



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----)
SSN: -----) ISCR Case No. 09-08732
)
)
Applicant for Security Clearance)

Appearances

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

December 22, 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 granted.

On July 27, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) 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 two sets 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, the DOHA adjudicators were unable to make a preliminary affirmative finding² that it is clearly

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.

consistent with the national interest to grant Applicant's request for access to classified information. On May 10, 2010, 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 finances (Guideline F).

Applicant timely responded to the SOR and requested a hearing. The case was assigned to me on August 3, 2010. Pursuant to a Notice of Hearing issued on August 6, 2010, I convened a hearing in this matter on August 24, 2010. The parties appeared as scheduled. The Government presented five exhibits (Gx. 1 - 5), which were admitted without objection. Applicant testified on her own behalf. I left the record open after the hearing so that Applicant could submit additional relevant information. The record closed on August 30, 2010, when I received Applicant's post-hearing submission, which has been admitted without objection as Applicant's Exhibit A. DOHA received the transcript of hearing (Tr.) on September 10, 2010.

Findings of Fact

The Government alleged that Applicant owes \$17,162 for nine delinquent accounts (SOR 1.a - 1.i). In response to the SOR, Applicant denied the allegation at SOR 1.g, but admitted the remaining allegations. With her response, Applicant submitted her own statements averring that she had paid the debts alleged at SOR 1.a, 1.c, and 1.g. However, her submission did not provide proof of her claims. In addition to the facts established by Applicant's response to the SOR, and having reviewed the transcript and exhibits, I make the following findings of relevant fact.

Applicant is 38 years old. She is employed, with her husband of six years, as a long distance truck driver for a shipping company with Department of Defense contracts to move loads to and from military installations.

Applicant was previously married between 1996 and 2003. Her first husband was addicted to drugs and put Applicant in dire financial straits by not working, using their money for drugs, and stealing her personal items to get money for drugs. In 2001, Applicant left her first husband and moved in with her mother. In February 2000, she and her first husband financed the purchase of a \$20,000 vehicle from Ford. She took the car when she left him, and was able to make payments for a time. At some point, her first husband agreed that he would make the car payments for her, but after six months, he stopped paying. (Gx. 2) In April 2003, Applicant was struggling to find a job that paid her enough to keep paying on the car loan and meet her other monthly obligations. She had the vehicle voluntarily repossessed. Ford Motor Credit Corporation (FMCC) subsequently notified her that there was a \$13,000 remainder due after the vehicle was resold. This debt has been referred to a collection agency with whom Applicant has been trying to negotiate a settlement. (Gx. 1; Gx. 2; Tr. 24 - 25)

³ The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. Pending official revision of the Directive, they take precedence over the guidelines listed in Enclosure 2 to the Directive.

Applicant's current husband has three sons from a previous marriage. For a time, all three lived with Applicant and her husband. Their mother (his ex-wife) provided medical insurance as part of the divorce decree from the boys' father. They are now ages 21, 19, and 10. In about 2007, the middle child was injured playing football and required emergency room care and a subsequent operation on his foot. Several months later, the boy also experienced a heart problem that required emergency room care. Applicant was named as the responsible party each time she took him to the emergency room or a doctor's office, as her husband was working. Thus, the bills for her stepson's care, which have not yet been paid, are reflected in her credit report. Her husband's ex-wife is aware of the need to resolve those debts through her insurance company, but has yet to do so. (Gx. 2; Tr. 26 - 31, 49 - 51) The debts in question are alleged in the SOR at SOR 1.a, 1.c, and 1.e - 1.h. Applicant has paid the debts at SOR 1.a and 1.c. The medical debt alleged at SOR 1.g has been removed from Applicant's credit history as erroneous. (Ax. A; Tr. 31)

After the end of her first marriage, Applicant also incurred a delinquent debt for an unpaid phone bill for \$179. She has paid that debt, alleged at SOR 1.b, in full. A debt for an unpaid insurance premium (\$883, alleged at SOR 1.i) resulted in 2007 when Applicant changed insurance companies. She mailed a check for the last premium to her old insurer, but it was returned to her. She did not know until she was interviewed by a Government investigator in October 2009 that the insurance company had assigned a debt to her. She is willing to pay the debt if it is accurate, but she has been unable to verify that the amount due is correct. She believes the balance to be about \$592. (Gx. 3; Tr. 31 - 32)

