



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



In the matter of:)
)
) ISCR Case No. 10-04595
)
Applicant for Security Clearance)

Appearances

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

August 17, 2011

Decision

O'BRIEN, Rita C., Administrative Judge:

Based upon a review of the case file, pleadings, and exhibits, I conclude that Applicant has not mitigated the security concerns raised under the guideline for financial considerations. Accordingly, her request for a security clearance is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on January 12, 2010 to request a security clearance required as part of her employment with a defense contractor (Item 6). 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 finding that it is clearly consistent with the national interest to grant Applicant's request.

On March 9, 2011, DOHA issued a Statement of Reasons (SOR) (Item 1), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified; DoD directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified; and the adjudicative guidelines (AG) implemented by the DoD on September 1, 2006. The SOR specified the basis for its

decision: security concerns addressed in the Directive under Guideline F (Financial Considerations) of the AG. Applicant answered the SOR on March 21, 2011, but failed to indicate if she wished to appear in person or have her case decided on the written record. On April 28, 2011, DOHA issued a second letter requesting Applicant to indicate which procedure she preferred. She responded on May 11, 2011, and requested a decision without a hearing. (Items 1-5)

In her Answers to the SOR, Applicant admitted seven allegations, and denied the six allegations at SOR subparagraphs ¶¶ 1.b, 1.e, 1.g, 1.j, 1.k, and 1.l. (Item 2) Department Counsel submitted a file of relevant materials (FORM)¹ in support of the Government's preliminary decision to deny Applicant's request. The FORM was forwarded to Applicant on June 21, 2011, and she received it on June 28, 2011. She was given 30 days from the date she received the FORM to file a response. Applicant timely submitted a one-page response, which I admitted as Applicant Exhibit (AE) A. The case was assigned to me on August 8, 2011, for an administrative decision based on the record.

Findings of Fact

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

Applicant is 31 years old and single. She has a five-year-old son who resides with her. She served as an enlisted member of the Air Force from 1998 to 2002. She attended college from 2008 to 2009 in a medical assistant program. She has held a number of supply positions in private industry since 2002. As of the date of her security clearance application in 2009, she was employed by a defense contractor as a supply technician. (Item 6)

The SOR alleges 11 delinquent debts, totaling \$19,731, which appear in Applicant's January and December 2010 credit reports.² Applicant filed a Chapter 13 wage-earner bankruptcy petition in November 2008. The bankruptcy petition lists assets of \$6,015 and liabilities of \$42,631. The wage-earner plan required her to pay \$93 per week for five years. She noted in her security clearance application that she "started to file bankruptcy, but I didn't go through with it." Applicant's petition was dismissed in January 2009 for failure to make the required payments. Two debts that appear in her 2008 bankruptcy petition also appear in the current SOR. (Items 4, 7, 11, 12)

¹ See Directive, Enclosure 3, Section E3.1.7. The FORM included 12 documents (Items 1 - 12) proffered in support of the Government's case.

² Applicant denied knowledge of about half of the delinquent debts presented to her at her security interview. She had also answered "No" to all financial questions in her security clearance application. Falsification of her security clearance application was not alleged in the SOR. Under the Appeal Board's jurisprudence, non-alleged conduct can be considered only under certain circumstances, including the whole-person analysis. Here, I will consider it only for that limited purpose. ISCR Case No. 00-0633 (App. Bd. Oct. 24, 2003).

At her February 2010 security interview, Applicant questioned numerous debts that appear in the SOR, stating that she

- did not recognize several debts (§§ 1.d, 1.j, and 1.k);
- paid or was paying regularly on other debts (§§ 1.g, 1.i, 1.l); and
- disputed the 2008 judgment for a medical debt of \$2,988 and a gym membership debt of \$792 (§§ 1.e and 1.f).

Applicant denied responsibility for the medical debt because she was unsure of its source. She denied the gym membership debt because she "dropped the plan" when she moved from the area where it was located. However, in her Answer to the SOR, she admitted this debt. The file contains no documentation that Applicant has filed disputes with the credit reporting agencies. (Items 8, 9)

Applicant told the security investigator in 2010 that she was delinquent on several debts because she was unemployed from July to November 2009. At the time of the interview, she believed she was living within her means and able to meet her current financial obligations because she "had a better job." Several months later, in November 2010, Appellant answered the DOHA interrogatory. She noted that, "I am going to [name] credit repair so they can help me clear my credit." It is unclear whether her statement meant that she was already receiving such help or that she intended to contact the company in the future. However, the file contains no documentation indicating that she has retained a credit counseling service, or that a credit counseling agency has performed any debt-resolution services for her. In her response to the FORM, Applicant stated that she was young when many of her problems arose. She noted that she "wasn't that good with finances, but I have grown and learned for [sic] my past mistakes." (Items 8, 9, 11, 12; AE A)

