



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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[NAME REDACTED]) ISCR Case No. 11-08505
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Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esquire, Department Counsel
For Applicant: *Pro se*

03/13/2013

Decision

MALONE, Matthew E., Administrative Judge:

Applicant mitigated the security concerns about her finances after showing she had paid or was resolving her past-due debts, and that her current finances are sound. Clearance is granted.

Statement of the Case

On March 11, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for her work as an employee of a federal contractor. After reviewing the results of the ensuing background investigation, Department of Defense (DOD) adjudicators were unable to find that it is clearly consistent with the national interest for Applicant to have access to

classified information.¹ On September 18, 2012, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the adjudicative guideline² for financial considerations (Guideline F).

Applicant timely responded to the SOR (Answer) and requested a hearing. The case was assigned to me on December 19, 2012, and I convened a hearing on January 16, 2013. DOHA received the transcript of hearing (Tr.) on January 31, 2013.

Department Counsel presented Government Exhibits (Gx.) 1 - 6, which were admitted without objection. (Tr. 19 - 25) Applicant testified and proffered eight exhibits, which were admitted without objection as Applicant's Exhibits (Ax.) A - H. (Tr. 26 - 32, 34 - 35, 67 - 71)

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed approximately \$41,258 in delinquent debt for 14 accounts specified in SOR 1.a - 1.n. Applicant admitted SOR 1.b, 1.c, and 1.g. She denied, with explanations, the remaining allegations. (Answer) Her admissions are incorporated herein as facts. Having reviewed the pleadings, transcript, and exhibits, I make the following additional findings of fact.

Applicant established in her Answer that she paid or otherwise resolved the debts at SOR 1.a, 1.d - 1.f, 1.h, 1.k, and 1.l. She further established that the debt at SOR 1.n is a duplicate of SOR 1.a, which was paid before the SOR was issued; that the debt at SOR 1.m is a duplicate of a previously paid debt not alleged in the SOR.

Applicant is 36 years old and employed as an armed security guard. She has worked in that capacity for different employers since October 2000, and has held a security clearance since 2006. Applicant earned a bachelor's degree in organizational management in 2008. Applicant has an excellent reputation in the workplace and her community. (Gx. 1; Ax. F; Tr. 14)

Applicant and her husband have been married since May 1997, but have been separated since July 2012. They have three children, ages 13, 14, and 15. After an argument escalated to a physical altercation, Applicant obtained a restraining order against her estranged husband. He also has been ordered to pay Applicant child support of \$538 monthly. Applicant has only received partial, sporadic payments, the last being about \$300 in January 2013. However, an enforcement hearing was scheduled for sometime in March 2013. (Gx. 1; Gx. 3; Answer; Tr. 48 - 49, 75 - 77)

¹ Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

² 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).

Since her separation, Applicant has experienced financial problems due to loss of her husband's income and medical insurance coverage. However, the couple had financial problems long before they parted ways. He lost income when he was injured in a car accident in 2006. They eventually lost their house to foreclosure in 2007. (Gx. 1; Gx. 3; Tr. 83 - 84)

Applicant had just finished her first year of college on an ROTC scholarship when she had her first child in 1997. She did not have any problems in school as a result, and was able to excel in academics and military requirements. However, before her third year, Applicant's husband became unhappy with her being away at school and not caring for their child. She testified credibly that he forced himself on her to make her pregnant again in an effort to get her to leave school. When Applicant was expecting their second child, she asked for a leave of absence, but her request was denied. She struggled academically, lost her scholarship, left school, and became obligated to repay her tuition to that point. The original debt was about \$25,000 for two years and one semester of ROTC-funded education. As alleged in SOR 1.j, her debt is now at least \$29,000. Applicant was able to make small payments on this debt over the years, but could not make any real progress. The debt eventually stopped appearing on her credit report because of the reporting limitations of the Fair Credit Reporting Act. However, Applicant has contacted the creditor and is in the process of obtaining a federally-sponsored loan consolidation as part of a repayment plan. (Answer; Gx. 1; Gx. 3; Ax. C; Ax. G; Tr. 49 - 52, 61 - 63, 84 - 88)

