



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



In the matter of:)
)
) ISCR Case No. 10-03389
)
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esquire, Department Counsel

For Applicant: *Pro se*

December 15, 2010

Decision

O'BRIEN, Rita C., Administrative Judge:

Based upon a review of the case file, pleadings, and exhibits, 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.

On December 31, 2009, Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP) to request a security clearance (Item 5). 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 by DoD Directive 5220.6 (Directive), as amended.

On August 27, 2010, DOHA issued to Applicant a Statement of Reasons (SOR) (Items 1, 2), that specified the basis for its decision: security concerns addressed in the Directive under Guideline F (Financial Considerations) of the Adjudicative Guidelines (AG) implemented by the Department of Defense on September 1, 2006. Applicant received the SOR on September 10, 2010. (Item 3)

Applicant responded to the SOR on September 14, 2010, denying SOR allegation 1.a. and admitting allegation 1.b.² She also requested a decision without a hearing. (Item 4) Department Counsel submitted the Government's written case, in a file of relevant material (FORM) dated October 19, 2010.³ In addition to the documents already identified, the FORM contained Applicant's response to DOHA interrogatories (Items 6, 7), and two credit bureau reports. (Items 8, 9) Applicant was given 30 days from the date she received the FORM to file a response. On or about November 29, 2010, Applicant requested an extension to gather documents from her lender. The request was granted and the deadline was extended to December 10, 2010. Applicant timely submitted a nine-page response to the FORM. Department Counsel did not object, and I admitted it as Applicant's Exhibit (AE) A. The case was assigned to me on December 10, 2010, for an administrative decision based on the record.

Findings of Fact

Applicant's admissions in response to the SOR are admitted herein as findings of fact. After a thorough review of the pleadings, the FORM, and Applicant's response to the FORM, I make the following additional findings of fact.

Applicant, 37 years old, is a high school graduate. She has been employed since December 2009 as a word processor. This is her first application for a security clearance. She married in 2000, and she and her husband have one seven-year-old child. In her security clearance application, Applicant listed continuous employment from 1997 to the present, except for a four-month period in 2008. She has worked in restaurant service, sales, and administrative positions. (Item 5)

In 2003, Applicant and her husband took out loans and borrowed against their equity in their inherited home to purchase a bar. She stated that they had solid credit before buying the business, and her credit bureau reports show many accounts that are current. However, the bar eventually began to fail, and in 2009, they ceased operation. There is no evidence that they sought financial counseling. She and her husband now have full-time jobs. (Items 4, 8, 9)

Applicant listed several debts in her security clearance application, including a veterinary surgery bill for \$2,961, past-due mortgage payments on her home, and a

² Applicant included documents with her Answer, which totals 41 pages. (Item 4)

³ See Directive, Enclosure 3, Section E3.1.7. The FORM included nine documents (Items 1 - 9) proffered in support of the Government's case.

foreclosure on a house that her husband inherited from his grandfather. As of May 2010, Applicant's balance on the loan against her husband's inherited property was \$66,000. Applicant submitted evidence of a cashier's check in the amount of \$11,562.25, paid on April 27, 2010, which brought their loan up-to-date. This loan is not alleged in the SOR. (Items 4, 5, 6)

In her Answer to the SOR, Applicant stated that she negotiated a settlement of her debt to her veterinarian (allegation 1.a.). She provided evidence that she paid \$2,271 on July 27, 2010, and that the account is paid in full.⁴ The account number in her documentation matches that in the Government's credit bureau reports. (Item 4 at p. 4; Items 8, 9)

During her security interview in February 2010, Applicant informed the agent of three debts: the veterinary bill and two mortgage delinquencies—the inherited house and her primary residence). She stated that she and her husband missed their mortgage loan payments because they had no income for several months after the bar closed. At the time of the interview, she was negotiating with her mortgage lender for a modification of the mortgage for her primary residence (allegation 1.b.). In June, 2010, she paid \$3,500 to a company that assists its clients in managing the loan modification process. She submitted a copy of her application and negotiation agreement. In July 2010, her mortgage servicing company was evaluating her application, and informed her that although the foreclosure process would continue, her home would not be foreclosed while her application was under consideration. (Item 4 at p. 14 - 41; Items 5, 7, 8, 9)

