



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



In the matter of:)	
)	
)	ISCR Case No. 11-03422
)	
Applicant for Security Clearance)	

Appearances

For Government: Fahryn E. Hoffman, Esq., Department Counsel
For Applicant: *Pro se*

03/12/2012

Decision

LAZZARO, Henry, Administrative Judge

Applicant's delinquent accounts are attributable to her husband abandoning their family and taking all their savings. She has acted responsibly in attempting to satisfy her delinquent creditors. Clearance is granted.

The Defense Office of Hearings and Appeals (DOHA) issued an undated Statement of Reasons (SOR) to Applicant stating it was unable to find it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.¹ The SOR alleges a security concern under Guideline F (financial considerations). Applicant submitted a response to the SOR, stamped as being received by DOHA on November 28 and 29, 2011, in which she requested a hearing. She denied all SOR allegations except subparagraph 1.c.

The case was assigned to me on January 12, 2012. A notice of hearing was issued on January 31, 2012, scheduling the hearing for February 13, 2012.² The hearing was

¹ This action was taken under Executive Order 10865, DoD Directive 5220.6, dated January 2, 1992, as amended (Directive), and the adjudicative guidelines which became effective within the Department of Defense for SORs issued after September 1, 2006.

² Applicant waived the 15-day notice requirement on the record (Tr. 15).

conducted as scheduled. The Government submitted ten documentary exhibits that were marked as Government Exhibits (GE) 1-10, and admitted into the record without objection. Applicant testified and submitted ten documentary exhibits that were marked as Applicant Exhibits (AE) 1-10, and admitted into the record without objection. The record was held open to provide Applicant the opportunity to submit additional documents in support of her case. Eleven documents were timely received, marked as AE 11-21, and admitted into the record without objection. Department Counsel's forwarding memorandum indicating she did not object to the documents submitted by Applicant was marked as Appellate Exhibit (App. Ex.) I and is included in the file. The transcript was received on February 23, 2012.

Findings of Fact

Applicant's admission to the one SOR allegation is incorporated herein. In addition, after a thorough review of the pleadings, testimony and exhibits, I make the following findings of fact:

Applicant is a 48-year-old woman who has been employed by a federal contractor since October 1999. She was recently promoted to the position of proposal analyst, which included a pay raise. Applicant's security clearance application (GE 6) discloses a continuous work history dating back to 1990, frequently as an administrative assistant assigned through temporary staffing agencies. The letters of recommendation Applicant submitted from her work supervisors indicate she is a highly respected, valuable, and talented employee.

Applicant graduated from high school in June 1982. She has been pursuing a bachelor's degree in international business management since June 2010.

Applicant was first married in September 1982. That marriage ended by divorce in April 1986. Applicant remarried in June 1986. She has two children from this marriage, ages 23 and 20. Her oldest child is a full-time college student. Her youngest child recently completed Air Force basic training, is now serving in the Air Force Reserve, and will be attending college full time. Applicant's children are basically self-supporting, although she does provide them with about \$800 per month to assist with their living expenses.

Applicant testified that her husband had become physically and emotionally abusive toward her in the last few years of their marriage. He abandoned the family in May 2008, and he took all the family savings, which amounted to approximately \$10,000. Applicant was left with her sole income to support herself and her children after her husband left.

Applicant obtained a divorce from her husband on November 10, 2011. The debt alleged in SOR subparagraph 1.b is based on cellular telephone charges her husband accrued on her cell phone that he took with him when he abandoned the family. That debt was allocated to him in the final divorce decree (AE 14). The debt alleged in SOR subparagraph 1.d is based on a personal loan Applicant's husband acquired. That debt was allocated to him in the final divorce decree (AE 14). Applicant has notified the various credit reporting agencies that these debts were allocated to her husband and that she is disputing her continuing liability for them (AE 10).

Applicant has fully satisfied the medical debt, owed in the amount of \$132, alleged in SOR subparagraph 1.a (AE 7). The debt alleged in SOR subparagraph 1.e arose from Applicant's delinquent automobile insurance. Applicant is now current on that insurance (AE 5).

The debt alleged in SOR subparagraph 1.c is based on Applicant's delinquent home mortgage, which only became delinquent after her husband abandoned their family. Applicant assumed responsibility for this debt in her final divorce decree (AE 15). She has been communicating with the mortgage company in an effort to accept an offer the company made of potentially offering her a deed in lieu of foreclosure to fully satisfy the debt. She submitted correspondence with the company, dated as recently as January 25, 2012, indicating that she is actively pursuing this remedy to extinguish this delinquent debt (AE 4).