Most of the debts alleged in the SOR were unpaid bills for medical care given to Applicant and her children. Applicant's husband quit his job after they separated, resulting in lost medical insurance for her and their children. She recently applied for Medicaid coverage and has paid most of the smaller medical debts on her own. Applicant tried using a debt management company to repay her remaining creditors through a debt management plan (DMP). However, the creditor holding the bills alleged at SOR 1.b and 1.c refused to accept the DMP repayment terms, so she cancelled the plan. Applicant subsequently completed the required financial counseling and filed a Chapter 13 bankruptcy plan to repay her remaining creditors, excluding her student loan, over the next five years. When the plan is finalized, Applicant estimates her monthly payments will be less than \$100. (Answer; Gx. 1; Gx. 2; Gx. 3; Ax. B; Ax. D; Ax. H; Tr. 16 - 17, 36 - 40, 43 - 48)

On June 27, 2012, Applicant submitted a personal financial statement (PFS) in response to interrogatories sent to her by DOD adjudicators. The PFS reflected an average negative cash flow each month after paying her expenses. However, since then Applicant has reduced her expenses by moving into a rental property that costs about \$450 less each month. She also has reduced the amounts she pays for food and utilities, as well as most of her discretionary expenses (e.g., entertainment, new clothes, etc.). A budget established when she was still working with the debt management company reflected a positive monthly cash flow of about \$330. Applicant has also taken action to force her husband to pay his court-ordered child support and, once a property

and child support agreement is finalized, will file for divorce. (Answer; Gx. 2; Gx. 3; Tr. 75)

A former supervisor who has know Applicant for several years testified that Applicant's integrity is "beyond reproach." He further opined that Applicant is completely honest and reliable, with impressive bearing and personal character. She also is trustworthy regarding her handling of weapons as part of her duties. (Tr. 89 -94)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,³ 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 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 the applicant to refute, extenuate or mitigate the Government's case.

³ See Directive. 6.3.

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

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. 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.⁶

Analysis

Financial Considerations

The Government presented sufficient information to support the SOR allegations. In response to the SOR, Applicant successfully refuted some of the allegations as inaccurate or duplicates of other debts. However, information remaining about her unpaid student loan and at least three delinquent medical accounts was sufficient to raise a security concern about her finances. That security concern 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.

More specifically, available information requires application of the disqualifying conditions at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*). Available information attributed to Applicant more than \$41,000 in delinquent or past-due debt that remained unpaid as of the date of the SOR.

In response, Applicant submitted information that supports application of the following AG ¶ 20 mitigating conditions:

(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;

⁵ See *Egan*, 484 U.S. at 528, 531.

⁶ See *Egan*; AG ¶ 2(b).

(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 has been acting to resolve her debts since before the SOR was issued. None of her debts arose through her own mismanagement of funds or frivolous spending. Instead, they resulted from the unplanned loss of her ROTC scholarship, the loss of her husband's income and medical benefits, and the demise of their marriage. She did not resort to abuse of her personal credit to support her family, and she has obtained professional help in resolving her debts. Applicant reduced her personal expenses in response to her financial problems, and she has not incurred any new debt. It is unlikely that Applicant will have similar financial problems in the future.

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 a mature, responsible adult who is now raising three children by herself. She incurred financial difficulties during her marriage when her husband lost income because of injury. After separating from her husband last year, she accrued additional debts for unplanned medical care for her and her children. None of the debts at issue are for credit cards or are the result of frivolous spending. In response to her financial problems, Applicant demonstrated sound judgment and a responsible approach to resolving her obligations. At work, she has a good reputation for trustworthiness, integrity, and reliability. Her financial problems are being resolved and are not likely to recur. A fair and commonsense assessment of the record as a whole shows that Applicant has mitigated the security concerns raised by the information about her finances.

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

Subparagraphs 1.a - 1.n: For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

MATTHEW E. MALONE
Administrative Judge