



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



In the matter of:	)	
	)	
[NAME REDACTED]	)	ISCR Case No. 11-02494
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Stephanie C. Hess, Esquire, Department Counsel  
For Applicant: *Pro se*

04/19/2012

**Decision**

MALONE, Matthew E., Administrative Judge:

Applicant mitigated the security concerns about her finances. Her request for a security clearance is granted.

**Statement of the Case**

On January 19, 2010, 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 completed background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) sent interrogatories<sup>1</sup> to Applicant seeking to clarify or augment information contained therein. Based on her responses to the interrogatories and the results of the background

<sup>1</sup> Authorized by DoD Directive 5220.6 (Directive), Section E3.1.2.2.

investigation, DOHA adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant's request for access to classified information.<sup>2</sup>

On December 22, 2011, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the adjudicative guideline (AG)<sup>3</sup> for financial considerations (Guideline F). Applicant answered the SOR (Answer) on January 11, 2012, and requested a hearing.

The case was assigned to me on February 27, 2012, and I scheduled it to be heard on March 13, 2012. At the hearing, the Government presented six exhibits, which were admitted without objection, as Government's Exhibits (Gx.) 1 - 6. Applicant testified and proffered five exhibits, which were admitted, without objection, as Applicant's Exhibits (Ax.) A - E. I also left the record open after the hearing to receive additional relevant information. The record closed on March 19, 2012, when Department Counsel waived objection to Applicant's timely post-hearing submission, which is admitted as Ax. F. DOHA received a transcript (Tr.) of the hearing on March 21, 2012.

### **Findings of Fact**

The Government alleged that Applicant filed a Chapter 7 bankruptcy petition in October 2002 and was discharged of her debts in January 2003 (SOR 1.a); that she had ten delinquent debts totaling \$24,917 (SOR 1.b - 1.j); and that in May 2007, she was charged with forging, uttering and obtaining money by false pretenses (SOR 1.k). Applicant admitted, with explanations, all but one (SOR 1.i) of the allegations. Her admissions are incorporated in my findings of fact. Having reviewed all of the information and testimony provided, I make the following additional findings of fact.

Applicant is 48 years old. She was married from April 1994 until obtaining a divorce in February 2004. She has one child, now age 26. In addition to her full-time employment, Applicant is studying for a bachelor's degree in business administration. She currently has a 3.875 grade point average. (Gx. 1; Ax. A)

From September 1988 until December 2010, Applicant worked as a state employee, the last seven years as a real property manager for the state's department of military affairs. During her state career, Applicant accumulated approximately \$47,000 in retirement savings through a state-sponsored 401(k) plan. She is eligible to retire from her state job, but can only access, without penalty, the money in her state 401(k) if she has, in fact, retired. (Gx. 1; Gx. 2; Ax. A; Ax. B; Tr. 62 - 63)

On December 19, 2011, Applicant was offered a real property manager's position with a private defense contractor not connected to her state position. That company is sponsoring her request for a security clearance, as required by the contract for which she was hired. Applicant submitted her retirement papers to her state employer and

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<sup>2</sup> Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

<sup>3</sup> See Directive, Enclosure 2. See also 32 C.F.R. § 154, Appendix H (2006).

reported to work with the defense contractor on January 18, 2011. She submitted her eQIP on January 18, 2011. Soon, thereafter, because of adverse information about her finances, she was advised she would not be given an interim clearance. Because her defense contractor offer of employment was conditioned on her ability to obtain a security clearance, Applicant could not continue working there. However, she was able to withdraw her state retirement papers, and returned to work at her previous state job in February 2011 pending the outcome of this case. (Answer; Gx. 1; Gx. 2; Ax. B; Tr. 62 - 65)

Applicant and her ex-husband experienced financial problems in about 2002. They decided to seek discharge of their debts through bankruptcy. In January 2003, they received a Chapter 7 discharge. (Gx. 3; Gx. 4) After her divorce in 2004, she struggled to make ends meet; however, her financial problems became considerably worse after 2006, when she and her ex-husband attempted to reconcile. Her ex-husband had been abusive during much of their marriage, and that did not change during their reunion. They stayed together for nine months before parting ways for good. (Tr. 56 - 57)

Credit checks conducted during Applicant's background investigation attributed to her the nine delinquent debts at SOR 1.b - 1.j, totaling nearly \$25,000. The largest debts, alleged at SOR 1.b and 1.c, are for delinquent or past-due car loan payments. The debt at SOR 1.c is for a car Applicant bought when she and her ex-husband tried to reconcile. He agreed to pay the car note if she paid the rent, but he did not hold up his end of the bargain and the car was repossessed. Applicant owes \$12,377 for the remainder due after resale. Applicant has paid about \$1,000 on this debt and the creditor has offered to settle the debt for \$9,802. (Ax. E; Tr. 76)

As to the car loan debt alleged at SOR 1.b, Applicant still has the car. When she bought the car in 2005, she thought she could use money from her 401(k) as a down payment. However, she later learned, after securing a loan for the balance of the sales price and taking possession of the car, that she could not access her 401(k) for that purpose. The dealer obtained a judgment against Applicant for \$8,820, which represents the down payment plus interest. Applicant has been repaying this debt since June 2008 and now owes only \$695. (Ax. B; Tr. 58)