The latest credit report in the file, dated December 2010, lists only three delinquent debts, of the 11 in the SOR. I cannot determine from the record evidence why the remaining SOR debts do not appear. Although Applicant claimed that she paid the debt at allegation 1.l, and was paying on the debts at 1.g and 1.i, she provided no documentation to support her claim. Even if her statements are accepted, these debts would appear on her report as "Paid" or "Paying as Agreed." (Item 12)

The SOR lists the following delinquent debts (Items 11, 12):

- **Communications**, \$413 (allegation 1.b)
- **Medical**, four debts totaling \$3,695 (allegations 1.c, 1.e, 1.g, 1.i)
- **School**, \$92 (allegation 1.d)
- **Gym membership**, \$792 (120 days past due), (allegation 1.f)

- **Auto loan**, \$13,579 (allegation 1.h)
- **Other**, \$400 (allegation 1.j)
- **Payday loan**, \$670 (allegation 1.k)
- **Insurance**, \$90 (allegation 1.l)

Applicant's November 2010 personal financial statement shows net monthly income of \$2,944 and expenses of \$1,075, leaving a monthly remainder of \$1,869. She did not list monthly payments on any of the SOR debts. The file provides no information on whether these numbers accurately reflect Applicant's current finances. (Items 4, 6, 7)

Applicant admits that on May 5, 2002, while on active duty in the Air Force, she was arrested and charged with six counts of a misdemeanor: Deposit Account Fraud/Bad Checks, \$499 or Less. On July 2, 2002, she was convicted in a state court and fined \$175. Shortly thereafter, Applicant received a General Discharge under Honorable Conditions from the Air Force. The file contains no further details regarding this conviction. (Items 4, 6, 10)

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.³ Decisions 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 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 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 interest⁴ 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 applicant to refute, extenuate or mitigate the Government's case.

³ Directive. 6.3.

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

Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁵ 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 her 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.⁶

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 has a history of delinquent debts. She initiated a bankruptcy petition in 2008, when her liabilities surpassed her assets by \$36,616. The reasons for her indebtedness are not evident from the evidence, although Applicant states that she did not have a clear understanding of how to manage her finances in the past. Her history of failing to meet her financial obligations supports application of disqualifying conditions AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*).

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

(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;

⁵ See *Egan*, 484 U.S. at 528, 531.

⁶ 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.

Applicant's failure to pay her debts did not occur in the distant past, because her debts are still delinquent. She has not shown that her debts will be resolved, or that her delinquencies will not continue in the future. Her unresolved financial situation casts doubt on her reliability, and AG ¶ 20(a) cannot be applied.

Applicant stated her financial problems stem from unemployment. However, it lasted only four months, and it occurred in 2009, after she had become so overextended that she filed for bankruptcy. The file contains no evidence of other circumstances that might have prevented her from being able to resolve her current situation. Therefore, I have no way to determine if unexpected conditions or circumstances beyond Applicant's control contributed to her indebtedness. AG ¶ 20(b) is not relevant to the available facts.

Applicant indicated that she wishes to pay her debts by retaining a credit counseling agency. However, she provided no evidence that she has retained one, set up payment plans, or paid debts through the company she named. She claimed to be paying one debt, and to have paid another, but provided no documentary evidence. In addition, although she disputed two debts, Applicant did not provide evidence that she informed the credit reporting agencies of these disputes. I cannot conclude that Applicant has paid any past-due debts, including the three small debts of less than \$100. Her debts remain unpaid, with no plan in place to resolve them. AG ¶¶ 20(c), (d), and (e) do not apply.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an 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 is 31 years old and presumed to be a mature adult. She accrued significant debt that led to an attempt to file a Chapter 13 bankruptcy petition in 2008. She has been aware that delinquent debts are a security concern since she completed her security clearance application in January 2010. However, the record indicates that, over the past one-and-one-half years, she has made no effort to resolve these debts. Moreover, although she had delinquent debts when she completed her security clearance application, she failed to disclose them to the Government. Applicant's failure to be candid in a security clearance application undermines her credibility. A fair and common-sense assessment of the available information bearing on Applicant's suitability for a security clearance shows she has not demonstrated the good judgment and trustworthiness required in those who protect the Government's interests. Because protection of the national interest is paramount in these determinations, such doubts must be resolved in favor of the Government.⁷

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:	AGAINST Applicant
Subparagraphs 1.a – 1.m	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge

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