



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



In the matter of:)
)
) ISCR Case No. 09-02045
)
)
Applicant for Security Clearance)

Appearances

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

For Applicant: *Pro se*

August 19, 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

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), signed on November 18, 2008, 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 finding¹ that it is clearly consistent with the national interest to grant Applicant's request.

On May 12, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) (Item 1), that specified the basis for its decision: security concerns addressed in the

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

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

Applicant received the SOR on May 19, 2009. She signed a notarized Answer on May 26, 2009, and requested a decision without a hearing. In her Answer, Applicant admitted to all allegations in the SOR. On July 6, 2009, DOHA Department Counsel submitted a file of relevant materials (FORM) in support of the government's preliminary decision to deny Applicant's request to be granted a security clearance. The FORM contained eight documents, identified as Items 1 through 8. The FORM and attached Items were forwarded to Applicant on July 8, 2009. Applicant was given 30 days from the date she received the FORM to respond. She submitted a timely response dated July 23, 2009. The case was assigned to me on August 13, 2009, for an administrative decision based on the record.

Procedural Matters

In his FORM, Department Counsel moved to amend subparagraph 1.g. of the SOR to change the alleged amount owed from \$900 to \$94. The motion is granted.

Revised allegation 1.g. now reads:

g. You are indebted to a collection creditor [account #] on a medical account that was placed for collection in November 2007 in the approximate amount of \$94. As of April 6, 2009, this debt had not been paid.

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, 27 years old, graduated from high school in 2000 and received an EMT certificate² from a technical college in 2002. She worked as an EMT from 2002 to 2006. She also worked as a customer services representative in 2007 and as an electronics technician in 2001-2002 and 2007. When she submitted her security clearance application, she was employed as an electronics technician for a defense contractor (Item 4).

In 2005, Applicant married and had a son, who is now three years old. She and her husband separated in 2007. Since the separation, her husband has provided less than \$500 in child support. Applicant does not have the financial resources to finalize her divorce or to enforce child support payments (Item 4; Item A).

² This acronym might indicate Emergency Medical Technician; however, Applicant does not explain the meaning in her security clearance application.

Applicant's debts started to become delinquent in 2002. The SOR alleges 32 debts and two judgments that together total \$26,300. The categories of debts and the amounts alleged follow:

Medical: twelve debts, totaling \$7,702 (allegations 1.a.–1.g.; 1.j.; 1.r.; 1.z.; 1.dd.; 1.gg.)

Telecommunications: six debts totaling \$1,437 (allegations 1.h.; 1.i.; 1.q.; 1.s.; 1.y.; 1.ee.)

Utilities: two debts totaling \$306 (allegations 1.k.; 1.p.)

Bank creditors: four debts totaling \$6,983 (allegations 1.m.; 1.n.; 1.cc.; 1.ff.)

Charge account: one debt totaling \$474 (allegation 1.o.)

Retail stores: two debts totaling \$3,440 (allegations 1.u.; 1.aa.)

Cash advances: two debts totaling \$681 (allegations 1.bb.; 1.hh.)

Judgments: two, totaling \$4,875 (allegations 1.v.; 1.w.)

Other creditors (allegations 1.l., 1.t., and 1.x.): three debts totaling \$402

In her Answer (Item 2), Applicant described the status of the debts, without providing supporting documentation:

Paid: allegations 1.x. and 1.bb., totaling \$492

Paying: allegations 1.m., 1.n., 1.o., 1.v., and 1.ff

Unrecognized creditor: allegation 1.aa

Will contact creditors and make arrangements to pay: allegations 1.s., 1.u., 1.y., 1.cc., and 1.hh.

Will pay by May 22, 2009: allegation 1.l

Will pay by June 30, 2009: allegations 1.q., 1.r., 1.t., and 1.ee

Delinquent because she was uninsured: allegations 1.a. – 1.g.; 1.j.; 1.z.; 1.dd. and 1.gg.

Delinquent because of separation from her husband: allegations 1.h., 1.i., 1.k., and 1.w. Applicant plans to satisfy these debts.

Applicant offered no documentation to support her statement that some of her jobs did not provide health insurance to cover her medical expenses. Applicant did not explain whether these expenses were routine, or they resulted from an unforeseen circumstance such as sudden illness, major health problems, or a medical emergency.

In response to the government's FORM, Applicant provided information and documentation.³ Based on her pay stubs, Applicant's current net monthly income is \$2,268, which yields an approximate annual net income of \$27,200. She submitted a list of monthly income and expenses, in which she listed expenses of \$2,228 per month and a monthly remainder of \$40. Applicant did not include any payments of SOR debts on this expense sheet (Item C). She also did not provide proof that she had paid the debts that she planned to pay in May and June 2009, as described in her Answer.

Applicant provided the following documentation:

Item D: statements related to three medical debts, with hand-written notes that Applicant paid each.⁴

Item E: shows that a debt to a water company for \$196.07 is paid. The debt was turned over to the state revenue department, which intercepted and applied her state income tax refund. This debt is alleged in the SOR at ¶ 1.x.

