



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



In the matter of:)
)
) ISCR Case No. 09-06319
)
)
Applicant for Security Clearance)

Appearances

For Government: Julie Mendez, Esquire, Department Counsel

For Applicant: *Pro se*

October 8, 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 May 13, 2009. 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 March 2, 2010, 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

In her Answer to the SOR, dated March 24, 2010, Applicant denied 9 allegations and admitted 11 SOR allegations. She also requested a hearing before an administrative judge. Department Counsel was prepared to proceed on April 22, 2010, and I received the case on May 3, 2010. DOHA issued a Notice of Hearing on May 21, 2010. I convened the hearing as scheduled on June 9, 2010.

During the hearing, the Government offered 12 exhibits, which I admitted as Government Exhibit (GE) 1 through 12, and one demonstrative exhibit, marked Hearing Exhibit I. Applicant testified, and did not present witnesses. She offered 19 exhibits, which I admitted as Applicant's Exhibit (AE) A through S.³ I held the record open to allow her to submit additional documentation. She timely submitted one document, which I admitted as AE T. DOHA received the transcript (Tr.) on June 16, 2010.

Findings of Fact

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, 50 years old, is a high school graduate. In 1992, Applicant married a citizen of another country. He was arrested for theft. While awaiting trial, he withdrew all the funds from their joint bank account and left the United States. They have not been in touch since that time. She has worked full-time as a special police officer for a defense contractor since 2004. In July 2009, she began a part-time job, working as a security officer on weekends for another defense contractor. She works a total of about 80 hours per week. (GE 1, 4; Tr. 55-59, 72-73)

Applicant has no children of her own. However, in the mid-1990s, a friend asked if Applicant could take in her seven-year-old son for a while because she was having financial problems. Applicant thought the arrangement was temporary. She did not

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 At the hearing, Applicant informed Department Counsel that she had four character references in her vehicle that she would like to submit. Department Counsel informed me of the additional documents that day. She forwarded them to me without objection on September 21, 2010. I accepted the documents without re-opening the record; they are marked as AE P – S.

legally adopt him; however, his parents granted her full legal custody. Once she realized his parents did not want to take him back, she sought financial assistance. They were required only to provide funds for medical treatment, but did not do so. She has raised him for the past 15 years without financial support from his parents. She applied for assistance from the state because he had been diagnosed as a child with depression and Attention Deficit/Hyperactivity Disorder (ADHD). Her request was denied. Sometime after finishing high school, he was shot in the head. Last year, he was diagnosed with schizophrenia and bipolar disorder. (Tr. 59-61, 79-80)

The boy's behavioral problems forced Applicant to move from at least three apartments. Most recently, he damaged electrical wiring in their apartment in 2009, and also flooded it by playing with the water heater. The resulting flood caused approximately \$5,000 in damages. The owner is a friend of Applicant, and allowed her to forego paying for the damage because she knew the young man, who is now 21 years old, has psychological problems. However, Applicant believed she should pay for it. She has been paying \$50 per month to the owner and is current on the payments. Recently, Applicant contacted the young man's biological mother and asked that she take responsibility for him. He moved from Applicant's home about three months before the hearing, and is currently in a rehabilitation center. She no longer has financial responsibility for him. Applicant described the situation as "really, really difficult financially and emotionally." (GE 6; Tr. 60, 69-72)

Applicant filed a chapter 7 bankruptcy petition in 1998. At the time, she was unemployed because her employer lost its contract. She was unable to find a job for eight months. She was supporting the boy, and did not have income to keep up with their expenses. In 2005, Applicant was working two full-time jobs simultaneously. Relying on her two incomes, she made poor financial decisions, "spoiling" the child, and purchasing more than she should have. She did not plan for the possibility of losing a job. She filed for bankruptcy again when she lost the second job, and could not meet her debts. (GE 7, 8; Tr. 61-63)

Applicant did not work two jobs again until July 2009. This time, she used the additional income to begin paying down her debts. In November 2009, she contacted a credit repair company. (Tr. 39) The law firm assists clients by verifying the accuracy of credit report entries, and disputing suspected errors. It has also helped by counseling her on how to organize and plan her debt payments. She has arranged payment plans with creditors based on advice from the company and from family members. Applicant pays the firm a monthly fee of \$39. She also contacted a debt resolution company in early 2010 to assist her with paying her payday loans. However, she found that the company charged upfront fees that would not be applied to her debts. Applicant decided to work out a plan to resolve the payday loan debts herself. She has paid one, and is making payments on the other two. (Answer; Tr. 30-31, 53-55)

