



**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. 16-02296

Appearances

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

10/23/2017

Decision

MALONE, Matthew E., Administrative Judge:

Applicant did not mitigate the security concerns about her debts. She also deliberately omitted adverse information about her finances from her security clearance application. Her request for a security clearance is denied.

Statement of the Case

On November 23, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain 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 interests of national security for Applicant to have a security clearance.¹

On September 15, 2016, DOD issued a Statement of Reasons (SOR) alleging facts that raise security concerns under the adjudicative guidelines² for financial considerations (Guideline F) and personal conduct (Guideline E). Applicant timely responded to the SOR (Answer) and requested a hearing.

I received the case on March 21, 2017, and I convened the requested hearing on June 15, 2017. The parties appeared as scheduled. Department Counsel proffered two items identified as Government Exhibits (Gx.) 1 and 2. Applicant testified and proffered one item identified as Applicant Exhibit (Ax.) A.³ I held the record open after the hearing to receive from Applicant additional relevant information. She timely submitted documents identified as Ax. B – F. I admitted each party's exhibits without objection.⁴ I received a transcript of the hearing (Tr.) on June 26, 2017.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed \$25,033 for 16 delinquent or past-due debts (SOR 1.a - 1.p). In response, Applicant admitted SOR 1.a and 1.o. She denied the remaining allegations. (Answer)

Under Guideline E, the Government alleged that Applicant deliberately made a false official statement to the Government when she answered “no” to questions in e-QIP Section 26 (Financial Record), thereby omitting the debts alleged at SOR 1.a – 1.p. (SOR 2.a) Applicant denied this allegation. (Answer) In addition to the facts established by Applicant's admissions to SOR 1.a and 1.o, I make the following findings of fact.

Applicant is 49 years old. She and her husband have been married since December 1998. A previous marriage ended in divorce in March 1994 after seven years. She has two adult children from her first marriage. (Gx. 1)

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

² At the time they issued the SOR, DOD adjudicators applied the adjudicative guidelines implemented by the Department of Defense on September 1, 2006. On December 10, 2016, the Director of National Intelligence issued a new version of the adjudicative guidelines, to be effective for all adjudications on or after June 8, 2017. In this decision, I have considered and applied the new adjudicative guidelines. My decision in this case would have been the same under either version.

³ A copy of Department Counsel's January 19, 2017 “discovery letter” and a Government Exhibit List also are included as Hearing Exhibits (Hx.) I and II, respectively.

⁴ Applicant also submitted a sixth item post-hearing. It was a link to an on-line credit management account. Applicant proffered in her forwarding email that the account would show a record of debt payments. Unfortunately, the account link required an account name and password that Applicant did not provide. I have admitted her submission as Ax. G; however, I have assigned it minimal weight.

Applicant worked as a truck driver from November 2005 until October 2010, when her employer relocated and she found herself out of work. In March 2011, Applicant again found work as a state corrections officer. In March 2015, she decided to leave that job and enroll in a three-month long school for long haul truck driving. In June 2015, she started working as an over-the-road truck driver and now requires a clearance to work on DOD contracts.

The Government produced a credit report that documents all of the debts alleged in the SOR. The debts at SOR 1.b, 1.c, 1.e – 1.l, 1.o and 1.p are for delinquent medical bills. Six of the debts are for less than \$200 each. Applicant claimed these debts stem from expenses incurred after she suffered a heart attack at the beginning of 2005. Her employer-sponsored medical insurance covered only 80 percent of the costs. Applicant testified that after the remaining costs went unpaid, Applicant received notices from creditors trying to collect and was aware of the debts when she completed her e-QIP. However, in other testimony, she claimed she was unaware of these debts when she completed her e-QIP. As to her answers to e-QIP Section 26 questions in general, Applicant testified she did not understand the questions. (Gx. 2; Tr. 21, 25 – 26, 28 – 29, 33, 42, 49 - 50)

The debts at SOR 1.a and 1.n represent the remainder due after voluntary repossession of two vehicles. Appellant has resolved the SOR 1.n account (Ax. A; Ax. F); however, the SOR 1.a debt remains unresolved. Appellant did not list either debt in her e-QIP because she thought the fact she returned both cars to the dealer meant there was no further obligation. The debt reflected in SOR 1.n arose when Applicant could not afford to pay the loan after she left her corrections job to go to trucking school. (Ax. A; Ax. F; Tr. 26, 30 – 32, 36 - 38)

The debt at SOR 1.d is for a delinquent cable television account. Applicant testified she was unaware of this debt when she completed her e-QIP. Applicant resolved this debt around the time of her hearing. (Ax. B; Tr. 20, 24, 34)

The debt at SOR 1.m is the result of a dispute over a security deposit at a prior residence leased by Appellant. She testified she was not aware of this debt when she submitted her e-QIP. Applicant paid this debt a few days before her hearing. (Ax. C; Tr. 20 – 21, 24)

