



**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. 16-01106

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

10/31/2017

Decision

MALONE, Matthew E., Administrative Judge:

Available information is sufficient to overcome the security concerns raised by the Government's adverse information about her financial problems and personal conduct. Applicant's request for eligibility for access to classified information is granted.

Statement of the Case

On April 2, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain eligibility for access to classified information as required for her job with a defense contractor. After reviewing the completed background investigation, Department of Defense (DOD) adjudicators could not determine that it was clearly consistent with the interests of national security for Applicant to have access to classified information.¹

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

On July 29, 2016, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline F (Financial Considerations) and Guideline E (Personal Conduct).² At the time the SOR was written, the DOD CAF applied the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006. On December 10, 2016, the Director of National Intelligence (DNI) issued a new set of AGs, effective for all security clearance adjudications conducted on or after June 8, 2017. I have based my decision in this case on the June 8, 2017 AGs.³

Applicant timely responded to the SOR (Answer) and requested a decision without a hearing. On October 13, 2016, Department Counsel for the Defense Office of Hearings and Appeals (DOHA) issued a File of Relevant Material (FORM)⁴ in support of the SOR. Applicant received the FORM on November 1, 2016, and had 30 days from the date of receipt to object to the use of the information included in the FORM and to submit additional information in response to the FORM.⁵ Applicant did not provide any additional information in response to the FORM. I received the case on October 1, 2017.

Findings of Fact

The Government alleged in the SOR that Applicant owes \$51,848 for nine delinquent or past-due debts (SOR 1.a – 1.d, 1.f – 1.h, 1.j, 1.k). The debts at SOR 1.g and 1.h represent unpaid federal and state taxes, respectively, totaling \$49,958. Those debts are for the 2007, 2008, and 2009 tax years, and represent 96 percent of the total debt at issue. The Government also alleged that Applicant filed a Chapter 13 bankruptcy petition in 2011 that was converted to a Chapter 7 bankruptcy in July 2012, and dismissed in September 2012 (SOR 1.e); and that Applicant's mortgage was foreclosed in 2010 (SOR 1.i). Applicant denied SOR 1.d, 1.f and 1.k. She admitted the remaining Guideline F allegations, with explanations and supporting documents. (FORM, Items 1 and 2)

Under Guideline E, the Government alleged that Applicant deliberately falsified answers to e-QIP Section 26 (Financial Record) by failing to disclose the bankruptcy action discussed in SOR 1.e (SOR 2.a); by failing to list the tax debts alleged in SOR 1.g and 1.h (SOR 2.b); by failing to list the unpaid federal taxes alleged at SOR 1.g as a delinquent federal debt (SOR 2.c); and by failing to list the delinquent debts alleged at SOR 1.a, 1.c, 1.d, 1.f – 1.i, and 1.k (SOR 2.d). The Government also alleged that Applicant deliberately made false statements to a DOD investigator during a subject interview on September 22, 2015, when Applicant affirmed the negative answers about her finances in her e-QIP (SOR 2.e). Applicant admitted providing incorrect answers in

² See Directive, Enclosure 2.

³ My decision in this case would have been the same under either version of the adjudicative guidelines.

⁴ See Directive, Section E3.1.7. In the FORM, Department Counsel relies on nine enclosed exhibits (Items 1 - 9).

⁵ See Directive, Section E3.1.7.

her e-QIP but denied any intent to provide false or misleading information. (FORM, Items 1 and 2) In addition to the facts established by Applicant's admissions, I find the following relevant facts.

Applicant is a 35-year-old single mother of a teenage daughter. She has been employed by a defense contractor since March 2015. She has a good reputation in the workplace for hard work and professionalism. (FORM, Items 2 and 3)

Applicant was married from August 2001 until divorcing her ex-husband in June 2016. The couple separated in September 2014. Applicant's ex-husband abuse of illegal drugs caused their marital finances to suffer. In July 2015, her ex-husband was ordered to pay monthly child support of \$937. A personal financial statement provided by Applicant in March 2016 does not show that she has been receiving those payments.

In 2010, Applicant and her ex-husband lost a house to foreclosure. Applicant provided information showing there is no continuing obligation after the account was closed seven years ago. In May 2011, they filed for Chapter 13 bankruptcy protection but could not agree on a wage earner's repayment plan they could afford. The petition declared \$13,724 in assets against \$57,589 in liabilities. In July 2012, they moved to convert the Chapter 13 petition to a Chapter 7 petition for discharge of their debts. In September 2012, they asked that the petition be dismissed. (FORM, Items 2, 4, 6, and 7)

In response to DOD interrogatories in March 2016, and in response to the SOR, Applicant established that she has paid or otherwise resolved the debts listed at SOR 1.a – 1.c, 1.f, and 1.j. The debt at SOR 1.d is for a truck belonging to Applicant's ex-husband. This was reflected in the Chapter 13 information provided in her response to interrogatories. The debt alleged at SOR 1.k is also attributable to her ex-husband. (FORM, Items 2, 4, 6, and 7)

