



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

In the matter of:)
)
) ISCR Case No. 11-02253
)
Applicant for Security Clearance)

Appearances

For Government: Philip J. Katauskas, Esquire, Department Counsel
For Applicant: *Pro se*

February 10, 2012

Decision

METZ, John Grattan, Jr., Administrative Judge:

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

On 27 July 2011, 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, requesting a hearing. DOHA assigned the case to me 6 October 2011, and I convened a hearing 1 November 2011. DOHA received the transcript 10 November 2011.

¹Consisting of the transcript (Tr.), Government's exhibits (GE) 1-5, and Applicant's exhibits (AE) A-I. AE H and I were 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 all the SOR allegations except SOR 1.b-1.e and 1.II. She is the 50-year-old founder, president, and chief executive officer of an information technology (IT) company seeking government contract work—for which she needs a clearance. She last had an industrial clearance in 2003, when she worked for a defense contractor.

Applicant is the never-married mother of an 18-year-old son, whose father lives outside the U.S. and provides essentially no financial support for his son. She has been unemployed since December 2003. She received \$2,000 per month in disability insurance payments from March 2004 through September 2011 (AE A, B). In September 2011, she received a \$28,000 lump-sum payment from the Social Security Administration (SSA) for back disability payments. In May 2001, Applicant won her disability case at SSA, and was rated 100% disabled effective July 2006. This ruling makes her eligible for Medicare, which will reduce her prescription costs (AE C), and may help her with delinquent medical bills back to January 2009 (AE H). SSA is currently paying Applicant \$500 per month. However, the disability insurer is seeking to recoup its payments made during the time Applicant has been found to be eligible for SSA disability payments.

The SOR alleges, and Government exhibits (GE 3, 5) substantiate, 40 delinquent debts totaling nearly \$41,000. However, SOR debt 1.mm is a duplicate of debt 1.a and debt 1.d is a duplicate of debt 1.b, so 38 debts totaling just over \$38,000 are at issue. Accordingly, I find debts 1.a and 1.d for Applicant. Applicant's August 2010 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).

The five debts Applicant denies (SOR 1.b-e, 1.II) are judgments obtained against her for unpaid rent. Although the credit reports show that the judgments remain unpaid, Applicant produced an August 2011 letter from the landlord showing that her accounts were current (Answer), and Applicant continues to reside in the apartment.³ However, she acknowledges sometimes not being able to pay her rent, and turning to friends or church groups for help.

Applicant's delinquent debts consist of two education loan accounts totaling over \$20,000 (SOR 1.aa and 1.bb), 15 medical accounts totaling nearly \$7,000, seven telephone accounts totaling nearly \$1,300, two insurance accounts totaling nearly \$1,000, and state and federal income tax debt totaling over \$3,300. Applicant claimed, without corroboration, that she had a repayment plan with the Internal Revenue Service and had been making payments. In November 2011, after the hearing, she settled four telephone accounts (SOR 1.f, 1.I-k) totaling \$330—less than what she owed. Similarly,

³Because of her financial situation, Applicant's rent is Government-subsidized. However, even in unsubsidized rentals, landlords may act quickly to reduce any unpaid rent to judgment, but are not equally swift to report those judgments as paid.

she paid two medical accounts (SOR 1.x, 1.y) totaling \$53 after the hearing. She paid \$280 on a medical account in September 2011, but did not link it to any of the alleged SOR debts.

Applicant has been the victim of a series of very unfortunate events since 2001. In September 2001, Applicant fell at work and hurt her back. At the time, she had medical insurance which covered most of her expenses. In October 2001, she had her first back surgery. Her recovery was long and painful. She was able to return to work in April 2003, but was under a lot of pain. She worked until December 2003, when the pain became too unbearable to continue to work. She had her second back surgery in January 2004.

In April 2004, her father fell ill, and she traveled to see him, using borrowed money. He died after a short illness. In November 2004, she founded her company (AE H). However, the company currently exists only on paper. Nevertheless, there is the prospect of Government contract work for the company if she can obtain her clearance (AE G). She would then begin to hire employees (who themselves would have to obtain clearances), and actually be hired by Government agencies to provide IT services. She claims, again without corroboration, to have a funding company that will give her a \$10,000,000 line of credit for her startup costs once she has her clearance.

In 2005, Applicant was in an automobile accident that was the other driver's fault. While she did not require another surgery, the injury only aggravated her bad back. Because the other driver was at fault, her medical bills were covered. In June 2007, Applicant's brother was beaten into a coma. Applicant borrowed money to go see him in the hospital, and when he died in February 2008 (AE H), she borrowed money to bury him (AE D, E).

Applicant claims (AE I) to have made arrangements with most of her creditors. While she provided some proof of payments made and accounts paid, most of her arrangements are uncorroborated. She would otherwise be eligible for a hardship deferment on her education loans, but to get the deferment, she has to make minimum monthly payments for six months to rehabilitate the loans. She cannot afford the monthly payments. Applicant claimed that she has had financial counseling, but provided no documentation. She did not submit a budget. 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.⁴

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 going back several years.⁵ Once the Government established the indebtedness, the burden shifted to Applicant to show her clearance worthiness, which she was unable to do.

The mitigating factors for financial considerations provide little help to Applicant, certainly 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.⁶ No reasonable person would conclude that the series of calamities that have befallen Applicant are not circumstances beyond her control, nor that she has acted irresponsibly in addressing her debts.⁷ While Applicant has taken little action to address her debts, she has had little means to do so. Nevertheless, Applicant has been under fairly severe financial pressure for ten years.

Applicant has overcome many personal hardships to found her company and get it qualified for Government contracts. But granting her clearance puts the cart before the horse. Progress on her debts relies on too many contingencies. Assuming that she gets

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

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

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

⁷¶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;

a line of credit for her startup costs, she still has to hire employees (who she then must pay), get Government work, and get paid long enough to address her debts. Put another way, the pendency of those contracts does nothing to show that she is gaining control over her finances⁸ or will be able to establish and meet payment arrangements for her delinquent debts.⁹ Unless she is able to find Government work that does not require a clearance, it is difficult to imagine how her debts can be resolved in the reasonably foreseeable future. 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-e, ll:	For Applicant
Subparagraphs f-kk, mm-nn:	Against 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

⁸¶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;

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