



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



In the matter of:

[NAME REDACTED]

Applicant for Security Clearance

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ISCR Case No. 15-01089

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

06/05/2017

Decision on Reconsideration

MALONE, Matthew E., Administrative Judge:

After reviewing the record evidence as a whole, including information provided by Applicant on reconsideration, I conclude Applicant did not mitigate the security concerns about her past-due or delinquent debts. Her request for access to classified information is denied.

Statement of the Case

On February 2, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain or renew eligibility for access to classified information as required for her job with a defense contractor. As part of her background investigation, a Government investigator interviewed Applicant on November 14, 2012. 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 December 2, 2015, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline F (Financial Considerations).² On January 8, 2016, Applicant responded to the SOR and requested a decision without a hearing. On March 25, 2016, Department Counsel for the Defense Office of Hearings and Appeals (DOHA) issued a File of Relevant Material (FORM)³ in support of the SOR. Applicant received the FORM on April 1, 2016, and had 30 days from the date of receipt to submit additional information in response to the FORM. The record closed after Applicant did not submit additional information before the May 1, 2016, deadline. I received the case on February 10, 2017.

I issued a decision unfavorable to the Applicant on March 16, 2017. Applicant had until Friday, March 31, 2017, to file notice of any intent to appeal my decision. On Monday, April 3, 2017, I received Applicant's written request (dated March 28, 2017) to reconsider my decision denying her request for eligibility for access to classified information. She averred that she had submitted information in response to the FORM that I should consider. Her request is included in the record as Hearing Exhibit (Hx.) 1. On April 6, 2017, I issued an order advising the parties that I had re-opened the record to consider new information from Applicant. My order is included as Hx. 2.

Applicant timely responded to my order on April 11, 2017, and provided 19 pages of information generated between April 2015 and December 2016. It is included as Applicant's Exhibit (Ax.) A. Department Counsel waived objection to its admissibility in an email (Hx. 3) dated April 28, 2017.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owes \$11,477 for 33 delinquent or past-due debts (SOR 1.a - 1.s, 1.u - 1.hh); and that in April 2005, she filed a Chapter 7 bankruptcy petition through which she received a discharge of debt in July 2005 (SOR 1.t). Applicant admitted all of the allegations, claiming only that she was repairing her credit. In her e-QIP, Applicant disclosed her Chapter 7 bankruptcy and several other debts. Credit reports obtained during her background investigation and the pre-SOR adjudication of her case further document all of the SOR allegations. She also discussed her financial problems during her November 2012 interview. (FORM, Items 1 - 6) I have incorporated herein by reference my findings of fact contained in the initial decision in this case. Having reviewed Applicant's information in Ax. A, I make the following additional findings of fact.

¹ Required by Executive Order 10865, as amended, and by the 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 six exhibits (Items 1 - 6) proffered in support of the Government's case.

Applicant's credit reports no longer list the debts alleged in the SOR. Applicant has been working since 2015 with a law firm that specializes in updating entries in a person's credit history. The firm also assists in challenging the accuracy of entries as either erroneous or as being no longer reportable because they are more than seven years old. A December 2016 credit report shows Applicant is current on a car loan and other smaller obligations. It also shows she successfully paid off a car loan that had been 120 days late at one time, and that she has numerous retail credit accounts that are in good standing. One other account, an unpaid cable television bill for \$545, is in collection status. (Ax. A)

Applicant acknowledged that her credit card balances, while current, are "a little high" (as of December 2016, they totaled at least \$4,598) but that she intends to pay them down "to at least 30%." She would like to buy a house, and avers she does not intend to incur bad debts in the future because she now understands the importance of good credit. (Ax. A)

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 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

⁴ Directive. 6.3.

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

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

Nothing submitted in support of this reconsideration has altered the fact that the Government met its burden of production in support of the allegations in the SOR. The facts established herein raise a security concern 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 19(c) (*a history of not meeting financial obligations*).

I have again considered the mitigating conditions listed at AG ¶ 20. Applicant's new information shows only that the debts reflected in the SOR and corroborated by the Government's information no longer appear in Applicant's credit reports. There are a variety of possible reasons for this, including the mere passage of time. Applicant did not establish that the SOR debts were not hers, that she had a verifiable basis for disputing them, or that she actually resolved any of them. In view of her long history of

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).

indebtedness, including a Chapter 7 bankruptcy and subsequent accrual of the delinquencies documented in the FORM, it was further incumbent on Applicant to show that her current finances are sound. She did not provide any information about her income and expenses, her savings, or the manner in which she manages her personal finances. On balance, Applicant did not meet her burden of persuasion in response to the Government's case. I again conclude she has failed to mitigate the security concerns 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: AGAINST APPLICANT

Subparagraphs 1.a - 1.hh: 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 request for a security clearance is **DENIED**.

If either party wishes to appeal this decision, a notice of intent to appeal must be filed with the DOHA Appeals Board no later than 15 days from the date of this decision.

MATTHEW E. MALONE
Administrative Judge