Item F: shows that payment plans were offered to Applicant for two debts: \$12.48 per month on the debt alleged at ¶ 1.ff. and \$24 per month on another debt. It is unclear whether this \$24-per-month plan relates to the debt alleged at ¶ 1.bb. the document includes hand-written notes indicating that Applicant paid each.

Item G: bills related to two medical debts, with hand-written notes that Applicant paid \$10 on each.⁵ She stated that she does not have formal payment plans for them, but expects to put any extra monthly remainders toward these debts.

Applicant did not state whether she has participated in financial counseling. There is also no indication that she considered or pursued the possibility of bankruptcy, which is a legitimate path that an applicant can consider to resolve overwhelming debt.

³ Applicant's documents are identified as follows: Item A: Applicant's letter dated July 23, 2009; Item B: Character references; Item C: Monthly expenses and pay stubs; Item D: medical statements hand-marked "Paid;" Item E: letter regarding paid water bill; Item F: offers of payment plans, with hand-marks indicating amounts paid; Item G: statements regarding medical debts, hand-marked "Paid \$10."

⁴ It cannot be determined from the record whether these debts are alleged in the SOR.

⁵ It cannot be determined from the record whether these two debts are alleged in the SOR.

She did provide three character references from her current supervisor, her technical lead, and a former manager. They are aware of Applicant's situation and state that she is striving to support herself and her child. They also note that, despite her financial problems, she is a dependable and trustworthy person who substantially contributes to the mission of her organization (Item B).

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).⁶ 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 interest⁷ 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.⁸ 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.⁹

⁶ Directive. 6.3.

⁷ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁸ See *Egan*, 484 U.S. at 528, 531.

⁹ See *Egan*; Revised 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.

The evidence contained in the FORM shows that Applicant's debts, amounting to approximately \$26,300, started becoming delinquent in 2002, and most remain 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 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, 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;

(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, her financial problems are not in the distant past, because many of her debts remain unpaid. Applicant is presently making efforts to pay her debts; however, with her limited income and resources, it cannot be predicted that her situation will be resolved, or that new delinquencies will not occur in the future. AG ¶ 20(a) cannot be applied.

AG ¶ 20(b) is relevant because Applicant's separation from her husband in December 2007 had a negative effect on her financial situation, and it is a condition that she could not have predicted. However, some of Applicant's debts became delinquent before and during her marriage. Therefore, it appears that her separation was not the only factor that caused her delinquencies. After the separation, Applicant's husband has provided almost no support. Consequently, she has been the sole provider for herself and her child for the past year-and-a-half. Applicant does earn a limited income, which also contributes to the difficulty in bringing her debts under control. Despite the demands on her income, it appears that Applicant is making an effort to resolve her debts and act responsibly under the circumstances. Partial mitigation is available under AG ¶ 20(b).

It does not appear from the record that Applicant received financial counseling to assist her in developing a budget, establishing payment plans, or resolving her debts. AG ¶ 20(c) cannot be applied.

Applicant has taken some steps toward resolving her debts; she is not ignoring her obligations but is trying to manage them within the framework of her limited income. However, her documentation that she paid or is paying debts is of limited value to support her claims because it consists of hand-written notes on the creditors' statements, rather than cancelled checks, bank statements showing amounts withdrawn, statements showing decreased balances owed, or other substantial evidence. The only debt that is conclusively shown to be paid (allegation 1.x.) was satisfied by the state action of applying her income tax refund, and does not constitute an effort by Applicant. In addition, the evidence does not show that the bulk of Applicant's debts are resolved, or in the process of being resolved, or that she will be able to resolve them in the future. Only partial mitigation is available under AG ¶ 20(d). Overall, the partial mitigation available under AG ¶ 20(b) and (d) is insufficient to outweigh the fact that Applicant carries a substantial debt load with no real plan in place to resolve it. I find against the Applicant on Guideline F.

Whole Person Concept

Under the whole person concept, an administrative judge must evaluate an 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 27 years old. Her financial inexperience, marriage and motherhood at a relatively young age, and her separation followed by the lack of child support, all contributed to the large debt load that she accrued over the past several years. Applicant was completely candid when she completed her security clearance application and listed numerous delinquent debts; her trustworthiness is not in question. However, many of Applicant's debts accrued before and during her marriage in 2005 and she did little to meet those obligations. A substantial amount of debt remains unpaid, with no plan in place to resolve it.

Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage her finances in such a way as to meet her financial obligations. This decision should not be construed as a determination that Applicant cannot or will not attain the type of financial stability necessary to justify the granting of a security clearance. The award of a security clearance is not a once-in-a-lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. A clearance is not recommended based on Applicant's current circumstances, but should she be afforded an opportunity to reapply for a security clearance in the future, having paid the delinquent obligations, established a record of payments with supporting documentation, or otherwise addressed the obligations, she may well demonstrate persuasive evidence of her security worthiness.

The delinquent debts that Applicant admits and are listed in her credit reports are a security concern. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from the cited adjudicative guideline. A fair and commonsense assessment of the available information bearing on Applicant's suitability for a security clearance shows she has not satisfied the doubts raised by her substantial indebtedness. Such doubts must be resolved in favor of the government.

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.w.	Against Applicant
Subparagraphs 1.x.	For Applicant
Subparagraphs 1.y. – 1.hh.	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