



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



In the matter of:)	
)	
)	ISCR Case No. 11-01584
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esq., Department Counsel

For Applicant: *Pro se*

04/26/2012

Decision

O'BRIEN, Rita C., Administrative Judge:

Based upon a review of the 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.

Statement of the Case

On December 14, 2011, Defense Office of Hearings and Appeals (DOHA) notified Applicant that it was unable to find that it is clearly consistent with the national interest to grant or continue her access to classified information, and it recommended that her case be submitted to an administrative judge for a determination whether to deny or revoke her clearance. DOHA set forth the basis for its action in a Statement of Reasons (SOR), citing security concerns under Guideline F (financial considerations) of the Adjudicative Guidelines (AG).¹

¹ Adjudication of the case is controlled by Executive Order 10865, as amended; DoD Directive 5220.6 (Directive), as amended; and the Adjudicative Guidelines, which supersede the guidelines listed in

In her Answer to the SOR, Applicant admitted all of the allegations in the SOR and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on February 13, 2012, and I received the case on February 21, 2012. DOHA issued a Notice of Hearing on March 9, 2012. I convened the hearing as scheduled on March 29, 2012. During the hearing, the Government offered eight exhibits, which I admitted as Government Exhibit (GE) 1 through 8. Applicant testified, and offered eleven exhibits, which I admitted as Applicant's Exhibit (AE) A through K. DOHA received the transcript on April 6, 2012.

Findings of Fact

Applicant's admissions to the SOR allegations are incorporated 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 is 42 years old, single, and has no children. She earned some college credits in 2004 and completed a certificate in project management. She has worked for a defense contractor as an information technology project manager since 2008. Her current position is program manager. She directly supervises three people, and manages a team of 27 people, working on information technology implementation and upgrades. (GE 1; AE G, H; Tr. 39-42)

Applicant experienced one period of unemployment for ten months between June 2005 and March 2006. She supported herself using her 401(k) funds, and began to have financial problems. Her student loans and federal income tax owed for 2005² were paid through garnishment. The tax was paid in approximately 2007. She has filed and paid all her required federal and state tax since then. The student loans were paid off in 2010. Her home went to foreclosure in 2005, when she was unemployed. In 2006, she negotiated a forbearance of her mortgage loan until 2012. As of the hearing date, Applicant had made her payments for the previous two months, and had set up an automatic deduction of her mortgage payments. Applicant's car loan payments have been up-to-date since she purchased a used car in 2009. She also has reserve funds available in her savings account. (GE 1, 3; AE C, E; Tr. 37-38, 43, 54-59)

Applicant's gross annual salary of \$112,412 includes her most recent merit increase. Her net monthly income as of the hearing date was approximately \$5,564. On her personal financial statement (PFS), she listed monthly expenses and debt payments of \$3,649; however, her medical expenses have increased by \$100 per month, so her total is currently \$3,749. Her current net remainder appears to be approximately \$1,800.

Enclosure 2 to the Directive. They apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

² Applicant testified that she believed this unpaid tax was an error, but the company that prepared and filed her return has moved and she has not been able to locate it. (Tr. 56)

However, the PFS did not include other outlays, including her monthly savings deposit of \$520, and varying amounts contributed to help her mother (in the most recent monthly period it was \$300). These expenses decrease her net remainder to \$1,000 to \$1,300. She deposits approximately \$360 per month in her savings account. Applicant has more than \$38,000 in her 401(k) account. She does not have credit card accounts. (GE 2; AE G, I; Tr. 37-38, 44-52)

The current status of the SOR debts follows. They appear in Applicant's credit bureau reports of May and December 2010, and September 2011. (GE 5, 6, 7, 8; AE J, K)

UNRESOLVED: Applicant contacted each of the creditors listed in the SOR, but the following debts remain unresolved.

