



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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SSN: -----) ISCR Case No. 09-04018
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Applicant for Security Clearance)

Appearances

For Government: Richard A. Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

September 8, 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 February 18, 2009, 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 a set of interrogatories¹ to clarify or augment 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 October 29, 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 illegal drugs (Guideline H) and financial considerations (Guideline F).

Applicant timely answered the SOR and requested a hearing. The case was assigned to me on April 20, 2010. Pursuant to a Notice of Hearing issued on April 22, 2010, I convened a hearing on May 19, 2010. The Government presented four exhibits that were admitted without objection as Government's Exhibits (Gx.) 1 - 4. Applicant testified on her own behalf, and submitted one exhibit that was admitted without objection as Applicant's Exhibit (Ax.) A.⁴ Additionally, I left the record open after the hearing to give Applicant time to submit additional relevant information. DOHA received a transcript (Tr.) of the hearing on May 26, 2010, and the record closed on June 4, 2010, after the Applicant failed to make a post-hearing submission.

Findings of Fact

Under Guideline H, the Government alleged that Applicant used marijuana with varying frequency (up to five times monthly) between December 2002 and June 2006, and at least once in August 2008 (SOR 1.a). Applicant admitted this allegation, but averred she has not used any illegal drugs since August 2008.

Under Guideline F, the Government alleged she owed about \$22,010 for eight unpaid debts (SOR 2.a - 2.h). Of those debts, two were more than 120 days past due (SOR 2.f and 2.h); one had been charged off as a business loss by the creditor (SOR 2.e); three had been referred to a collection agency (SOR 2.c, 2.d, 2.g); and two were being enforced through civil judgments (SOR 2.a and 2.b). Applicant denied the allegation at SOR 2.b, claiming it was a duplicate of the debt listed at SOR 2.a. She denied the allegation at SOR 2.c, claiming she had paid the debt in full in March 2010. Applicant also denied the allegation at SOR 2.g. She claimed that she has been repaying the debt through an agreement she reached with the creditor in April 2007. Applicant admitted the remaining allegations under Guideline F.

Applicant's admissions are incorporated in my findings of fact. Having reviewed Applicant's response to the SOR, the transcript, and exhibits, I make the following additional findings of relevant fact.

Applicant is 31 years old, and she has worked for her current employer, a defense contractor, since January 2009. Her supervisors submitted written recommendations attesting to Applicant's value to their company, her strong work ethic,

³ The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006). Pending official revision of the Directive, they take precedence over the guidelines listed in Enclosure 2 to the Directive.

⁴ As identified in the transcript of the hearing at pages 20 - 22, Ax. A consists of six separate documents.

her honesty, and her reliability. They also recommended her for a position of trust that would include access to classified information. (Ax. A)

From May 2005 until January 2009, Applicant worked as a sales associate and accounts receivable manager for a national mobile phone company. Prior to May 2005, she worked as a server in a restaurant. When Applicant submitted her SF 86, she disclosed that she had financial problems in the form of several delinquent debts. She also disclosed that she had used marijuana frequently between 2002 and 2006, and a one-time use of that drug with a friend at a party in August 2008. (Gx. 1)

As to her drug use, Applicant used marijuana between 2002 and 2006 as often as five times monthly. There were also long periods when she did not use the drug at all. She never bought or sold marijuana, but she had access to it through her friends. She usually smoked marijuana with her co-workers at the restaurant. She also used marijuana with a boyfriend, with whom she lived until they broke up in 2004. She no longer associates with any of her former co-workers or her ex-boyfriend. (Gx. 2; Tr. 23, 28 - 29, 46)

Applicant did not use marijuana between 2006 and August 2008, when she and a longtime friend were at a party. They both had been drinking and took a few puffs of marijuana when it was offered to them. Applicant and her friend have known each other for 20 years, and Applicant will be a participant at her friend's wedding. However, she has never known her friend to use drugs before or after the party in August 2008. (Gx. 2; Tr. 47 - 48)

Applicant's financial problems arose through her own inexperience in managing her personal finances. The debts alleged at SOR 2.a, 2.e, and 2.g are for delinquent bank-sponsored credit card accounts totaling about \$14,400. The accounts were opened between 2000 and 2006, when Applicant was primarily employed as a restaurant server. (Gx. 3; Gx. 4) The amounts owed represent the maximum credit limit for each account plus accrued interest and fees after the accounts became delinquent. (Tr. 40 - 41) By agreement with the creditor in SOR 2.g, Applicant has been paying \$25 monthly for that debt since April 2007, and she has reduced the amount owed by about \$800. (Answer to SOR; Tr. 25, 42, 54 - 55)

Applicant also owes \$103 for an unpaid retail store account she opened in 1997, but for which she stopped paying in 2003. Another retail account, alleged in SOR 2.h for \$806, was opened in April 2002 but was closed for non-payment in May 2007. Applicant has not made any payments on these debts. (Gx. 3; Tr. 42)

As alleged in SOR 2.d, Applicant is liable for an unpaid cable television account totaling about \$733. The account was in her name, but Applicant testified that this debt stemmed from the fact her ex-boyfriend has a converter box that was supposed to be returned when they moved out of their apartment in 2004. (Tr. 39 - 40) However, available information also shows that the account was two months behind when they ended service because she could not afford to pay the monthly bill. (Gx. 2; Ax. A)

In April 2010, Applicant paid the delinquent \$89 medical bill alleged in SOR 2.c. The debt alleged at SOR 2.b is a duplicate of the debt alleged in SOR 2.a, which is being enforced through civil judgment. (Answer to SOR; Gx. 2; Ax. A; Tr. 13, 25) Accordingly, the debts alleged at SOR 2.b and 2.c are resolved for the Applicant.

In addition to the delinquent debts alleged in the SOR, available information shows that Applicant has accrued other unpaid or past due debts. In 2004, she settled a delinquent credit card for less than the amount owed. She also resolved a car loan payment delinquency in May 2007. (Ax. A; Gx. 3)

Applicant is current on her present financial obligations. She makes about \$35,000 annually and has not incurred new debt which she cannot pay. However, Applicant admitted that she lives paycheck to paycheck, with about \$150 remaining each month after expenses. Further, aside from the \$25 monthly payment on the debt at SOR 2.g, Applicant is not making any payments on her past delinquencies. She has not established a budget and has not sought the assistance of a financial counselor. Applicant also testified that she has tried to work with her creditors but has received little cooperation from them. (Tr. 25 - 27, 51)

Policies

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁵ 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,⁶ 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:

- (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.

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁶ Directive. 6.3.

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

Drug Involvement

The Government presented sufficient information to support the allegation in SOR 1.a that Applicant used marijuana from December 2002 until June 2006, and again on one occasion in August 2008. Accordingly, the government's information raises a security concern addressed in AG ¶ 24 as follows:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

(a) Drugs are defined as mood and behavior altering substances, and include:

(1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and (2) inhalants and other similar substances;

(b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

More specifically, available information requires application of the disqualifying conditions listed at AG ¶ 25(a) (*any drug abuse (see definition (at AG ¶ 25(a)))*). By contrast, available information shows that Applicant last used marijuana on a regular basis more than four years ago. While her most recent use occurred about two years ago, it appears to have been an aberration, given the overall change in Applicant's

⁷ See *Egan*, 484 U.S. at 528, 531.

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

personal and professional circumstances since 2005. Applicant no longer associates with the people with whom she used marijuana until 2006. Even though she remains close friends with the person with whom she last used marijuana, it appears highly unlikely that Applicant or her friend will use illegal drugs in the future. The foregoing requires application of the mitigating conditions listed at AG ¶ 26(a) (*the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*) and AG ¶ 26(b) (*a demonstrated intent not to abuse any drugs in the future, such as: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; (4) a signed statement of intent with automatic revocation of clearance for any violation*). I have considered all of the information bearing on the allegations under this guideline, and I conclude Applicant has mitigated the security concerns raised by Applicant's past drug involvement.

Financial

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.

The Government presented sufficient information to support the allegations in SOR ¶ 2.a - 2.h; that is, that Applicant owed at least \$22,000 for eight delinquent debts. Available information showed that Applicant has a history of unpaid debts since at least 2001. Even though the debt at SOR 2.b was shown to be a duplicate of the debt at SOR 2.a, and the debt at SOR 2.c has been paid, Applicant still owes a significant amount of unpaid debt. She has not demonstrated that she has the means or a plan to satisfy her debts. Thus, 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*).

By contrast, Applicant established that she is managing her finances in a more prudent way now, and that she has been paying one of her large debts at a modest monthly rate since 2007. However, she has not demonstrated that her finances have improved so that she would be able to avoid future delinquencies. She has very little cash remaining each month after expenses and does not have the means to make any tangible progress on the remaining \$15,000 in unpaid debts. Applicant's actions in paying down the debts at SOR 2.c and 2.g, as well as paying or settling other debts not alleged in the SOR, entitle her to some benefit under the mitigating condition at AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). However, she did not present sufficient information to support any of the remaining Guideline F mitigating conditions. Applicant has failed to mitigate the security concerns about her finances.

Whole-Person Concept

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guidelines F and H. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is 31 years old and is presumed to be a mature, responsible adult. In a relatively short time, she has established a sound reputation at work, and she conveyed a sincere appreciation for the gravity of her past drug use and her ongoing financial difficulties. At each stage of her background investigation and in the adjudication of this case, she was candid and forthright about adverse information in her background. However, while the security concerns about her past drug use are mitigated, the favorable information in her background is insufficient to overcome the continued security concerns about her finances. Applicant's financial problems arose through her own mismanagement and poor decision making about her money. She relied excessively on personal credit, which she is still unable to pay or otherwise resolve. The end result is that she may now be at risk of engaging in illegal acts to obtain funds to pay her debts, and her overall judgment remains in question. Applicant was sincere in her testimony that she intended to resolve her debts, but she has not yet shown how she will do so. Unless and until she can better demonstrate progress in resolving her debts, doubts will remain about her suitability for access to classified information. Because protection of the national interest is paramount in these determinations, such doubts must be resolved in favor of 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 H:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraphs 2.b - 2.c:	For Applicant
Subparagraphs 2.d - 2.h:	Against Applicant

⁹ See footnote 8, *supra*.

Conclusion

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

MATTHEW E. MALONE
Administrative Judge