



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
 [NAME REDACTED]<sup>1</sup> ) ISCR Case No. 11-08000  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Richard Stevens, Esq., Department Counsel  
For Applicant: *Pro se*

12/23/2013

**Decision**

MALONE, Matthew E., Administrative Judge:

Applicant failed to mitigate the security concerns raised by her financial problems, much of which arose from excessive gambling and from her failure to file and pay her state and federal taxes. Although she recently paid or otherwise resolved several past-due debts, she did so only after receiving the SOR and despite having the resources to start addressing her debts at least a year earlier. Significant doubts remain about Applicant’s judgment and reliability. Clearance is denied.

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<sup>1</sup> Applicant remarried after her background investigation was completed. Accordingly, her last name is now different from what was provided on the SOR. (Tr. 6)

## Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on August 30, 2011. After reviewing the results of a subsequent background investigation, Department of Defense (DOD) adjudicators could not determine that it is clearly consistent with the national interest for Applicant to have access to classified information.<sup>2</sup> On April 10, 2013, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the adjudicative guideline<sup>3</sup> for financial considerations (Guideline F).

Applicant timely responded to the SOR (Answer) and requested a decision without a hearing. However, on June 19, 2013, Applicant asked that her case be converted to a hearing. A copy of her request is included in the record as Hearing Exhibit 1. The case was assigned to me on August 9, 2013, and I convened a hearing on September 17, 2013. Department Counsel presented Government Exhibits (Gx.) 1 - 5, which were admitted without objection. Applicant testified and proffered three exhibits, admitted without objection as Applicant's Exhibits (Ax.) A - C. Additionally, I left the record open after the hearing to receive additional relevant information from Applicant. Her timely<sup>4</sup> post-hearing submission has been included in the record, without objection, as Ax. D. DOHA received the transcript of hearing (Tr.) on September 25, 2013.

## Findings of Fact

Under Guideline F, the Government alleged that Applicant owed approximately \$26,942 for 25 delinquent accounts. (SOR 1.a - 1.y<sup>5</sup>) Applicant admitted, with explanations, all of the SOR allegations except for SOR 1.d, 1.k, 1.l, 1.p, and 1.u. Her denials were also accompanied by explanations. (Answer)

Additionally, Department Counsel moved that the SOR be amended to conform to information obtained at hearing,<sup>6</sup> by adding as SOR 1.z, the following allegation:

You failed to file your state and federal income tax returns for tax years 2011 and 2012, as required.

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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> The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

<sup>4</sup> The record closed on October 15, 2013, which was later than originally planned due to a Government shutdown between October 1 and October 11.

<sup>5</sup> The SOR listed only 25 allegations as "1.a - 1.z". "SOR 1.z" was a typographical error that was corrected at hearing to read as "SOR 1.y." (Tr. 14 - 17)

<sup>6</sup> See Directive E3.1.17.

I granted the motion without objection from Applicant, who admitted to the allegation. (Tr. 88 - 90) Finally, Department Counsel moved, without objection, to withdraw the allegations at SOR 1.g and 1.i, as duplicates of SOR 1.o and 1.w, respectively. (Tr. 15) I granted the motion without objection from Applicant. Accordingly, the total amount of debt at issue in this case was adjusted downward to \$26,353. Applicant's admissions are incorporated herein as facts. Having reviewed the pleadings, transcript, and exhibits, I make the following additional findings of fact.

Applicant is a 44-year-old employee of a defense contractor for whom she has worked since July 2008, when that company acquired a small defense contractor where she had been working since July 2004. Before that, she had worked for another defense since 1994. That company sponsored her first request for clearance, which was denied for failure to disclose background information. Applicant re-applied in 1995 and, in 1996, she was granted a security clearance, which she has held without interruption. Applicant's performance appraisal's for the past seven years reflect excellent work and reliability. She has established an excellent reputation in her workplace and in her community for integrity and trustworthiness. (Gx. 1; Ax. B; Ax. C; Tr. 9, 35)

Applicant is a high school graduate and the mother of one child, now age 23, for whom she still provides some financial support. Applicant has been married twice. Her first marriage began in June 2007. They separated in 2008 and divorced in April 2009. Applicant has been married to her current husband, a church pastor and small business owner (personal trainer), since September 2012. (Gx. 1; Tr. 34, 68)

Applicant's first husband was a truck driver, but also gambled and dealt in illegal drugs. They met in 2004 in State A, where Applicant had been working since 1994. In mid-2004, just before Applicant moved to State B to take a new job, she learned about her then-boyfriend's drug activity. She demanded he cease such conduct as a condition of staying together when she moved. He stopped selling drugs, but continued to gamble. Before they left State A, Applicant accompanied him to a casino to gamble for the first time in her life. (Gx. 1; Tr. 46 - 49)

Applicant's new job in State B paid her about \$50,000 annually. However, when Applicant, her daughter, and her boyfriend moved there, his brother, his brother's girlfriend and her four children moved in with them. Applicant was the sole income earner and rented a five-bedroom house for about \$1,200 a month. She also paid for all utilities and food. Nonetheless, Applicant married her boyfriend in 2007. Applicant continued to gamble, both at nearby casinos and during trips to Las Vegas, even after she and her first husband separated in 2008. She estimates that she lost about \$25,000 before realizing in late 2008 that her gambling was out of control. She sought help through a church-based counseling organization and, aside from a day of gambling in Las Vegas in 2010, has stopped gambling. (Tr. 50 - 56, 61 - 63, 80 - 81)

