



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



In the matter of:)
)
) ISCR Case No. 09-02117
)
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel

For Applicant: *Pro se*

May 10, 2010

Decision

O'BRIEN, Rita C., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the security concerns raised under the guideline for financial considerations. Accordingly, her request for a security clearance is granted.

Applicant requested a security clearance by submitting a Questionnaire for Sensitive Positions (SF 86) on October 23, 2008. 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.

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

On July 21, 2009, DOHA issued to Applicant a Statement of Reasons (SOR), which specified the basis for its decision: security concerns addressed in the Directive under Guideline F (Financial Considerations) of the Adjudicative Guidelines (AG).²

Applicant submitted an undated, unsigned Answer to the SOR. In response to a request from DOHA, she submitted a second, signed response on October 29, 2009. Applicant admitted all but the two SOR allegations at subparagraphs 1.d. and 1.i. in the SOR. She requested a hearing before an administrative judge. Department Counsel was prepared to proceed on December 4, 2009, and I received the case on December 16, 2009. DOHA issued a Notice of Hearing on January 14, 2009, and I convened the hearing as scheduled on February 4, 2010.

During the hearing, the government offered six exhibits, which I admitted as Government Exhibit (GE) 1 through 6. Applicant testified and offered one exhibit, which I admitted as Applicant's Exhibit (AE) A. DOHA received the transcript (Tr.) on February 12, 2010.

Procedural Ruling

At the hearing, the government moved to amend the SOR to accord with the evidence by inserting the name of the creditor in several allegations. The SOR is amended to read as follows:

1.f. You are indebted to [creditor's name] in the approximate amount of \$36.00. As of the date of this SOR, it remains unpaid.

1.g. You are indebted to [creditor's name] in the approximate amount of \$90.00. As of the date of this SOR, it remains unpaid.

1.h. You are indebted to [creditor's name] in the approximate amount of \$66.00. As of the date of this SOR, it remains unpaid.

1.v. You are indebted to [creditor's name] in the approximate amount of \$83.00. As of the date of this SOR, it remains unpaid.³

Findings of Fact

² Adjudication of this case is controlled by the Adjudicative Guidelines that were implemented by the Department of Defense on September 1, 2006. The Adjudicative Guidelines supersede the guidelines listed in Enclosure 2 to the Directive, and they apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

³ Creditor names are not listed in this decision. Specific information is available in the record.

Applicant's admissions to the SOR allegations are incorporated herein as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the record evidence, I make the following additional findings of fact.

Applicant, 36 years old, is currently working to attain a bachelor's degree, which she expects to complete in 2011. (Tr. 20) She is single and has two sons and two daughters, who range from 12 to 20 years of age. All live at home, and Applicant supports them. Her 20-year-old son is a full-time shoe store manager, and contributes to the family financially. The other three children attend school. Applicant has worked as a quality assurance specialist for a defense contractor since March 2008. (Tr. 28) This is her first application for a security clearance. (Tr. 21)

Applicant has been employed full-time since 1999. (Tr. 25) She worked in private industry from 2001 to 2008. When she left she was earning \$27,000 per year. (Tr. 25) Her gross income in her current position is approximately \$36,000, or \$3,012 per month. In 2007 through mid-2009, she also received Social Security payments for one son. In the first half of 2009, the payment was \$516 per month. The payments ended in July 2009. (GE 5; AE A) Her net income in May 2009 was \$2,867. (GE 5) As of January 2010, her monthly expenses (rent, utilities, food, transportation, medical/dental expenses, food, and clothing) amounted to approximately \$2,491. (Tr. 45-46; AE A) She pays for her own medical insurance; her children's medical care is paid through assistance from a state department of social services. (Tr. 47) Some of the unpaid medical debts in the SOR relate to her daughter's emergency room visits before she was covered by the state medical assistance program. (Tr. 51) Applicant does not use credit cards, and she does not own a car. (Tr. 47, 56)

Applicant and her husband do not live together. Her husband was violent, and Applicant does not want him to know her location; therefore, she has waived her right to child support from the children's father. (Tr. 28) She does not receive outside financial support, and is the sole support of the family. The need to support her children on her limited income resulted in numerous debts becoming delinquent.

In 2009, Applicant contacted a credit union to obtain a consolidation loan to pay her debts. (Tr. 39) Her application for a consolidation loan was denied. She contacted a second consolidation company, which requested a large monthly payment. She did not initiate the plan because she realized she could not pay the proposed amount and still maintain her home and living expenses. (Tr. 39-40)

The financial problems Applicant experienced arose, in part, because of an error by the government agency that subsidized her rent. Applicant qualified for government-subsidized housing support ("Section 8") when she lived in an apartment from 2001 to 2004. The subsidy was to rise along with increases in the cost of living. Her apartment rent increased steadily each year, but because of an error by the government agency, her subsidy did not increase. Over the years, she was required to pay a larger and

larger proportion of the rent. She testified that, "...at one point I was paying over \$1,000 for my portion of the rent, which put me in another financial hardship." (Tr. 57) She contacted the public housing office, and was told there had been an error so that she was, incorrectly, being required to pay the annual rent increases herself. The landlord lowered the rent because he agreed that it represented a hardship for Applicant. Applicant obtained a "redetermination" from the public housing office, and the error was corrected. Her rent decreased to \$876, from the incorrect amount of \$1,200 per month. At some points when she was responsible for the increased rent, she was spending more than 50 percent of her income on rent, and was unable to make the payments. She set up a repayment plan on the debt after leaving the apartment, and was paying on it until she could no longer afford the payments. (Tr. 35-37, 56-58)