In 2014, Applicant retained the services of a firm specializing in credit repair and negotiating with creditors. That firm has reported to Applicant that the debts at SOR 1.k and 1.l were removed from her credit history in December 2014. The debts at SOR 1.b and 1.c were removed in January 2015. The debt at SOR 1.d was removed in May 2015, and two of the debts (otherwise unspecified) owed to the creditors at SOR 1.f – 1.h were removed in September 2015. Applicant pays the firm \$99 each month for their services, which also include access to information about personal financial management. Applicant has viewed that information, but has not acted on it. (Ax. D; Ax. E; Tr. 21, 38 - 40)

Applicant testified her finances are sound. She is able to meet her current obligations, and she sometimes provides modest financial support for her children and grandchildren. A month before the hearing, Applicant and her husband were able to purchase outright parcels of undeveloped land from her parents' and her husband's parents' estates for \$10,000. She also purchased outright two used cars for about \$4,500. As of the hearing, Applicant was past-due in filing her state and federal income tax returns. (Tr. 40 – 42, 43 - 48, 53 – 54)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁵ 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(d) 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.

A security clearance decision resolves only whether it is clearly consistent with the national interest⁶ 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.

⁵ See Directive. 6.3.

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁷ 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.⁸

Analysis

Financial Considerations

The Government’s information reasonably raised a security concern about Applicant’s finances. That concern is stated at AG ¶ 18, as follows:

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.

More specifically, the record as a whole requires application of the disqualifying conditions at AG ¶¶ 19(a) (*inability to satisfy debts*) and 19(c) (*a history of not meeting financial obligations*). Available information documented the SOR allegations that Applicant owes or owed a significant level of past-due or delinquent debt.

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 *Egan*, 484 U.S. at 528, 531.

⁸ See *Egan*; AG ¶ 2(b).

(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; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) does not apply because Applicant's financial problems are recent and continuing. Her larger debts (SOR 1.a, 1.e, and 1.i) remain unresolved. As to AG ¶ 20(b), Applicant did not establish that her debts arose from circumstances beyond her control. Certainly, her heart attack would fall into that category; however, it occurred 12 years ago. Applicant was aware of her obligations when she was receiving collection notices, but she did not act on those debts until late 2014 and 2015. At that time, the credit repair firm she hired caused the debts to be removed from her credit history. Other debts (SOR 1.d, 1.m, and 1.n) were not beyond her control. The car repossession debt at SOR 1.n arose when Applicant left a state job to go to trucking school. Her inability to pay that car loan was a direct result of her own decision.

AG ¶ 20(c) does not apply. Although Applicant has received assistance with credit repair and negotiating with creditors, she has not availed herself of the financial management resources offered by the credit repair firm. Applicant did not clearly establish that her financial problems are under control.

Finally, AG ¶ 20(d) does not apply. Although Applicant has paid or resolved several of her debts, she did not do so in a timely manner indicative of responsibly meeting one's obligations.

Applicant has made progress in addressing her longstanding debts; however, she has not established a reliable record of fiscal responsibility that inspires confidence that her financial problems will not recur. On balance, Applicant has failed to mitigate the security concerns raised by the Government's information.

Personal Conduct

Applicant did not disclose any of her past-due or delinquent debts when she submitted her e-QIP. Applicant denied any intent to mislead the Government about her finances. The Government established through sufficient circumstantial evidence that

her omissions were intentional. This information raises a security concern about Applicant's judgment, reliability, and trustworthiness expressed 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.

Available information shows that Applicant was aware of most of the delinquent or past-due debts reflected in the SOR. She received collection notices for medical bills that went unpaid after her heart attack, and she knew that she had voluntarily returned two cars because she was unable to continue making payments on those car loans. While it was reasonable that she may not have been aware of all of the listed debts, she clearly was aware of others and should have disclosed them in her e-QIP. Her stated reasons for not doing so were not plausible, and her testimony on this issue was conflicting. Available information requires application of the disqualifying condition at AG ¶ 16(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.

I have also considered the following AG ¶ 17 mitigating conditions that are pertinent in this case:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully; and
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

As to AG ¶ 17(a), Applicant did not establish that she attempted to correct her omissions in a timely manner. To be fair, however, the record does not reflect that investigators interviewed Applicant during her background investigation. Such interviews often offer applicants their first opportunity to correct or at least explain their omissions. AG ¶ 17(b) does not apply because Applicant did not establish that her negative answers resulted from improper advice.

AG ¶ 17(c) does not apply because intentional false statements are not minor offenses. Applicant's submission of her e-QIP was her first interaction with the Government's attempt to assess her suitability for access to classified information. In addition to demonstrating her hesitation to be fully candid with the Government about adverse information in her background, Applicant's false statements potentially violate federal law (18 U.S.C. § 1001). On balance, available information is not sufficient to mitigate the security concerns under this guideline.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(d). Applicant's actions to resolve her debts are not sufficient to satisfy the security concerns raised by her financial problems. Information about her omissions of adverse information from her e-QIP further sustains doubts about Applicant's judgment and trustworthiness. Because protection of the national interest is the principal focus of these adjudications, those doubts must be resolved against granting eligibility for a security clearance.

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.p:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

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

MATTHEW E. MALONE
Administrative Judge