



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 11-09780
)	
Applicant for Security Clearance)	

Appearances

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

06/10/2013

Decision

MALONE, Matthew E., Administrative Judge:

Applicant incurred significant unpaid debt because of unforeseen events and other circumstances beyond her control. Her response to her financial problems reflected well on her judgment and reliability. She is unlikely to experience similar financial problems in the future. Clearance is granted.

Statement of the Case

Applicant has held a security clearance since 1987. It was last renewed after a background investigation commenced when she submitted an Electronic Questionnaire for Investigations Processing (e-QIP) in August 2007. Based on adverse financial information entered by her employer into the Joint Personnel Adjudication System (JPAS) in late 2011 and 2012, the Department of Defense (DOD) commenced a background investigation to update information about Applicant's finances. After reviewing the results of that investigation, DOD adjudicators issued interrogatories to

Applicant to clarify or augment information obtained by Government investigators.¹ Based on the background investigation and on Applicant's responses to interrogatories, it could not be determined that it is clearly consistent with the national interest for Applicant to have access to classified information.² On November 29, 2012, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the adjudicative guideline³ for financial considerations (Guideline F).

Applicant timely responded to the SOR (Answer) and requested a hearing. The case was assigned to me on February 12, 2013, and I convened a hearing on March 4, 2013. DOHA received the transcript of hearing (Tr.) on March 18, 2013.

Department Counsel presented Government Exhibits (Gx.) 1 - 7, which were admitted without objection. Applicant testified and proffered two exhibits, admitted without objection as Applicant's Exhibits (Ax.) A and B. The record closed on March 22, 2013, when I received Applicant's timely post-hearing submission, which is admitted without objection as Ax. C.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed approximately \$133,307 in delinquent debt for 13 accounts specified in SOR 1.a - 1.m. The debts alleged at SOR 1.l (\$98,502) and SOR 1.k (\$21,000) comprise nearly 90 percent of the total debt alleged. Applicant denied SOR 1.d and 1.e and admitted the rest. (Answer) Her admissions are incorporated herein as facts. Having reviewed the pleadings, transcript, and exhibits, I make the following additional findings of fact.

Applicant is a 50-year-old employee of a defense contractor for whom she has worked since August 2011. Applicant's employer holds her in high regard and enthusiastically supports retention of her security clearance. Applicant served in the U.S. Navy on active duty from 1987 to 1999, and in the Navy Reserve from 1999 to 2005. She was honorably discharged as a first class petty officer. Applicant was first awarded a security clearance in the Navy and has continued to have access to classified information in her civilian work with defense contractors since 1999. (Gx. 1; Ax. C; Tr. 42)

Applicant and her husband have been married since May 1997, but they have been separated since April 2007. They met while both were in the Navy, but he was a compulsive gambler for most of the time they were together. His gambling led to

¹ Authorized in the Directive at E3.1.2.2.

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

³ 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).

counseling and disciplinary action by the Navy. He eventually received an other than honorable discharge for his gambling-related conduct. Divorce papers are awaiting her husband's signature. Applicant has two children, ages 20 and 26, for whom she has had to provide sporadic financial support. Her husband has been mostly unemployed since they separated. (Gx. 1; Tr. 30, 50 - 51, 67 - 68)

The Government's information supports all of the SOR allegations. However, SOR 1.i alleges a debt of \$98,502 for unpaid state taxes. However, available information most probative of this debt shows that it is owed to the Internal Revenue Service. Accordingly, SOR 1.i was amended without objection at hearing to conform to the evidence.⁴ (Gx. 2 - 4; Ax. B; Ax. C; Tr. 45, 61 - 62)

Since leaving active duty in 1999, Applicant has worked for several different defense contractors. Between 2000 and 2006, she worked for Company A. But in 2006, when her husband became seriously ill, she found her employer-sponsored health insurance, on which they both depended, was insufficient to cover the required care. Applicant went to work for a nationally-known defense contractor for most of the next two years so she and her husband could afford his medical care. (Gx. 1; Gx. 2; Tr. 34 - 35, 39 - 40)

In 2008, Applicant started her own defense-related consulting business. Because she was self-employed, she was required to pay her state and federal taxes quarterly. However, unbeknown to her, her husband had taken money she thought he was sending to the IRS and state tax authority and lost it gambling in Las Vegas. Applicant estimates he lost about \$150,000. In addition to the \$98,000 IRS tax debt alleged at SOR 1.i, Applicant and her husband incurred a \$16,000 debt for unpaid state taxes, which has since been satisfied. Since November 2012, she has also been repaying another state tax lien of \$8,957 through monthly \$840 payroll garnishments. The remaining balance due is now less than \$5,000 and will be paid off by October 2013. Applicant has been paying her federal tax debt at a monthly rate of \$1,790. However, she was recently notified that her monthly obligation was being raised to \$1,841. (Gx. 3; Gx. 4; Gx. 7; Ax. B; Ax. C; Tr. 45 - 46)