In May 2009, Applicant retained an attorney to file a chapter 7 bankruptcy petition. (GE 5) It took several months for her to be able to pay the \$1,400 cost of filing and the required financial courses (Tr. 39-41) The courses provided information on money management and ways to avoid accumulating debt after the bankruptcy. The petition was filed in January 2010. (AE A)

The SOR debts total approximately \$27,000. The following SOR debts are included in the bankruptcy: utilities totaling \$2,548 (1.a.; 1.d.; 1.e.; 1.m., and 1.p.); rent totaling \$2,561 (1.s.); credit cards totaling \$1,432 (1.i., 1.j.); an automobile loan totaling \$17,000 (1.k.); personal loans totaling \$1,226 (1.n., 1.o.); a library fine totaling \$27 (1.r.); unknown types totaling \$736 (1.l. and 1.t.); and medical debts for laboratory fees and emergency room visits totaling \$1,558 (1.b, 1.c., 1.f., 1.g., 1.h., 1.q., 1.u., and 1.v.).⁴ The largest debt is the automobile repossession and resulting deficiency balance. Two debts are more than \$1,000; the remaining debts are generally \$800 or less. Applicant's debts stem from the normal and usual expenses required to maintain and support a five-person household.

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.⁵ Decisions must also reflect consideration of the "whole-person" factors listed in ¶ 2(a) of the Guidelines.

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

⁴ One utility debt (1.a., \$154) and two personal loans (1.n. and 1.o., which total \$1,200) could not be located in the bankruptcy petition. Applicant testified that if they are not included, it was an error. She intends to pay any debt that was inadvertently omitted from her petition. (Tr. 88)

⁵ Directive. 6.3.

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 adjudicative factors addressed under Guideline F (Financial Considerations).

A security clearance decision is intended only to resolve the questions of 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. 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 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

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 indebtedness results from an inability rather than an unwillingness to

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*; Adjudicative Guidelines, ¶ 2(b).

pay her debts. She earns a modest income, on which she was unable to support herself and her children. Her credit bureau reports show that she has had delinquencies as far back as 2003. Disqualifying condition AG ¶19a (*inability or unwillingness to satisfy debts*) and AG ¶19c (*a history of not meeting financial obligations*) apply. There is no evidence of other disqualifying conditions such as frivolous spending, or debts related to alcoholism, gambling or deceptive practices.

The Financial Considerations guideline also contains factors that can mitigate security concerns. I have considered the mitigating factors, especially AG ¶ 20(b) and 20(c).

AG ¶ 20(b) applies (*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*). Applicant has supported her family of five on her one salary for years. She waived her right to claim child support because her husband was violent and she was unwilling to risk his discovering her location. Applicant also suffered an unexpected financial pressure when the government agency that provided her rent subsidy inadvertently failed to increase it to meet ongoing rent increases. As a result, she was paying more than 50 percent of her income toward rent, until she was able to get the error corrected. She could not predict or control these situations. Despite these hardships, she acted responsibly, by maintaining continuous full-time employment; working to earn a college degree to move into a better-paying field; and making efforts to deal with her debts.

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*) applies. Applicant received counseling in the form of the financial courses required as part of the bankruptcy process. In addition, Applicant has brought her financial situation under control. She chose to file bankruptcy, as the only method available to alleviate the debts on her limited income. Bankruptcy is a legitimate path to resolve overwhelming debt. But for three small debts, the SOR debts have been included in that filing.

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate the applicant's security eligibility by considering the totality of an applicant's conduct and all the circumstances. An administrative judge should consider the nine adjudicative process factors listed at 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant's attempts to keep her finances under control over the years demonstrate her maturity. She did not try to ignore her debts, but sought to resolve them by seeking out two separate consolidation plans; one was denied, and she was unable to afford the payments for the other on her single income. Her debts are not due to frivolous spending, but stem from the ordinary costs of raising a large family, including approximately \$1,500 in medical expenses for herself and her children. Through government agency error, she was required to pay more than 50 percent of her net monthly income for rent in about 2004, the approximate time at which her debts started to become delinquent. She worked to have the rent error corrected, and after her rent was lowered to what it should have been, she set up a payment plan to pay the delinquency. She has supported her family on one income in an area with one of the highest costs of living in the country. She has not claimed child support from her husband because she feared his past violence and does not want to reveal her and her children's location. But supporting herself and four children on her single salary was not possible without incurring delinquencies. Applicant's filing for bankruptcy was the one remaining legitimate path to resolve her debts. She does not use credit cards and does not own a car. She has sought higher education to improve her future earning potential, and changed jobs in 2008 in order to move into her chosen profession. Despite the financial obstacles she faced, Applicant has shown maturity and reliability in the face of a difficult financial situation. Her trustworthiness and good judgment are not at issue.

Overall, the record evidence satisfies the doubts raised about Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns raised by the cited adjudicative guideline.

Formal Findings

Paragraph 1, Guideline F	FOR APPLICANT
Subparagraph 1.a. – 1.v.	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is granted.

RITA C. O'BRIEN
Administrative Judge