Applicant moved to her current location in State C in July 2012. The job she has held since then pays \$95,000 annually before taxes and other deductions. Applicant claimed her finances are better since moving to State C because the cost of living is

much lower than in State B. Applicant estimated, based on her income and expenses since moving to State C, that she has about \$2,000 remaining each month. (Gx. 1; Tr. 68)

When Applicant submitted her e-QIPs for periodic re-investigations in 2009 and 2011, she disclosed most of the debts alleged in the SOR. She also disclosed that she owed the Internal Revenue Service (IRS) and State B about \$13,000 in unpaid income taxes that were being garnished from her wages. Applicant also listed about \$5,000 in debts owed to various unspecified creditors as a result of her gambling. Credit reports obtained in her last two investigations further document all of the allegations in the SOR. (Gx. 1 - Gx. 5)

Applicant's tax debts arose when she decided, in 2004, to claim 10 exemptions from withholding of taxes from her paychecks. She did this because she felt, as a single mother of her then-teenage daughter, she needed more cash in her paychecks each week. However, each year at tax time, she did not have enough to pay the accrued taxes and late payment penalties for the previous year. In 2008, the IRS contacted her to collect a \$15,000 debt for unpaid taxes from tax years 2004, 2005, and 2006. Applicant entered into a repayment plan that satisfied that tax debt in September 2010. (Gx. 1 - 3; Answer; Ax. A; Tr. 35, 56 - 57)

At the hearing, Applicant disclosed that she did not file her tax returns on time for tax years 2011 and 2012. She testified that she had "not gotten around to it," and that she had not filed requests for extensions. As of the hearing, she had filed her 2011 return, but still owed the IRS \$1,253. She paid that debt six days after her hearing in this matter. She filed her 2012 tax returns eight days after the hearing and paid a \$342 federal tax debt with her filing. Applicant currently claims three exemptions from withholding because she still claims her adult daughter as a dependent as Applicant still provides most of her support for school and medical costs. (Tr. 58 - 61, 82 - 85, 88 - 90; Ax. D)

Applicant established that she has paid or otherwise resolved most of the debts in the SOR. Applicant paid or resolved \$15,859 of the \$26,353 past-due debt alleged in the SOR. In addition to providing tuition and medical support for her daughter, Applicant also provides financial and tuition support to her sister, who is also in college. Additionally, Applicant helps fund her husband's small business by purchasing office supplies and other consumables as needed. However, Applicant was interviewed about her debts by a Government investigator in September 2011. Aside from her federal tax debts, she did not act to repay or resolve any of her debts until May 2013. (Answer; Ax. A; Tr. 37 - 45, 64 - 73, 83 - 86)

## Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>7</sup> and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new 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 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 determinative of a conclusion for or against an applicant. 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.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest<sup>8</sup> 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.<sup>9</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>10</sup>

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<sup>7</sup> See Directive. 6.3.

<sup>8</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>9</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>10</sup> See *Egan*; AG ¶ 2(b).

## Analysis

### Financial Considerations

In addition to Applicant's admissions, the Government presented sufficient information to support all of the SOR allegations. Applicant accrued significant debt beginning in about 2004. Her debts arose, in part, from gambling losses and from her failure to file or pay her income taxes on time. Her debts remained largely unaddressed until after she received the SOR in April 2013. These facts raise a security concern that is 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage.

More specifically, available information requires application of the disqualifying conditions at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*); AG ¶ 19(c) (*a history of not meeting financial obligations*); and AG ¶ 19(f) (*financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern*); and AG ¶ 19(g) (*failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same*).

In response, Applicant submitted information that requires consideration of the mitigating condition at AG ¶ 20(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*). Applicant receives partial benefit here, because she is no longer married to her first husband, she no longer gambles, and she has sufficient income to pay or otherwise resolve her remaining debts.

Nonetheless, Applicant could have started resolving her debts as early as July 2012, when she moved to State C, with its lower cost of living and her increased income. She did not plausibly explain why she did not act to pay even her smaller delinquencies using some of the \$2,000 she claims to have each month after expenses. Applicant has also exacerbated the Government's concerns by continuing to neglect her federal and state tax responsibilities. Based on all of the foregoing, I conclude that Applicant has not mitigated the security concerns raised by her financial problems.

## **Whole-Person Concept**

I have evaluated the facts and have applied the appropriate adjudicative factors under Guideline F. I also have reviewed the record in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is 44 years old and has established a solid record of performance since at least 2008. Her response to the SOR and her presentation at hearing demonstrated she has a thorough grasp of the status of her debts. However, she has continued to neglect her obligations regarding taxes, and she did not try to resolve her debts until faced with revocation of her clearance. These factors undermine confidence that her financial problems will not recur and that her debts do not reflect adversely on her judgment and reliability. Available information about her finances still raises doubts about her suitability for access to classified information. Because protection of national security is the principle consideration in these adjudications, any remaining doubts must be resolved against the individual.

## **Formal Findings**

Formal findings on the allegations set forth in the SOR, as amended, and as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:           AGAINST APPLICANT

Subparagraphs 1.a - 1.z:           Against Applicant

## **Conclusion**

In light of all of the foregoing, it is not clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

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MATTHEW E. MALONE  
Administrative Judge