



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

In the matter of:)
)
) ISCR Case No. 09-06567
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Jr., Esquire, Department Counsel
For Applicant: *Pro se*

May 31, 2011

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ Applicant's clearance is denied.

On 9 September 2010, the Defense Office of Hearings and Appeals (DOHA) sent Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations.² Applicant timely answered the SOR and requested a hearing. DOHA assigned the case to me 7 December 2010, and I convened a hearing 5 January 2011. DOHA received the transcript 13 January 2011.

¹Consisting of the transcript (Tr.), Government's exhibits (GE) 1-7, and Applicant's exhibits (AE) A-M. AE M was timely received post-hearing.

²DOHA acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on 1 September 2006.

Findings of Fact

Applicant admitted SOR allegations 1.a-c and o. She denied the remaining allegations. She is a 41-year-old management analyst employed by a defense contractor since May 2008. She was unemployed from April 2003 to May 2003 and from April 2005 to May 2005. Otherwise, she has been employed full time since January 1999. She makes \$60,000 per year. She also works a second job to make ends meet. She seeks to retain the clearance she has held since about 1994.

Applicant is the never-married mother of two children, ages 18 (son) and 13 (daughter). Her son's father was murdered in late May 2008. He had been paying \$500 monthly child support, but those payments were replaced—beginning the end of 2008—by \$1,500 monthly social security payments, which end in June 2011. Her daughter's father is supposed to pay \$710 per month, but rarely does so and is thousands of dollars behind in his payments. Enforcement action has been sporadic.

Applicant filed for chapter 7 bankruptcy protection in May 2000 and was discharged of her dischargeable debt in September 2000 (SOR 1.a.). She had cosigned a loan for her father and when he defaulted on his payments, the lender garnished her wages, rendering her unable to pay her rent. The amount of debt discharged was about \$4,000.

The SOR additionally alleges, and Government exhibits (GE 5-6) substantiate, 19 delinquent debts totaling over \$68,000. Applicant admits three delinquent debts, totaling nearly \$15,000. One of those debts—a nearly-\$9,000 medical bill for a tummy tuck in 2006 (SOR 1.o)—is duplicated at SOR 1.d and 1.p, now found for Applicant.

Applicant's April 2009 clearance application (GE 1) disclosed a number of delinquent debts, which she largely confirmed during her interview with a government investigator in June 2009 (GE 2). She attributed her financial problems to the murder of her son's father in May 2008. However, several of her debts were delinquent before that date. In November 2009, Applicant provided proof that she had paid a number of delinquent debts that were not alleged in the SOR (GE 2).

Applicant paid SOR debt 1.b (\$189) in December 2010 (AE A). She settled SOR debt 1.c—a \$5,500 deficiency on a March 2010 automobile repossession—for thirty cents on the dollar in December 2010 (AE B).

The eight SOR debts at 1.e-l are educational loans that fell delinquent in 2007 and 2008, and were rehabilitated in January 2010 by Applicant paying \$200 monthly for nine months (AE D). In June 2010, Applicant obtained a four-month temporary hardship forbearance (AE E). In January 2011, she obtained another temporary hardship forbearance covering the year from October 2010 to October 2011 (AE M). The eight educational loans—obtained in 1996, 2004, and 2005—total over \$43,000. Applicant has not yet obtained her degree and expects to borrow more money to complete her undergraduate degree in business management.

Applicant claimed she had paid SOR debt 1.m (\$107) five years ago. However, she discovered that she had a second account with the creditor. She paid the account in full in January 2011 (AE M). She disputed SOR debt 1.n (\$92) and the account is being removed from her credit report (AE F). The medical bill for Applicant's tummy tuck (SOR 1.o, \$8,954) has been in collection by several collection agents. Applicant reached an agreement with one collection agent to pay \$150 per month. Her records (AE M) show that she made regular payments (but not regular amounts) from May 2006 to April 2007 and then made payments in February and March 2008. The loan was sold to another collection agent and Applicant has made regular \$150 monthly payments from October 2009 to December 2010 (AE C, M). However, it appears that more than half of each monthly payment goes to pay interest, which continues to accrue.

In December 2009, Applicant reached an agreement to pay approximately \$200 on SOR debt 1.q (\$641) in January 2010 (AE G). Applicant did not make that payment because the creditor offered to accept a lump-sum settlement of 50% of the balance due in January 2010. Applicant paid the debt in April 2010. In December 2010, the same creditor offered Applicant the same 50% discount on SOR debt 1.r (\$230) and she paid the debt the day before the hearing (AE H). Applicant paid SOR debt 1.s (\$65) in January 2011 (AE M). Applicant paid SOR debt 1.t (\$565) in November 2009 (AE I).

Applicant claimed (Tr. 44) that she has a budget, but did not provide a copy. She has not had any financial counseling because she did not want anyone else involved in her financial affairs (Tr. 81). Applicant provided no work or character references.

Policies

The adjudicative guidelines (AG) list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline F (Financial Considerations).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter 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 judgement,

reliability, and trustworthiness of those who must protect national interests as their 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.³

Analysis

The Government established a case for disqualification under Guideline F, and Applicant did not fully mitigate the security concerns. Applicant has a history of financial difficulties and financial irresponsibility going back several years.⁴ Although she has made some progress on her debts, that progress is insufficient to overcome the security concerns raised by her financial situation.

The mitigating factors for financial considerations provide considerable help to Applicant, although not enough to fully mitigate the security concerns. Her financial difficulties are both recent and multiple, and not apparently due to unusual circumstances not likely to recur.⁵ Similarly, the murder of her son’s father was a circumstance beyond her control, but the murder did not precipitate Applicant’s financial problems, particularly where the \$500 monthly child support was replaced within six months by \$1,500 social security payments. Applicant would have been made whole within three months of the social security payments.

Applicant’s efforts to address her debts have been mixed, although she has largely acted responsibly in addressing her debts.⁶ However, the debts at SOR 1.b, 1.c, 1.r, and 1.s were not resolved until around the time of the hearing. Applicant has received no financial counseling, nor has she produced a budget that demonstrates how her finances—arguably stable at the time of the hearing—will remain stable in the face of two assured events in 2011.⁷ Applicant’s income will decline \$1,500 monthly when her son’s social security payments end in June 2011. In addition, Applicant will either have to resume payments on her educational loans in October 2011 or she will be taking on even more educational debt as she finishes her degree.

The payments Applicant has made have largely been timely and in good faith,⁸ but the two financial events on the horizon demonstrate just how much her finances

³See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁴¶19.(a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations;

⁵¶20 (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

⁶¶20.(b) the conditions that resulted in the financial problem were largely beyond the person’s control . . . and the individual acted responsibly under the circumstances;

⁷¶20.(c) the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;

⁸¶20.(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

remain unsettled. Put another way, while Applicant has made substantial progress resolving her debts, she has not established a clear track record that suggests her financial problems will not recur. I resolve Guideline F against Applicant. Assessment of the whole-person factors yields no different result.

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a–c:	Against Applicant
Subparagraphs d and o:	For Applicant (duplicates)
Subparagraphs e–l:	Against Applicant
Subparagraphs m–q.:	For Applicant
Subparagraphs r–s:	Against Applicant
Subparagraph t:	For Applicant

Conclusion

Under the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance denied.

JOHN GRATTAN METZ, JR
Administrative Judge