Applicant began dating a man in 2009. They have cohabitated since July 2011, and they share living expenses. Applicant submitted a detailed and reasonable budget that lists her net monthly income as \$3,228, and his net monthly income as \$4,464. Her net monthly disposable income after paying all recurring living expenses is \$469.69. His net monthly disposable income after paying all recurring living expenses is \$1,357.48.

Policies

The Directive sets forth adjudicative guidelines to consider when evaluating a person's eligibility to hold a security clearance. Chief among them are the disqualifying and mitigating conditions for each applicable guideline. Each clearance decision must be a fair and impartial decision based upon relevant and material facts and circumstances, the whole-person concept, and the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive. Although the presence or absence of a particular condition or factor for or against clearance is not outcome determinative, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Guideline F (financial considerations) with its disqualifying and mitigating conditions, is most relevant in this case.

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant.³ The Government has the burden of proving controverted facts.⁴ The burden of proof in a security clearance case is something less than a preponderance of evidence,⁵ although the Government is required to present substantial evidence to meet its burden of proof.⁶ "Substantial evidence is more than a scintilla, but less than a preponderance of the

³ ISCR Case No. 96-0277 (July 11, 1997) at 2.

⁴ ISCR Case No. 97-0016 (December 31, 1997) at 3; Directive, Enclosure 3, Item E3.1.14.

⁵ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁶ ISCR Case No. 01-20700 (December 19, 2002) at 3 (citations omitted).

evidence.”⁷ Once the Government has met its burden, the burden shifts to an applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against her.⁸ Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.⁹

No one has a right to a security clearance¹⁰ and “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹¹ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting national security.¹²

Analysis

Guideline F, 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 overextended is at risk of having to engage in illegal acts to generate funds. (Adjudicative Guideline [AG] 18)

Applicant’s home mortgage loan and several other debts became delinquent after her husband abandoned the family in 2008. Disqualifying Condition (DC) 19(a): *inability or unwillingness to satisfy debts* applies.

Applicant’s current financial problems are directly the result of her husband abandoning their family and taking all their savings with him. Applicant was left to support herself and her children solely on her income after her husband departed. Two of the debts alleged in the SOR were allocated to Applicant’s ex-husband in their final divorce decree, and Applicant has so notified the various credit reporting agencies. Applicant fully satisfied two other debts alleged in the SOR. The only debt alleged in the SOR that remains delinquent is based on the mortgage that became delinquent after Applicant’s husband abandoned their family. Applicant has been corresponding with the mortgage company and supplying it with information it requested in an effort to fully resolve this debt. The detailed and reasonable budget Applicant submitted indicates she is living a financially secure and responsible lifestyle.

⁷ ISCR Case No. 98-0761 (December 27, 1999) at 2.

⁸ ISCR Case No. 94-1075 (August 10, 1995) at 3-4; Directive, Enclosure 3, Item E3.1.15.

⁹ ISCR Case No. 93-1390 (January 27, 1995) at 7-8; Directive, Enclosure 3, Item E3.1.15.

¹⁰ *Egan*, 484 U.S. at 528, 531.

¹¹ *Id.* at 531.

¹² *Egan*, Executive Order 10865, and the Directive.

The following Mitigating Conditions (MC) apply: MC 20(a): *the behavior happened . . . under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*; MC 20(b): *the conditions that resulted in the financial problem were largely beyond the person's control (e.g., . . . divorce or separation), and the individual acted responsibly under the circumstances*; MC 20(c): *. . . there are clear indications that the problem is being resolved or is under control*; MC 20(d): *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*; and MC 20(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*.

Considering all relevant and material facts and circumstances present in this case, the factors listed in ¶ 6.3.1 through ¶ 6.3.6 of the Directive, the whole-person concept, and the applicable disqualifying and mitigating conditions, I find Applicant mitigated the financial considerations security concern. Applicant has overcome the case against her and satisfied her ultimate burden of persuasion. It is clearly consistent with the national interest to grant Applicant a security clearance. Guideline F is decided for Applicant.

Formal Findings

Formal findings for or against Applicant on the allegation 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
Subparagraphs 1.a-e:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance is granted.

Henry Lazzaro
Administrative Judge