1.f (\$544) – When Applicant contacted the creditor she was told the account was closed and it would not accept payments. As of the hearing date, Applicant was awaiting documentation to confirm the status. (GE 2; Tr. 26-27, 60-68)

1.g (\$3,547) – Applicant testified that the original creditor for this account is the same as the one at allegation 1.f, which would not accept payments on the debt. (GE 2; AE A; Tr. 27, 60-68)

1.h (\$7,130) - Applicant contacted this creditor to establish a payment plan. The creditor would not agree. She provided the telephone number of the representative she spoke with. (AE A; Tr. 27, 65-67)

1.i (\$1,398) - When Applicant contacted the creditor in 2006, she was informed that she could not transfer or sell this timeshare property because the deed was never recorded. During her most recent contact, the representative said Applicant should not have been billed, and should have the account removed from her credit report. As of the hearing date, Applicant was waiting for confirmation from the representative. (AE A; Tr. 25-26, 65-67)

1.j (\$50) - Applicant does not recognize this debt. Her doctor's office confirmed that she does not owe an outstanding balance. (AE A; Tr. 25, 66)

1.k (\$1,908) - Applicant testified that she mistakenly failed to contact this creditor before the hearing, but she intends to do so and to pay the debt. (Tr. 67-69)

RESOLVED: Applicant paid the following debts listed in the SOR:

1.a (\$130) - Applicant's documentation shows she paid this debt by debit from her checking account in January 2012. (AE F at p. 3; Tr. 36, 60)

1.b. (\$809) - Applicant provided documentation showing she paid this debt by debit from her checking account in March 2012. (AE C; AE F at p. 4; Tr. 36, 60)

1.c. (\$184) - Applicant provided documentation showing she paid this debt by debit from her checking account in February 2012. (AE F at p. 2; Tr. 36, 60)

1.d. (\$194) - Applicant provided documentation showing she paid this debt by debit from her checking account in February 2012. (AE F at p. 7; Tr. 35-36, 60)

1.e (\$1,893) - Applicant provided documentation showing she paid this debt by debit from her checking account in March 2012. (AE C; AE F at p. 5; Tr. 36, 60)

1.l (\$249) - Applicant provided documentation showing she paid this debt by debit from her checking account in March 2012. (AE C; AE F at p. 6; Tr. 32-35, 60)

1.m (\$102) - Applicant provided documentation showing she paid this debt by check in November 2011. (GE 4; AE C; AE AE F at p. 8; Tr. 35, 60)

1.n (\$323) - Applicant provided documentation showing she paid this debt in 2006. (AE A, J, K; Tr. 25, 65)

Policies

Each security clearance decision must be a fair, commonsense determination based on 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 "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).

³ Directive. 6.3.

A security clearance decision is intended only to resolve the questions of 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 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.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 interest as her or his 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.

Applicant accrued significant debts that were unpaid and in collection status as of the date of the SOR. The record supports application of the following disqualifying conditions under AG ¶19:

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

The financial considerations guideline also contains factors that can mitigate security concerns. I have considered the mitigating factors under AG ¶ 20, especially the following:

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

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; and

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

Applicant's financial problems began when she was unemployed for approximately ten months between 2005 and 2006. She was unable to keep up with her mortgage payments, and negotiated a forbearance on her loan. Her unemployment was unforeseen. Applicant acted reasonably by working with her mortgage lender to reduce her payments. Once she was employed, Applicant acted reasonably. She began to build savings and her 401(k) account. She now has a reserve fund that she can use if unforeseen circumstances jeopardize her ability to meet her financial obligations in the future. She has also resumed her full mortgage payments, and they are automatically deducted from her bank account. She has taken steps to pay her delinquent accounts. AG ¶ 20(b) applies.

Applicant has been making efforts to resolve her financial situation. She contacted the creditors and provided documentation showing she paid the outstanding balance on eight of the SOR debts. She also contacted the creditors for five of the six remaining debts to pay or set up payment plans; however, she could not negotiate an arrangement with these creditors. She also provided documentation to show she has been saving regularly and contributing to her 401(k) account to maintain a sizeable cushion should she encounter future difficulties. Applicant has made a good-faith effort, resulting in substantial progress in resolving her financial situation. AG ¶¶ 20(c) and (d) 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 relevant 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 demonstrated a good-faith effort to meet her financial obligations when she contacted all of the SOR creditors, and succeeded in resolving eight debts. Her responsible professional position, comfortable monthly net remainder, and substantial savings cushion indicate it is unlikely she will be in a similar position in the future. Her testimony was credible and sincere, and I conclude she will continue to resolve her remaining delinquencies.

Overall, the record evidence satisfies the doubts raised about Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns raised by the cited adjudicative guideline.

Formal Findings

Paragraph 1, Guideline F	FOR APPLICANT
Subparagraphs 1.a – 1.n	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is granted.

RITA C. O'BRIEN
Administrative Judge