



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



In the matter of:

[NAME REDACTED]

Applicant for Security Clearance

ISCR Case No. 12-06844

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

12/12/2016

Decision

MALONE, Matthew E., Administrative Judge:

Applicant failed to mitigate the security concerns raised by her delinquent or past-due debts. Her request for access to classified information is denied.

Statement of the Case

On February 14, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain or renew eligibility for access to classified information. After reviewing the completed 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.¹

On August 21, 2015, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns about financial considerations (Guideline F).² Applicant timely responded to the SOR and requested a decision without a hearing. Department Counsel for the Defense Office of Hearings and Appeals (DOHA) issued a File of Relevant Material (FORM),³ dated February 25, 2016, in support of the SOR. Applicant

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

² See Directive, Enclosure 2. See also 32 C.F.R. § 154, Appendix H (2006).

³ See Directive, Enclosure 3, Section E3.1.7. The FORM included eight exhibits (Items 1 - 8) proffered in support of the Government's case.

received the FORM on March 16, 2016. She timely responded to the FORM and provided additional information. The record closed on April 6, 2016, and the case was assigned to me on September 13, 2016.

Findings of Fact

Under Guideline F, the Government alleged Applicant owes \$115,236 for 15 delinquent or past-due debts (SOR 1.a - 1.o). Applicant denied SOR 1.d, 1.h, 1.i, and 1.k. She admitted with remarks the remaining allegations. All of the debts alleged are documented in the credit reports produced by the Government. (FORM, Items 1, 3 - 7)

Applicant is 49 years old and was offered a position in December 2011 with a defense contractor. Her employment is contingent on obtaining eligibility for a security clearance. Applicant worked as police officer and detective from August 1991 until retiring in October 2011. (FORM, Item 4)

Applicant has been married twice – from January 1987 to June 1999 and from July 2001 to December 2007. Both marriages ended in divorce. She has an adult child from her first marriage. (FORM, Item 4)

Applicant disclosed several debts in her EQIP. Credit reports obtained by the Government during the ending background investigation reflect the debts alleged in the SOR. Applicant was interviewed by a Government investigator in March 2012 as part of her background investigation. Among the topics discussed was her financial condition at the time. (FORM, Items 4 - 8)

In response to the SOR and the FORM, Applicant cited her divorces as being an underlying cause of her financial problems. She also referenced a house fire and injuries from that fire that caused her to be homeless and out of work for a time. She did not provide any details about those events. Applicant also claimed her home was burglarized, resulting in the loss of numerous valuables, and that her basement flooded. Again, Applicant did not provide any details about those events, such as when they occurred or what financial impact resulted from any or all of those events. Response to FORM; FORM, Item 3)

Applicant also did not provide any information that shows she has paid or otherwise acted to resolve her debts over the four years since her interview. In response to the FORM, she provided an undated and unsigned letter from a credit repair company. It appears from that letter that Applicant started working to repair her credit at or near the time she responded to the FORM. Applicant also has not provided any information about her current finances. (Response to FORM)

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. 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

⁴ Directive. 6.3.

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. Department Counsel must produce sufficient reliable information on which DOD based its preliminary decision to deny or revoke a security clearance for an applicant. Additionally, Department Counsel must prove controverted facts alleged in the SOR.⁶ If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.⁷

Because no one is entitled to a security clearance, applicants bear a heavy burden of persuasion to establish that it is clearly consistent with the national interest for them to have access to protected information.⁸ A person who has access to such information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, there is a compelling need to ensure each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the nation's 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 to classified information in favor of the Government.⁹

Analysis

Financial Considerations

Available information supports the SOR allegations. The resulting security concern about the facts established by the Government is expressed at AG ¶ 18:

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. Affluence that cannot be explained by known sources of

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

⁶ Directive, E3.1.14.

⁷ Directive, E3.1.15.

⁸ See *Egan*, 484 U.S. at 528, 531.

⁹ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

More specifically, the ongoing presence of multiple, unsatisfied debts requires application of the following AG ¶ 19 disqualifying conditions:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Under AG ¶ 20, the following mitigating conditions are pertinent to the facts and circumstances of this case:

- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's debts are multiple and recent. They have not been paid or otherwise resolved despite being the subject of her investigative interview four years ago. It was incumbent upon Applicant to present information that might support these mitigating conditions. She did not do so and has failed to mitigate the security concerns raised by the Government's information.

In addition to evaluating the facts and applying the appropriate adjudicative factors under Guideline F, I have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant did not meet her burden of persuasion in response to the adverse information about her unresolved debts. Doubts about her suitability for access to classified information remain. Because protection of the national interest is the principal focus of these adjudications, those doubts must be resolved against the Applicant.

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: AGAINST APPLICANT

Subparagraphs 1.a - 1.o: Against Applicant

Conclusion

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

MATTHEW E. MALONE
Administrative Judge