



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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[NAME REDACTED]) ISCR Case No. 11-12972
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Applicant for Security Clearance)

Appearances

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

06/17/2013

Decision

MALONE, Matthew E., Administrative Judge:

Applicant mitigated the security concerns raised by her unpaid debts. She acted early and in good faith to resolve her debts, her current finances are sound, and she is unlikely to experience similar financial problems in the future. Clearance is granted.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) in July 2011. After reviewing the results of a subsequent background investigation, Department of Defense (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,

¹ Authorized in the Directive at E3.1.2.2.

it could not be determined that it is clearly consistent with the national interest for Applicant to have access to classified information.² On December 10, 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 April 2, 2013, and I convened a hearing by video teleconference on May 7, 2013. Department Counsel presented Government Exhibits (Gx.) 1 - 4, which were admitted without objection. Applicant testified and proffered two exhibits, admitted without objection as Applicant's Exhibits (Ax.) A and B. DOHA received the transcript of hearing (Tr.) on May 17, 2013.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed approximately \$47,563 for two delinquent credit card accounts. (SOR 1.a and 1.b) Applicant admitted, with explanations, both SOR 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 is a 44-year-old technical writer employed by a defense contractor. She has worked for her current employer since October 2007, but was employed at the same job site by a different employer from September 2006 until September 2007. Applicant has an excellent reputation at work for the quality of her work and for her character and professionalism. She has held a security clearance without incident since January 2007. (Gx. 1; Ax. A; Tr. 44)

Applicant has a master's degree in linguistics. From September 2000 until September 2006, she worked as an adjunct college professor teaching English and writing. She has been married since January 1998, and she has two children, ages four and six. (Gx. 1; Gx. 4; Tr. 47)

While working as a college professor, Applicant's income varied depending on how many classes she taught each semester. She estimates her annual income averaged about \$25,000. When she was hired for defense contractor work, she was pregnant and thought she could work until her October 2006 due date. However, she had suffered an injury at her previous job and could not immediately start working in September 2006. She took unpaid leave until January 2007 after her older child was born. The result was that she did not have any income between for the last four months of 2006. (Gx. 4; Tr. 54)

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).

When Applicant started working in 2007, she worked 32 hours each week and did not receive the same range of benefits as a full-time employee, such as paid maternity leave. When her second child was born in October 2008, she was working for her current employer, but still was not working full time, and did not yet have paid maternity leave. Between October 2008 and February 2009, she worked part-time from home while on maternity leave. However, she only made about \$300 each month. Applicant did not become a full-time employee with full paid leave and other benefits until October 2011. Her average annual salary between January 2007 and October 2011 was about \$35,000. Her current full-time salary is about \$56,000. (Answer; Gx. 4; Tr. 55 - 57)

In 2005, Applicant and her husband bought a house for \$315,000. Their mortgage was financed over 30 years at 6.5 percent interest, resulting in a \$2,000 monthly payment. Their combined annual income at that time was between \$85,000 and \$90,000. This increased in January 2007 by about \$10,000. However, when Applicant was not paid for four months in 2006, and was essentially unpaid for five months when their second child was born, they struggled to pay large obligations, such as property taxes, unexpectedly high electrical bills in summer, unplanned auto repairs, and so on. Applicant and her husband amassed three large credit card balances because they used credit to make ends meet. When they struggled to stay current on the credit card accounts, the minimum monthly payments doubled. (Answer; Gx. 4; Tr. 40 - 41, 67 - 68, 72 - 73)

Applicant and her husband realized they were in serious financial trouble in 2010. When she submitted her EQIP in 2011, she disclosed several delinquent debts, including those alleged in the SOR. Although they were making the minimum monthly payments on their credit accounts and their mortgage was current, they were unable to make progress in paying down their credit cards. They tried to no avail to negotiate with the credit card companies, and they put their house up for sale. However, the credit card companies would not negotiate as long as money was coming in, and the housing market where they live was still poor and their home had lost significant value. In late 2010, they sought the advice of her brother-in-law, an attorney. He advised them to stop paying their credit card accounts and their mortgage. Following his advice, Applicant and her husband were able to obtain a release from their mortgage through transfer of a deed in lieu of foreclosure, and they were able to negotiate lower settlement payments to satisfy two of their three credit card accounts. One of those accounts was the debt alleged at SOR 1.a. Of the \$24,966 due after penalties and interest, they paid \$8,738. These negotiated resolutions resulted in added income tax liabilities for tax years 2011 and 2012, which Applicant and her husband were able to pay on time. (Gx. 1; Gx. 4; Ax. B; Tr. 42 - 43, 50, 62 - 66, 69)

Applicant and her husband are in the process of negotiating a settlement of the SOR 1.b credit card debt. They have made an initial payment to stop interest from accruing, and they will likely be able to resolve this debt on terms similar to the SOR 1.a account. Again, Applicant knows that she and her husband will likely incur an additional income tax liability as a result of resolving the debt this way. (Answer; Tr. 43, 50 - 53)

Applicant and her husband have about \$6,800 net income each month. After expenses, they have about \$2,000 remaining, and they have been able to save about \$7,000 and have incurred no new debts since 2010. Applicant understands that her financial problems were caused, in part, by getting overextended on their expenses. However, she and her husband both testified that they wanted to resolve their debts in a reliable, systematic way that would leave their finances more sound than before. (Gx. 4; Tr. 59 - 60)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁴ 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 interest⁵ 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

⁴ See Directive. 6.3.

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

burden of persuasion.⁶ 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.⁷

Analysis

Financial Considerations

In addition to Applicant’s admissions, the Government presented sufficient information to support both of the SOR allegations. Applicant has experienced significant financial problems since about 2007. One of the debts alleged in the SOR is still unresolved. 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.

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;

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; AG ¶ 2(b).

(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 were caused by a combination of lost income and poor money management decisions. Applicant acknowledges that she and her husband bought too much house in 2005. Any margin for error was erased when they lost her income in 2006 and 2008. Initial efforts to resolve their debts began long before Applicant submitted her most recent EQIP, but were hindered by a depressed real estate market. However, Applicant's finances are significantly more stable and the circumstances that gave rise to her financial problems are unlikely to recur. Applicant and her husband have a positive monthly cash flow, they have one debt left to resolve, and they took a proactive, systematic approach to resolving their debts. All available information supports application of AG 20(a) - (d), and Applicant's finances are no longer a security concern.

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 has a solid reputation in the workplace. She and her husband have nearly completed their plan to resolve their unpaid debts and their financial circumstances are now much improved. 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.b:	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