



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



In the matter of:

[NAME REDACT]

Applicant for Security Clearance

ISCR Case No. 15-01089

Appearances

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

06/05/2017

Decision

MALONE, Matthew E., Administrative Judge:

Applicant did not mitigate the security concerns about her history of indebtedness. 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. During her background investigation, Applicant was interviewed on November 14, 2012, by a Government investigator. 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

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).

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 was advised she 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. The case was assigned to me on February 10, 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) In addition to the facts thus established, I make the following findings of fact.

Applicant is a 39-year-old employee of a defense contractor, where she has worked since March 2006. She has never been married, but she has three children between the ages of 9 and 21 by two different men. Child support from both men has been modest due to their limited incomes, and it has been erratic due to their employment difficulties. (FORM, Items 2 and 3)

Applicant attributes her financial problems to spending beyond her means. Through a 2005 Chapter 7 bankruptcy, she was discharged of debts totaling about \$15,000; however, the debts alleged in the SOR have all been incurred since 2005. Applicant stated in her response to the SOR that she is trying to repair her credit, but she did not produce any corroborating information about her efforts in this regard. She also has not obtained any financial counseling or other professional assistance in resolving her debts or improving her ability to manage her finances. At the time of her interview, Applicant claimed to have about \$1,000 remaining each month after expenses. She also claimed to have about \$18,000 in a retirement savings account. She did not produce any information showing payments made on any of her past-due debts. (FORM, Item 3)

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

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.

⁴ 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 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

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*).

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).

By contrast, the record does not support any of the mitigating conditions listed at AG ¶ 20. Applicant's debts are recent and ongoing even after she was discharged of significant debt through a 2005 Chapter 7 bankruptcy petition.

In addition to my evaluation of the facts and application of 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). This record raises significant doubts about Applicant's suitability for access to classified information. Applicant is not required to be debt free; however, the Government is entitled to assurances that unpaid debts are not the result of poor judgment or that an individual is not at risk of engaging in misconduct to resolve financial delinquencies. Applicant has not produced any information that addresses the doubts about her suitability for access to classified information that have been raised by the Government's information. 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.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.

MATTHEW E. MALONE
Administrative Judge