



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



In the matter of:)
)
) ISCR Case No. 11-04981
)
Applicant for Security Clearance)

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel
For Applicant: *Pro se*

November 30, 2011

Decision

O'BRIEN, Rita C., Administrative Judge:

Based upon a review of the 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 December 9, 2010, to request a security clearance required as part of her employment with a defense contractor. 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 July 26, 2011, DOHA issued a Statement of Reasons (SOR) 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 August 18, 2011. She requested a decision without a hearing.

In her Answer to the SOR, Applicant admitted three allegations. She denied the three allegations at SOR subparagraphs ¶¶ 1.a, 1.e, and 1.f.¹ (Item 4) Department Counsel submitted a file of relevant materials (FORM)² in support of the Government's preliminary decision to deny Applicant's request. The FORM was forwarded to Applicant on September 19, 2011, and she received it on September 26, 2011. She was given 30 days from the date she received the FORM to file a response. Applicant did not submit a response. The case was assigned to me on November 29, 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, I make the following additional findings of fact.

Applicant is 37 years old. She married in 2002 and divorced in 2007. She did not list children on her security clearance application. She received a bachelor's degree in 1997, with a specialty in office systems. She worked in sales administration from 2001 to 2008, when she was laid off. She was unemployed from December 2008 to March 2009. From 2009 to 2010, she worked as a purchasing assistant, a bartender, and an office manager. In November 2010, she obtained her current position as an administrative assistant with a federal contractor. (Item 5)

In her answer to the SOR, Applicant provided information on her financial history. She listed factors that she described as "somewhat beyond my control." During her marriage, her husband did not contribute substantially to the household income. After her divorce in 2007, she "assumed responsibility for the debt" (presumably, the marital debts). The same year, she was involved in a car accident. She was laid off in 2008 and had a short period of unemployment, during which she lived on unemployment compensation and a severance package. She does not have family members who can help her financially. A roommate left without paying her share of utility bills in 2009. (Items 4, 6)

Applicant noted in her Answer that she has tried to keep up with her debts, and has paid several small ones. She has a "short-term goal" to set up payment plans, and also to put her home up for sale. She disclosed on her security clearance application a

¹ Applicant noted that she admitted allegations 1.e and 1.f. However, her explanations indicated that, in fact, she denied them. I construe her answers to these two allegations as denials. (Item 4)

² See Directive, Enclosure 3, Section E3.1.7. The FORM included nine documents (Items 1 - 9) proffered in support of the Government's case.

debt that was more than 90 days past due, and stated that she is “working with the creditor directly.” (Item 4)

The SOR alleges, and the evidence establishes, six delinquent debts totaling approximately \$36,000, which appear in Applicant's credit reports of December 2010 and May 2011. During her security interview in January 2011, Applicant discussed her delinquent debts and stated that she intended to pay them. Subsequently, Applicant noted in her interrogatory response of June 2011, that she “was able to settle one credit card debt [name] this spring.” This information appears to relate to the \$12,926 debt at allegation 1.a. The document she provided, dated February 2011, shows a settlement offer of \$3,178. She stated that she had made a payment on the debt at allegation 1.a in April 2011, but she has not provided documentary evidence of any payments on the debt. (Items 6, 7, 8, 9)

Applicant noted in her interrogatory response that she was “working with” the creditors listed in the SOR at allegations ¶ 1.c (\$10,293) and 1.d (\$9,206). She also stated that she had made payments on the debt to the Internal Revenue Service at allegation 1.e (\$448) and to her state taxing authority at allegation 1.f (\$197) on April 15, 2011. However, she did not attach supporting documentation. As to the debt of \$2,995 at allegation 1.b, Applicant stated that she had not “received any additional correspondence in regards to this being charged off.” The record contains no other information showing payment on this debt. (Item 7)

Applicant's June 2011 personal financial statement shows net monthly income of \$2,287. Her expenses of \$1,215 and debt payments of \$1,204 total \$2,419, leaving a negative monthly remainder of \$132. She listed payments on the debts at allegations 1.e and 1.f., but did not provide documentation showing such payments. (Item 7)

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).

³ Directive. 6.3.

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.

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.

Applicant has a history of delinquent debts. 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 potentially mitigating conditions are relevant:

(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

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).

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 failure to pay her debts did not occur in the distant past, because her debts are still delinquent. Although she intends to pay her debts, she has not shown with supporting documentation that they are being resolved, or that they 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 several events beyond her control including unemployment and marital debts after her divorce. However, it lasted only three months, and it occurred in early 2009, almost three years ago. Applicant listed other factors including a car accident, but without explaining how that affected her finances. The record contains insufficient evidence to support full mitigation under AG ¶ 20(b).

There is no record evidence that Applicant received financial counseling or that her financial situation is under control. In addition, Applicant stated that she has made payments on her debts, intends to pay on a settlement offer, and is working with creditors. However, she did not supply evidence to support her claims or to substantiate a good-faith effort to resolve her debts. AG ¶¶ 20(c) and (d) 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 37 years old and presumed to be a mature adult. She has accrued approximately \$36,000 in delinquent debt. She has been aware that delinquent debts are a security concern since she completed her security clearance application in December 2010, and her interrogatory response in June 2011. However, the record contains little documentation to show that Applicant has taken significant steps to resolve these debts. Applicant chose to have a decision based on the written record, and so I do not have the opportunity to assess her demeanor or credibility. Without documentary evidence to support Applicant's statements, I cannot find that her claims of efforts to resolve her debts are established.

For all these reasons, I conclude Applicant has not mitigated the security concerns arising from the cited guideline. A fair and commonsense assessment of the available information bearing on Applicant's suitability for a security clearance shows she has not satisfied the doubts raised by her indebtedness. Such doubts must be resolved in favor of the national interest.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.f	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).