In 2010, Applicant returned to work for Company A. She was given \$35,000 as a "signing bonus" contingent on remaining with the company for at least a year. However, she left Company to work for her current employer before one year and became obligated to repay the bonus. Her current employer paid the debt and has been deducting \$3,000 each month from her pay since January 25, 2012. The balance due is now less than \$13,000 and will be satisfied by December 2013. (Gx. 2; Gx. 7; Ax. C; Tr. 42 - 44)

Applicant has repaid the debts alleged at SOR 1.d, 1.e, and 1.h, and she has negotiated a \$100 per month repayment plan for the debt at SOR 1.j. She has had

⁴ Directive E3.1.17.

difficulty contacting some of the listed creditors to arrange payments or other resolution of her debts. She has been repaying other debts not alleged in the SOR, with which she was saddled when she and her husband separated. For instance, her husband took out high interest loans using titles to their two cars as collateral, and there are other medical bills from his illness to be paid. (Gx. 2; Ax. C; Tr. 30, 36, 54 - 60, 63)

The debts at SOR 1.k and 1.m represent missed payments for the mortgage and home equity loan, respectively, on her marital residence. As to the SOR 1.k mortgage, after Applicant was unable to negotiate a loan modification to resolve the arrearage, she tried to arrange a short sale of the home. However, the mortgage was guaranteed by the Department of Veterans Affairs (VA), which precluded a short sale. The mortgage was foreclosed in October 2012. Applicant does not yet know if she will owe a remainder on either obligation after the home is resold. (Gx. 2; Tr. 47 - 50, 63, 65, 82 - 84)

Within the past year, Applicant has provided financial support for her son and daughter, who have embarked on their own careers but have had insufficient initial cash flow. She provided her daughter with money to pay her rental deposit and other moving expenses, and she helped her son pay for unexpected car repairs and dental work. She has advised both children that she will be unable to provide additional money until she has resolved the debts remaining from her marriage. (Gx. 2; Tr. 37, 52 - 53, 73 - 79)

Applicant submitted a personal financial statement (PFS) with her response to interrogatories. After all of her expenses, which includes repayment of her husband's two high interest loans and repayment of her IRS debt, Applicant has less than \$500 remaining each month. Before expenses, her income in the PFS is reduced by a state tax garnishment and her repayment of the signing bonus debt. (Gx. 2; Tr. 67, 70 - 73)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁵ 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

⁵ See Directive. 6.3.

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 interest⁶ 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.⁷

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.⁸

Analysis

Financial Considerations

In addition to Applicant's admissions, the Government presented sufficient information to support all of the SOR allegations. Applicant has experienced significant financial problems since about 2007. Many of the debts alleged in the SOR are still unresolved, and her personal finances still consist of significant debts that require most of her income to resolve. 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

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷ See *Egan*, 484 U.S. at 528, 531.

⁸ See *Egan*; AG ¶ 2(b).

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*).

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;

(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 debts arose through the dissolution of her marriage, which, in turn, was caused by her husband's illness and compulsive gambling. Applicant's largest debts consist of state and federal taxes that were not paid because Applicant's husband gambled away the money intended for quarterly tax payments. He also incurred high interest debts when he used titles to their two cars as collateral. Applicant's husband has been unemployed for long periods and all of the marital debts and obligations have fallen to Applicant. These circumstances also explain how the marital residence came to be foreclosed. In response to these circumstances, Applicant has resolved some of the smaller debts listed in the SOR. She also has been repaying the federal tax debt through specified monthly payments under an agreement with the IRS. She is also repaying the high interest debts incurred by her husband.

Applicant's repayment efforts regarding all of the SOR debts have been hindered by the state tax garnishment and by her resolution of the signing bonus obligation she incurred when she took her current job. However, when both of those debts are resolved later this year, Applicant's cash flow will improve. Her debt resolution actions in the past two years show she is likely to complete resolving her debts in the reasonably

near future. On balance, I conclude Applicant will not experience similar financial problems in the future and that she has mitigated the security concerns raised by her past 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 a mature, responsible adult whose career includes honorable military service and possession of a security clearance without incident since 1987. Her marriage dissolved because of her husband's gambling problem, which exacerbated the debts they incurred when he was ill. Over at least the past two years, Applicant has acted reasonably and to the best of her abilities to resolve her past-due debts and improve her finances. 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.m:	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