript, Applicant's request for a security clearance is denied.

On July 30, 2008, Applicant submitted a Questionnaire for Sensitive Positions (SF 86) to obtain a security clearance required for her job with 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 two sets of interrogatories¹ to clarify or augment information about potentially disqualifying information in her background. After reviewing the results of the background investigation and Applicant's responses to the interrogatories, DOHA adjudicators were unable to make a preliminary affirmative finding² that it is clearly consistent with the

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

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

national interest to grant Applicant's request for access to classified information. On August 27, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which, if proven, raise security concerns addressed in the adjudicative guidelines (AG)³ for financial considerations (Guideline F).

Applicant timely responded to the SOR and requested a hearing. The case was assigned to me on December 18, 2009. Pursuant to a Notice of Hearing issued on December 30, 2009, I convened a hearing in this matter on January 19, 2010. The parties appeared as scheduled. The Government presented five exhibits (Gx. 1 - 5), which were admitted without objection. Applicant testified on her own behalf and proffered five exhibits, which were admitted without objection as Applicant's Exhibits (Ax.) A - E. DOHA received the transcript of hearing (Tr.) on January 27, 2010. The record closed on February 2, 2010, when I received Applicant's post-hearing submissions that are admitted collectively as Ax. F.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owes approximately \$361,539 for eight delinquent debts (SOR 1.a - 1.h). In response to the SOR, Applicant admitted with explanation all of the SOR allegations. Having reviewed Applicant's response to the SOR, the transcript, and exhibits, I make the following findings of relevant fact.

Applicant is 30 years old and employed by a defense contractor. She requires a security clearance to perform the duties of her position as a contracts administrator. Applicant has worked directly for her current employer since December 2003. She worked as a temporary employee on the same contract from September 2001 until being hired as a regular employee. Applicant transferred from a previous location (City A) to her current location in July 2008. She transferred to follow her husband, who took a new job in City B. Applicant currently makes about \$52,000 annually, but may be promoted this year to a contracts negotiator position making about \$65,000. (Gx. 1; Tr. 91)

Applicant's job performance has been excellent. Multiple professional and personal references cite her good character, honesty, and reliability as the bases for their recommendations that she be granted a security clearance. (Ax. D)

Applicant has a bachelor's degree in journalism and a master's degree in mass communications. She owes about \$54,000 in student loans that are in forbearance until October 2010. At that time she estimates her monthly payments will be about \$400. (Tr. 86 - 87, 95)

³ The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. Pending official revision of the Directive, they take precedence over the guidelines listed in Enclosure 2 to the Directive.

She and her husband have been married since August 1999. They have two children, ages five and three. (Gx. 1) Applicant's husband has earned his living as a salesman in several different areas. When they relocated to City B in July 2008, he was selling and re-selling time shares. However, he has been largely unemployed since about December 2008, when the position for which he moved was eliminated due to market declines. (Tr. 61 - 62, 75)

Applicant and her husband enjoyed good financial health from the beginning of their marriage until late 2007. They had some credit card debt early in their marriage, but they made a concerted effort to pay it off and to avoid credit card use. They bought a house for use as their primary residence in May 2004. They financed the purchase through a \$146,000 fixed-rate 30-year loan. Their rate was 4.8%. Their income at that time was about \$80,000 annually and they had no difficulty meeting their mortgage and other regular obligations. (Tr. 44 - 48, 60)

In 2006, Applicant's husband, who had been working in telecommunications sales, decided to explore real estate investing based on what some of his friends were experiencing in the market. He wanted to buy homes, fix them up, and sell them for a profit. In October 2006, he and Applicant bought a house for \$180,000, which appraised for \$220,000. They obtained a \$150,000 adjustable rate mortgage at 16%. They also obtained a \$58,000 home equity line of credit (HELOC) against their primary residence and used \$30,000 for the remainder of the purchase price. They also obtained a HELOC on the investment property to fund improvements thereto. The first mortgage on the investment property also had a balloon payment provision, but Applicant could provide few details about this part of the transaction. She was pregnant with their younger child and left the matter largely to her husband. However, they both reviewed information about comparable local sales and the appraisal of the property they were buying. (Tr. 49 - 51, 57 - 58, 99 - 100)

Applicant and her husband put their investment property on the market in December 2006. However, they soon realized the house would not sell for their asking price, which was based on the earlier \$220,000 appraisal. At first, they blamed their realtor, but they had no success after changing agents. In her answer to the SOR and at the hearing, Applicant implied that the appraisal was fraudulent. (Tr. 52) After they put the house on the market, they received an appraisal that showed the house was worth about \$145,000. They were able to make the monthly mortgage, taxes, and insurance payment of about \$1,600 until December 2007. At that point, they were again using credit cards and could not make all four mortgage payments. They also could not pay the homeowners' association dues associated with the investment property. (Tr. 59 - 60)

In July 2008, as noted above, Applicant and her husband decided to move to their current location in City B. Applicant's employer agreed to transfer her to a job at this location at the same pay. Her husband's new job selling time shares was supposed to pay more than his previous position; however, the market for time shares soon dried up and he lost his job. Additionally, they were unable to sell their primary residence in City A. They stopped paying both mortgages on that house in June 2008. (Tr. 61 - 62) It went to foreclosure in late 2008 and was sold for \$148,139 in March 2009. (Ax. C)