Applicant has always filed her federal and state income tax returns on time. The tax debts alleged in the SOR were the result of malfeasance by the person Applicant and her ex-husband used to file their returns between 2007 and 2009. Applicant contacted the IRS and her state tax authority in November 2014 about her tax obligations. Those agencies determined that her tax debts were not collectable due to her difficult financial conditions. The IRS and state tax authority will resolve those debts by diverting any income tax refunds to which Applicant may be entitled. (FORM, Items 2, 6 – 8)

Applicant did not disclose her past-due tax debts or the other debts as alleged. In response to the SOR, she denied doing so intentionally claiming she misunderstood what was required. As to omission of her bankruptcy, Applicant averred that she did not list the 2011 petition because she and her ex-husband withdrew it before any repayment plan or discharge went forward. As to her taxes, she believed the debt was not collectable because the IRS and state tax authority had closed the case. As to Applicant's omission of her other debts, Applicant provided information showing she was working to resolve some of those debts before completing the e-QIP and was not

delinquent. She was not aware of the other debts at issue in the SOR. For the same reasons, she affirmed her negative e-QIP answers with a DOD investigator during her September 2015 subject interview. (FORM, Items 2 and 7)

As of March 2016, Applicant had minimal positive cash flow each month after expenses. However, those expenses included payments to several of the debts listed in the SOR. Because Applicant established most of those debts have been paid off, she has more money left over each month since the latter half of 2016. Applicant lives frugally and, apparently, without reliable court-ordered support of her ex-husband. Applicant has not incurred any new delinquent or past-due debts since submitting her e-QIP. (FORM, Items 2, 6, and 7)

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. Decisions must also reflect consideration of the factors listed in ¶ 2(d) 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 interest⁷ 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.⁸ If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.⁹

⁶ See Directive, 6.3.

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

⁸ See Directive, E3.1.14.

⁹ See Directive, E3.1.15.

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. 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.¹⁰

Analysis

Financial Considerations

The Government's information about Applicant's debts reasonably raised the security concern expressed at AG ¶ 18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

Applicant has been experiencing significant financial problems since at least 2009, when she and her ex-husband became delinquent on their mortgage. Additionally, they accrued significant tax debt due to the actions of the person who prepared their 2007 – 2009 income tax returns. The remaining debts stemmed from Applicant's separation and resulting loss of income. This information requires application of the disqualifying condition at AG ¶¶ 19(a) (*inability to satisfy debts*); 19(c) (*a history of not meeting financial obligations*); and 19(f) (*failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required*).

I have also considered whether the record supports application of any of the following AG ¶ 20 mitigating conditions:

¹⁰ See *Egan*, 484 U.S. at 528, 531.

(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to 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.

I conclude all of these mitigating conditions apply. Applicant has paid or otherwise resolved all of the debts attributable solely to her. Although the outstanding tax debts remain, Applicant's ex-husband also shares responsibility for those debts. The IRS and state tax authority are not demanding direct payment from Applicant, and they are satisfied with resolving the debts through annual diversions of her tax refunds. Most of the financial problems presented herein resulted from conditions largely beyond Applicant's control; yet she has acted responsibly in repaying what debts she could, starting well before she submitted her e-QIP and before the SOR was issued. Applicant's current finances show that she lives well within her means and that she has not incurred new unpaid debts. On balance, available information is sufficient to mitigate the security concerns established by the Government's information.

Personal Conduct

The Government alleged that Applicant deliberately tried to hide adverse information about her finances when she submitted her e-QIP and when she spoke with a DOD investigator. Such information raises the following security concern addressed at AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to

cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

More specifically, to be disqualifying, Applicant's omissions and false statements to investigators must have been made intentionally. If Applicant intended to make such false statements, the following AG ¶ 16 disqualifying conditions would apply:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities; and

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative.

I conclude from all available information probative of this issue that Applicant did not intend to mislead the Government by her omissions or other statements. Her explanations of mistake are sufficiently plausible to show lack of intent. As to the taxes, she knew she has always filed her returns as required, and the IRS had told her the case was closed on her unpaid debts for the three years addressed in the SOR. As to her bankruptcy, she and her ex-husband did not go through with the petition. As to her other debts, she was already paying or had already resolved the debts that were her responsibility. Others she did not know about when she submitted the e-QIP. Based on all of the foregoing, I conclude that, although Applicant provided inaccurate answers to e-QIP questions about her finances, she did not have the intent to mislead or deceive the Government about those finances. The security concerns under this guideline are resolved for Applicant.

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(d). A fair and commonsense assessment of the record evidence as a whole shows that the doubts about Applicant's suitability for a clearance raised by the Government's information have been resolved.

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.k:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a – 2.e:	For Applicant

Conclusion

In light of all available information, it is clearly consistent with the interests of national security for Applicant to have access to classified information. Applicant's request for security clearance eligibility is granted.

MATTHEW E. MALONE
Administrative Judge