Applicant's current finances are sound. She and her husband own their own home, which they bought as a new construction. During the purchase of that home, they successfully negotiated a lower monthly mortgage payment because they were trying to resolve her financial issues. (Tr. 37 - 39) Applicant and her husband live well within their means, and they have about \$800 remaining after paying all of their expenses. Their saving have not grown as they would like because they are paying off other debts, which have not been alleged in the SOR. This process has been ongoing since before Applicant applied for a security clearance. (Tr. 40 - 44, 56)

Applicant was forthcoming and candid about all of her financial problems at each step of the application, investigation, and adjudication of her clearance. At her hearing, I found her testimony to be credible, as she exhibited a thorough command of her financial information and as she stated her willingness to accept responsibility for all of the debts attributed to her.

Policies

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁴ for an applicant to either receive or continue to have access to classified information. Each decision must be a fair, impartial, and

⁴ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

commonsense determination based on examination of all available relevant and material information,⁵ 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. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under AG ¶ 15 (Guideline F - Financial Considerations).

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.⁶ 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 means that any reasonable doubt about an applicant's suitability for access must be resolved in favor of the government.⁷

⁵ Directive. 6.3.

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

Analysis

Financial Considerations

The security concern about Applicant's finances, as stated in AG ¶ 18, is that

[f]ailure 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 ¶ 1.a - 1.i. Between 2001 and 2008, Applicant accrued about \$17,162 for nine delinquent debts, some of which were still unresolved as of May 2010. Accordingly, 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*). As to AG ¶ 19(a), the information reflects only an inability, and not an unwillingness, to pay her debts.

By contrast, available information shows that Applicant has paid the debts at SOR 1.a - 1.c. It also appears that the debts at SOR 1.e - 1.h, are for medical services rendered to her stepson that should be paid through his mother's insurance company. Applicant established that the largest of her debts (SOR 1.d) arose through unforeseen circumstances, such as the end of her first marriage because of her first husband's drug problem. From 2000 until about two years after they separated in 2001, Applicant was able to pay the car note as required, but eventually relinquished the vehicle to the creditor. The debt has increased significantly since the repossession, due in large part to fees and interest added by the collection agency that now holds this account. Applicant has tried, to no avail, to negotiate a reasonable repayment agreement with this creditor. Further, the record also shows that Applicant has repaid the debts within her means to do so. She has been acting since before she applied for a clearance to resolve debts that arose from her first marriage. Finally, her current finances are sound. All available information shows that she and her husband manage their finances responsibly, that they have no new unnecessary debts, and that they have a significant positive monthly cashflow that will help them avoid future financial problems.

All of the foregoing requires application of the mitigating conditions at AG ¶ 20(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*); AG ¶ 20(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*); 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*); AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise*

resolve debts); and AG ¶ 20(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).

The ongoing presence of significant unpaid delinquent debt does not automatically mean Applicant should be disqualified. The amount of debt at issue certainly raises the possibility that Applicant could resort to illegal means to get money to pay her debts. But, however large or small the total debt, the analysis here must also consider Applicant's response to her adverse financial circumstances and her overall approach to money management. On balance, I conclude the security concerns about her past financial problems and remaining unpaid debts are mitigated.

Whole-Person Concept

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guideline F. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is 38 years old, and she has overcome significant obstacles to restore her finances and her personal life. There is no indication that the debts alleged in the SOR arose from any misconduct or irresponsible management of her affairs. She has accepted full responsibility for the debts attributed to her, even if such attribution is misplaced in some cases. All of the information bearing on her suitability for access to classified information shows that she is candid and reliable, even when it may be adverse to her own interests. A fair and commonsense assessment⁸ of all available information bearing on Applicant's past conduct and current circumstances shows she has satisfactorily addressed the Government's doubts about her ability and willingness to protect the Government's interests as her own.

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 F:	FOR APPLICANT
Subparagraphs 1.a - 1.i:	For Applicant

⁸ See footnote 4, *supra*.

Conclusion

In light of all of the foregoing, it is clearly consistent with the national interest to grant Applicant access to classified information. Request for security clearance is granted.

MATTHEW E. MALONE
Administrative Judge