Available information shows that the second mortgages on both properties were charged off by the lenders as business losses. The loans were not likely to be satisfied in the event of foreclosure because the properties were going to be sold for less than the first mortgage in each instance. The primary lender for each property would have first claim to any sale proceeds leaving nothing for the secondary loans. Applicant has not satisfied either of the HELOCs and the first mortgage on her investment property remains unresolved as there has been no sale yet. (Ax. F)

When she submitted her application for a security clearance, she disclosed the delinquent mortgages she and her husband incurred. She also described her efforts to resolve those mortgages through persistent efforts to sell both properties. They repeatedly reduced the asking price on each property. They also attempted to reach short sale agreements on both to no avail. (Gx. 1; Gx. 2; Ax. F)

The smaller debts alleged in the SOR (1.a - 1.c) also remain unpaid. SOR 1.a is a disputed charge of \$283 for an overdrawn bank account last discussed with the bank in 2008, when Applicant's husband was still working. (Tr. 36 - 39) SOR 1.b is a \$35 charge for a cable television box that Applicant claims her husband returned when they moved in 2008. (Tr. 39 - 40) SOR 1.c is an unpaid credit card with a balance due of \$2,178 that has been delinquent since October 2008. As of the hearing, Applicant was "putting together a plan" to resolve this debt. (Tr. 41 - 42)

Applicant has enrolled in a debt management and financial counseling service. (Ax. A) However, there is as yet no record of repayment or other action to resolve her debts through this service. A recent assessment of Applicant's finances shows that she and her husband, who was still unemployed as of the hearing, are covering their current monthly obligations. However, after paying all of their monthly expenses, it appears they are living paycheck to paycheck. In October 2009, their car was repossessed after they missed three months of payments. (Tr. 81 - 84) They have reduced their rent through an agreement with their landlord, but it is likely to increase when their lease is up later in 2010. Applicant did not present any information about how she would be able to pay more rent and make her monthly student loan payments when they come due.

Policies

A security clearance decision is intended 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. Each 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 policies in the adjudicative guidelines. 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:

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

⁵ Directive. 6.3.

(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, by itself, conclusive. 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).

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.⁶ 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.⁷

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.

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

The Government presented sufficient information to support the allegations in SOR ¶¶ 1.a - 1.h; that is, that Applicant owed \$361,539 for eight delinquent debts. Available information showed that she has not yet paid or resolved her debts. The two HELOC debts (SOR 1.f and 1.g) have been written off by the lenders of those accounts. One home mortgage (SOR 1.e) has been resolved through foreclosure and subsequent sale. But another mortgage of \$150,000 (SOR 1.d) and unpaid homeowners association dues of \$4,182 (SOR 1.h) remain Applicant's responsibility. The debts at SOR 1.a - 1.c, which have been delinquent for more than two years and total just under \$2,500, also remain unresolved. Accordingly, the record 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 to the SOR and at hearing, Applicant established that her husband has been under-employed or out of work entirely for more than about two years. The record also shows that their foray into real estate investments failed, in large measure, because of an inaccurate appraisal of the property they bought and an unforeseen failure in the housing market. Applicant further demonstrated that she and her husband acted with reasonable diligence in trying to sell or otherwise resolve their interest in the investment property. These facts require consideration 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*). However, the record does not support its application because of Applicant's decision to move to their current location. Given the problems experienced in trying to sell the investment property, Applicant knew or should have known that it would be equally as difficult to sell her primary residence. Even if her husband's new job had worked out, there is nothing in the record to show that they would have been able to support themselves in their new location and still meet the mortgage and HELOC obligations on the primary residence they were leaving.

The other mitigating conditions under AG ¶ 20 do not apply because Applicant did not establish that she has paid even the smallest of her debts. The fact that she is no longer obligated for the mortgage and HELOC on her primary residence is due solely to the lender's foreclosure of the first mortgage and subsequent sale of the property, and due to a business loss charge-off of the HELOC. Further, Applicant has not established that her financial health is any better or that it will improve. To the contrary, it appears that Applicant will not be able to meet her obligations when her student loans come due and her rent increases later in 2010. Finally, although Applicant has enrolled in a debt counseling and repayment service, she has not presented an agreed upon repayment plan or track record of debt payment. On balance, I conclude that the security concerns about her unpaid debt are not mitigated.

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). Available information shows that Applicant, 30 years old, is a mature, responsible wife and mother. She has a record of

steady, reliable employment through which she has established an excellent personal and professional reputation. She has worked hard to earn two degrees in her chosen field, and her employer lauds her professionalism and integrity. She was candid at all times about her finances, and the facts yielded through her background investigation and this adjudication show that Applicant and her husband may have been victims of bad luck who were duped by an overly liberal appraisal of their investment property. On the other hand, the same facts show that they did not do their homework before they bought the property and that they overextended themselves both in the 2006 purchase and when they decided to move in 2008. Applicant's lack of action regarding smaller delinquencies, the likely worsening of her financial circumstances in the next year, and the ongoing presence of significant delinquent mortgage obligations make unacceptable the risk of granting Applicant access to classified information. The favorable information in Applicant's background is insufficient to overcome that risk. A fair and commonsense assessment⁸ of all available information bearing on Applicant's past and current circumstances shows she has not addressed satisfactorily the Government's doubts about her ability and 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.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:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a - 1.h:	Against Applicant

Conclusion

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

MATTHEW E. MALONE
Administrative Judge

⁸ See footnote 5, *supra*.

⁹ See footnote 7, *supra*.