In March and June 2010, Applicant was interviewed by government investigators as part of her background investigation. She discussed the status of the debts attributed to her by credit reports the investigators had obtained. At the time of her interviews, Applicant was already paying some of her past-due debts or negotiating with her creditors for resolution of her debts. As of her hearing, Applicant had paid or otherwise resolved the debts at SOR 1.d - 1.i. (Ax. B; Ax. F; Tr. 35 - 45) If she finds employment, either with the defense contractor or another employer, that will allow her to retire, Applicant will be able to access her 401(k) funds, without penalty, and use them to pay off the remaining debts listed at SOR 1.b, 1.c, and 1.j. (Answer; Gx. 1; Gx. 2)

In 2005, Applicant was renting an apartment from a friend. In October 2005, the apartment and Applicant's belongings in it suffered smoke damage from a ventilation system mishap. Applicant had renter's insurance and contacted the company to make a

claim. An adjuster for the insurer documented about \$3,000 in damages that would be paid to Applicant. However, Applicant was also told that, after Applicant's claim was paid, the insurer would move to recover the costs from Applicant's landlord friend. Applicant decided she did not want her friend to bear the cost of the accident and told the insurer she no longer wanted to pursue the claim. Applicant cleaned the apartment and replaced her damaged belongings at her own cost, never receiving any money from the insurer.

In 2007, Applicant was charged with attempting to obtain money by false pretenses by filing a false insurance claim, a felony. Applicant did not qualify as indigent for purposes of having court-appointed counsel, and she could not afford the legal fees needed to contest the charges at trial. She decided to plead guilty to a lesser included misdemeanor version of the same charge. Applicant was fined and ordered to be of good behavior for two years. Applicant recently petitioned the court to have this offense expunged. Applicant has not been involved in any other criminal conduct. (Gx. 1; Gx. 2; Gx. 5; Gx. 6; Ax. D; Tr. 48 - 51)

Applicant's current finances are sound. In addition to paying her past-due debts, she meets all of her current expenses, such as rent, car loan, insurance, and utilities. She estimates that she has about \$500 remaining each month after expenses. That figure would increase once she starts receiving her state retired pay along with her income from the defense contractor position, which will pay about \$88,000 annually. (Gx. 2; Ax. B; Tr. 60 - 61)

Applicant has an excellent reputation in the workplace and in her community. She provided several written references that noted her honesty, her hard work, and her professionalism. (Ax. A)

## **Policies**

A security clearance decision is intended to resolve whether it is clearly consistent<sup>4</sup> with the national interest for an applicant to either receive or continue to have access to classified information. Each decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>5</sup> 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 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

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

<sup>5</sup> Directive. 6.3.

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. 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.<sup>6</sup> 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 compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.<sup>7</sup>

## Analysis

### Financial Considerations.

The Government presented information that showed Applicant owes almost \$25,000 in past-due debts. As of the close of the background investigation, it appeared most of those debts had not been paid or otherwise resolved. The Government's information also showed that Applicant accumulated her debts after being discharged of other debts through Chapter 7 bankruptcy. Finally, Applicant pleaded guilty to a misdemeanor charge of attempting to obtain money by false pretenses. All of this information raises a security concern about Applicant's finances addressed, in relevant part, at AG ¶ 18 as follows:

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 overextended is at risk of having to engage in illegal acts to generate funds.

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<sup>6</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>7</sup> See *Egan*; AG ¶ 2(b).

More specifically, available information requires application of the following AG ¶ 19 disqualifying conditions:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust.

In response to the Government's information, Applicant established that the circumstances that caused her and her ex-husband to file a Chapter 7 petition, and that caused her to accumulate numerous past-due debts, were largely related to the demise of her marriage, and to an ill-advised attempt at reconciliation. She also established that she has been paying off her past-due debts since before she applied for her security clearance. Her current finances are sound. She has paid or resolved all but three of the debts alleged in the SOR, and she has the means to resolve those debts in the near future. Finally, Applicant established that her finance-related criminal conviction was an aberration, and that it is unlikely she tried to defraud her insurance company. Based on all of the foregoing, I conclude that, of the mitigating conditions listed at AG ¶ 20, the following apply:

- (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;
- (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 difficulties do not reflect poorly on her overall judgment and reliability. She has mitigated the security concerns under this guideline.

### **Whole-Person Concept**

I have assessed these facts and have applied the appropriate adjudicative factors, pro and con, under Guideline F. I have also reviewed the record in the context of the whole-person factors listed in AG ¶ 2(a). I conclude that Applicant is a mature,

responsible person, who exhibited sound judgment and reliability in her response to her financial problems, which were largely beyond her control. She is a career state employee with a reputation for reliability and professionalism. Applicant's character is also reflected in her superior academic record. A fair and commonsense assessment of all available information shows that her financial problems do not pose an unacceptable security risk.

### **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

Subparagraph 1.a - 1.k:           For Applicant

### **Conclusion**

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

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MATTHEW E. MALONE  
Administrative Judge