Applicant's mortgage company approved her application for a loan modification. In her response to the Government's FORM, she provided a copy of the lender's letter indicating that the modification was approved, and that her new payment of \$1,124 begins on February 1, 2011. Applicant's first payment will "halt the foreclosure process," as long as she continues the payments. (AE A; Item 4)

Applicant's personal financial statement (PFS) of July 2010 shows a monthly net income, including her spouse's net income, of \$4,275. After expenses of \$1,640, and a mortgage payment of \$788 on the inherited house, her net monthly remainder is \$1,847. (Item 6)

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

⁴ The record is contradictory as to the settlement amount. Applicant indicates she paid a settlement of \$591.74 (Item 4 at p. 11; Item 6), but the creditor states she paid \$2,271 in its letter of September 21, 2010. (Item 4 at p. 4)

⁵ Directive. 6.3.

must also reflect consideration of the factors listed in ¶ 2(a) of the guidelines, commonly referred to as the “whole-person” concept. 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 are 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 Guideline F (financial considerations).

A security clearance decision is intended only to resolve 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

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).

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.

The evidence contained in the FORM shows that Applicant owed two debts: a veterinarian bill and a delinquent mortgage. Applicant provided evidence that she paid one debt, but the larger debt to her mortgage lender remained \$21,280 past due. The property was in foreclosure status as of January 2010, with a loan balance of \$224,000. AG ¶19 (a) (inability or unwillingness to satisfy debts) and AG ¶ 19 (c) (a history of not meeting financial obligations) apply.

Under AG ¶ 20, the following conditions that can potentially mitigate security concerns are relevant:

(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;

(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; and

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

Applicant's debts are recent, as they were delinquent when the SOR was issued in 2010. However, they were not frequent, because she had only two debts that were delinquent. In addition, they resulted from a failed business, which is now closed. It is unlikely that Applicant will engage in a similar venture in the future, given its effect on her finances. Applicant's steps to resolve her debts reflect well on her current reliability. AG ¶ 20(a) applies.

Applicant borrowed from her equity in another property, and took out loans to finance a business in 2003. Opening a business was not beyond her control, but its failure was unforeseeable. When it failed, she was unable to meet her mortgage payments, and they became delinquent in 2009, when her business ceased operation. She reasonably decided to close the business in 2009. Since then she has been trying to recover financially. She and her husband now have full-time jobs. According to her credit bureau report of January 2010, her accounts are in good standing, but for the twodebts listed in the SOR. She sought to resolve her major delinquency, the mortgage on her primary residence, by hiring a company to assist her in obtaining a loan modification. Her efforts have been successful, and this month, she was notified that her

loan has been modified, and her payment reduced from \$1,920 to \$1,124. With a monthly net remainder of \$1,847, she will be able to meet this lower payment. The modification has also halted the foreclosure process, as long as she makes the new payments. Applicant has paid the smaller SOR debt, and resolved the larger debt. AG ¶¶ 20(b) and (d) apply.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate the applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited guideline. I have also reviewed the record before me in the context of the whole-person factors listed in 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.

Applicant's financial difficulties started when she and her husband purchased and operated a bar. They ran the bar for several years, but eventually it began to fail, and they closed it in 2009. As she noted in her Answer, they obtained full-time jobs and started to repair their credit. The SOR alleges two debts. Applicant provided evidence that she paid one in July 2010. The larger debt related to foreclosure on her home. Applicant was in touch with the lender, and also hired a company that helped her apply for a loan modification that would bring her monthly payment within her means. She was recently informed that the modification was approved. Her new lower payment allows her to retain a monthly remainder of several hundred dollars. Given this experience, it is unlikely she will be in a similar situation in the future.

A fair and commonsense assessment of the available information bearing on Applicant's suitability for a security clearance shows she has satisfied the doubts about her ability and willingness to protect the Government's interests.

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 as follows:

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

Conclusion

In light of all of the foregoing, it is clearly consistent with the national interest to allow Applicant access to classified information. Applicant's request for a security clearance is granted.

RITA C. O'BRIEN
Administrative Judge