Applicant completed a Personal Financial Statement (PFS) in December 2009 which indicated a monthly net remainder of \$222, after expenses and debt payments. At

that time, Applicant was supporting the young man. However, he currently does not live with her and consequently, her expenses have decreased. She also works fewer hours per week at her full-time job, and more hours at her part-time job. She estimates her gross monthly income from her full-time job will be about \$3,700, and from her part-time job about \$1,700, for a total of \$5,400 per month. After deductions, her net monthly income will be about \$3,900. Her expenses have decreased from \$2,800 to \$2,000. After debt payments of approximately \$950 per month, Applicant will have a net monthly remainder of approximately \$1,000 per month. (GE 6; Tr. 64-69)

The debts as listed in the SOR total \$22,500. Applicant disputed the following nine debts with the assistance of the law firm: 1.a. - 1.d., 1.f. - 1.i., and 1.l. (AE G; Tr. 54-55). The current status of each debt follows.

Allegations 1.b. (\$193); 1.n. (\$6,043) - medical debts

1.b. – Applicant provided proof of a \$10 payment in May 2010. However, she denied this debt in her Answer because it was included in her bankruptcy. Her 2005 bankruptcy filing shows the debt is included in Schedule F. The credit agency has deleted it from her credit bureau report. (GE 3, 6, 7; AE B, G; Tr. 18-22)

1.n. – This medical debt results from treatment of injuries Applicant sustained in a car accident in 2005. She signed a payment plan in 2009 for monthly payments of \$50. She provided proof of three \$50 payments, and testified that she is now current on her plan for this debt. (GE 1, 5; AE M; Tr. 38-39, 48-51)

Allegation 1.f. (\$1,260) - utilities – Applicant provided proof of two \$10 payments in April and May 2010. However, Applicant disputed this debt through the law firm. AE G shows that, upon investigation, the credit reporting agency deleted this account from her credit report. (GE 2, 6; AE A, F, G; Tr. 29-30)

Allegations 1.c. (\$451); 1.d. (\$579) - credit cards

1.c. – Applicant contacted the lender and was offered a new credit card with a balance reflecting the balance on the previous card. She does not use the new credit card, but makes \$35 per month payments on the balance. She plans to destroy the card once she has paid the balance. She provided proof of the arrangement, and a payment of \$35. (GE 2, 4, 6; AE C; Tr. 24-25)

1.d. – Applicant accepted a settlement offer of \$300 from the creditor, with monthly payments of \$96. She provided proof of two payments of \$10 and \$96 (GE 2, 6; AE D; Tr. 25-27)

Allegations 1.a. (\$575); 1.e. (\$420); 1.l. (\$205) - payday loans -

1.a. and 1.l. - The same creditor holds these two debts. Applicant provided proof of \$10 payments on each debt in April and May 2010. (GE 3, 4, 6; AE A)

1.e. – Applicant paid this debt. She received a settlement offer of \$210 in January 2010. She provided proof that on March 4, 2010, the full amount was deducted from her bank account. (GE 3; AE E; Tr. 28-29)

Allegation 1.k. (\$2,857) - state tax lien – Applicant pays her state and federal taxes each year. However, in 2005, she had her federal and state tax returns prepared professionally. The preparer failed to submit her returns timely, and did not inform Applicant.⁴ (GE 4) She was unaware of the tax lien until 2007, when she applied for a car loan. Applicant established a payment plan of \$142 per month. She provided documentation showing her payments in 2009 and 2010. She testified that she has reduced the balance to approximately \$1,200. (GE 3, 4, 5, 6; AE K; Tr. 35-36, 45-49)

Allegations 1.j. (\$2,768); 1.o. (\$735); 1.p. (\$789); 1.q. (\$902); 1.r. (\$2,747) – rent

1.j. and 1.r – Applicant testified that these two allegations refer to a debt related to the same property. She moved out of an apartment in 2008 before the lease had expired and was charged a fee. She arranged a payment plan with the creditor in 2009 for payments of \$250 per month. Applicant provided documentation showing two \$250 payments in December 2009, one in February 2010, one in April 2010, and two in May 2010. (GE 2, 12; AE J; Tr. 33-35, 44-45)

1.o. – Applicant provided a letter from the creditor stating that this debt was cancelled because it was included in her bankruptcy petition. The creditor requested that it be removed from Applicant's credit report, and it does not appear on her December 2009 credit report. (GE 9; AE N; Tr. 40)

