



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



In the matter of:

[NAME REDACTED]

Applicant for Security Clearance

ISCR Case No. 15-02930

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

10/31/2016

Decision

MALONE, Matthew E., Administrative Judge:

Applicant incurred delinquent or past-due debts through circumstances that are unlikely to recur. Although she still has unpaid debts, she has acted responsibly in resolving those debts she was able to pay, and she is managing her current finances in a prudent manner. The security concerns about Applicant's finances are mitigated and her request for a security clearance is granted.

Statement of the Case

On June 29, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain or renew a security clearance required for her employment with a defense contractor. Based on the results of the ensuing background investigation, Department of Defense (DOD) adjudicators could not determine that it is clearly consistent with the national interest for Applicant to have a security clearance.¹

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

On January 4, 2016, DOD issued a Statement of Reasons (SOR) alleging facts which raise security concerns addressed under the adjudicative guideline² for financial considerations (Guideline F). Applicant timely responded to the SOR (Answer) and requested a hearing. The case was assigned to an administrative judge on March 28, 2016. The case was transferred to me on May 18, 2016, and I convened a hearing on June 29, 2016. The parties appeared as scheduled. Department Counsel presented Government Exhibits (Gx.) 1 - 5.³ Applicant testified and presented Applicant's Exhibits (Ax.) A - C. I held the record open after the hearing to receive additional relevant information from Applicant. Her timely post-hearing submissions are admitted, without objection, as Ax. D⁴ and E.⁵ The record closed on July 6, 2016, and a transcript of the hearing (Tr.) was received on July 13, 2016.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed \$15,130 for eight delinquent or past-due debts (SOR 1.a - 1.h). In response, Applicant admitted, with explanations, all of the SOR allegations (Answer). The SOR allegations are supported by Gx. 1- 5, and by Applicant's admissions. In addition to the facts thus established, I make the following findings of fact.

Applicant is 36 years old and works for a defense contractor in a job for which she was hired in State A in April 2004. She is single, and has one child, now age 10. She and the child's father live together. (Gx. 1; Tr. 42 - 43)

From June 2000 until February 2004, Applicant worked in a county courthouse in State B, where she originally is from. In February 2004, she followed her boyfriend, her child's father, to State A, where he originally is from. After two months, Applicant found work with her current employer. Her boyfriend also was gainfully employed for the next three years before being laid off. The \$8,015 debt alleged at SOR 1.b is a delinquent motorcycle loan Applicant co-signed for her boyfriend. He defaulted on the loan after losing his job in 2007. The 2007, 2012, and 2015 credit reports admitted as Gx. 2, Gx. 3, and Gx. 4, respectively, list the motorcycle loan with the manufacturer and creditor listed in SOR 1.b. They also list a second motorcycle loan from a different manufacturer and creditor. Neither loan is listed in the 2016 credit report at Gx. 5. Applicant testified she only co-signed one motorcycle loan and that she thought she and her boyfriend had satisfied the debt. But she did not corroborate her claim with any documentation. Her boyfriend has not taken any action regarding the debt at SOR 1.b, which remains unresolved. (Answer; Gx. 2 - 5; Ax. A; Tr. 24, 25 - 27, 29 - 31, 37, 47 - 53)

The debt alleged at SOR 1.a is for acupuncture treatment Applicant obtained for her back beginning in 2012. Her insurance covered some of the costs. Applicant agrees she owes a debt, but she disagrees with the amount listed in her credit reports.

² 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).

³ At Department Counsel's request, I have included, as Hearing Exhibit (Hx.) 1, a copy of the March 8, 2016 letter that forwarded Gx. 1 - 4 to Applicant, in accordance with Directive Section E3.1.13. Also included, as Hx. 2, is a list identifying those exhibits.

⁴ Ax. D is a record of monthly payments for the debt alleged at SOR 1.c.

⁵ Ax. E is a copy of a monthly budget Applicant developed with the help of a financial counselor.

Applicant did not provide any documents to support her claims regarding the amount of this debt. She was unaware of this debt until November 2015 and has been trying to negotiate a repayment plan ever since. In exchange for reducing the overall debt, the creditor is demanding payments Applicant cannot afford. This debt remains unresolved. (Answer; Gx. 1; Gx. 3; Ax. A; Tr. 28 - 29, 36 - 37)

Applicant is repaying the unpaid medical account debt alleged at SOR 1.c. She and the creditor agreed that she would pay \$200 each month to satisfy a lower amount than actually owed. (Answer; Gx. 3; Ax. A; Ax. D; Tr. 25, 32)

As to the remaining debts, Applicant established that the debt at SOR 1.h is a duplicate of the debt alleged at SOR 1.g. She also presented information showing she has paid the debts at SOR 1.d - 1.g. (Answer; Ax. A; Ax. C; Tr. 22 - 23, 32 - 36, 56)

Applicant recently started consulting with a financial counselor for advice on resolving the rest of her debts. She also is trying to improve her money management skills and has established a sound monthly budget. Available information shows Applicant has nearly \$700 remaining each month after debt payments and expenses. Her boyfriend also contributes to the household finances and supports their child. He has been gainfully employed for over a year. Applicant lives modestly and within her means; she files and pays her taxes as required; and she has not incurred any new unpaid debts. (Ax. E; Tr. 41 - 46, 50 - 55)

Applicant has a solid reputation among her friends and co-workers based on their association with her over the past five to twelve years. They regard her as honest, hard working, and reliable. (Ax. B)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁶ 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 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.

⁶ See Directive, 6.3.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁷ 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.⁸ 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.⁹

Analysis

Financial Considerations

Available information is sufficient to support the SOR allegations under this guideline. The facts established reasonably raise a security concern about Applicant's finances 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.

Applicant incurred significant unpaid debt through a combination of poor decision making and lack of attention to her finances. Some of her debts were also the result of incomplete medical insurance coverage. The debts at SOR 1.a and 1.b, which comprise most of the total debt at issue, remain unresolved. 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*).

I have also considered the following pertinent 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;

⁷ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁸ See *Egan*, 484 U.S. at 528, 531.

⁹ 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 personal and professional circumstances have improved since she incurred the debts reflected in the Government's information. Her boyfriend is again employed and contributes to the household finances. Further, Applicant has improved the way her finances are managed, and she acted in good faith to resolve as many of her debts as she could. Although still in its nascent stages, Applicant has sought professional financial help as she tries to establish a monthly budget and continues to pay her past-due debts. Applicant's response to her financial problems supports a conclusion she is responsible and has good judgment. I conclude from all of the foregoing that AG ¶¶ 20(a), 20(c), and 20(d) apply.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(a). Applicant responsibly has addressed her debts to the extent she is able. She continues to negotiate with her remaining creditors and is hopeful of establishing repayment plans agreeable to all concerned. Among her friends and work associates, she has a good reputation for honesty and reliability. Her financial problems do not reflect adversely on her judgment and trustworthiness. A fair and commonsense assessment of the record evidence as a whole supports a conclusion that the security concerns about Applicant's finances have been mitigated.

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.h: 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