1.p. and 1.q. – These allegations refer to the same debt. Government exhibits 2, 3 and 7, show that the debt to this realty company was included in Applicant's 2005 bankruptcy petition. Applicant hired a law firm in June 2010 to demand that the creditor cease sending her collection notices for this debt. She also submitted documentation from her law firm showing that it was removed from her credit report. (GE 2, 3, 4, 7, 10, 11; AE O, T; Tr. 40-43, 51-53)

Allegations 1.i. (\$747); 1.m. (\$700) – communications

1.i. – Applicant established a payment plan for this cell phone debt. She provided proof of two \$10 payments in April and May 2010. In her interrogatory response, she noted that she was disputing this debt through the law firm. Applicant provided documentation showing that as of March 2010, the debt to this creditor, with the correct account number, had been deleted from her file based on the credit reporting agency's investigation. (Answer; GE 6; AE A, I; Tr. 33)

1.m. – Applicant initiated a payment plan for this cell phone debt and provided evidence of payments in April and May 2010 totaling \$50. (GE 3; AE A, L; Tr. 37)

⁴ Applicant made payments of \$108 per month to the Internal Revenue Service on the federal tax debt for 2005 and it is paid in full. (GE 6; Tr. 64-65)

Allegations 1.g. (\$573); 1.h. (\$42) – other debts

1.g. - Applicant provided documentation showing that as of March 2010, the debt to this creditor, with the correct account number, had been deleted from her file following an investigation by the credit reporting agency. (GE 6; AE G; Tr. 31-32)

1.h. Applicant stated in her security interview that she did not recognize this debt to a book club. However, she provided proof at the hearing that in March 2010, she paid the debt in full. (GE 6; AE H; Tr. 32)

Applicant's coworker of two years attested to her strong work ethic and honesty. Her current supervisor describes her as dependable, conscientious and sincere, and highly recommends her. Her pastor, who has known her for more than three decades, states that she is a person with strong values, integrity, and honor. Another friend, who has known Applicant for more than 20 years, believes that loyalty is Applicant's foremost trait. She cites Applicant's loyalty to the child who was not her own, but who she raised for more than 15 years. He had psychological problems, but did not leave Applicant's care until he was in his early 20's. As she did not receive assistance, she suffered financial setbacks as a result. (AE P – S)

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 does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when 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 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

⁵ Directive. 6.3.

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

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 earns a modest income, and until recently, had little money available at the end of the month to apply to her past debts. The following disqualifying conditions under AG ¶19 apply:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

There is no evidence of 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 under AG ¶ 20, especially the following:

⁷ See *Egan*, 484 U.S. at 528, 531.

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

(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; and,

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Several factors affected Applicant's finances. Her husband fled the country with all of her funds in the early 1990s. About two years later, she agreed to help a friend who was having financial problems by taking in her son temporarily. Later, Applicant discovered that her friend did not want to take the child back, and refused to contribute financially to his care. Since that time, Applicant has supported herself and the child without assistance. The boy had serious emotional problems. His behavior caused damage in at least three apartments, requiring her to leave them. In 2009, his actions caused flooding and other damage totaling \$5,000. She could not predict or control her husband's actions, her friend's abandonment of the child, their refusal to help support him, or the child's emotional problems, all of which affected her financially. Applicant did maintain employment for the past 15 years, at times working two jobs, but did not always make responsible financial decisions. AG ¶ 20(b) applies in part.

Applicant has been working on her financial situation since 2009, when she was able to obtain a second job and could begin making payments. She sought assistance and counseling from a credit repair agency, as well as advice from family members. She has paid two debts in full. She has been making payments on the state tax debt, which occurred through her preparer's error; her payments have reduced it from \$2,800 to \$1,200. On other debts, she has set up payment plans involving small payments, which she has made. She disputed numerous SOR debts in her credit report. Her challenges resulted in deletion of four debts from her credit report, reducing the alleged SOR debt by \$2,773. Another \$1,691 alleged in the SOR relates to debts that were discharged by Applicant's 2005 bankruptcy. Considering the debts Applicant has paid, made payments on, and had removed from her credit report, she has made substantial progress in resolving her financial situation. AG ¶ 20 (c), (d) and (e) apply.

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 was candid about her poor choices in the past that led to her financial problems. Her current situation is unlike the one she found her self in earlier this decade. She is earning two incomes. She no longer supports the young man she raised, which leaves her with a higher monthly net remainder. She has the assistance of a firm to help resolve her debts, and a record of working to resolve her debts since 2009, before the SOR was issued.

The Appeal Board has addressed a key element in the whole person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrates that he has '...established a plan to resolve his financial problems and taken significant actions to implement that plan.' The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ('Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching

