



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



In the matter of:

[NAME REDACTED]

Applicant for Security Clearance

)
)
)
)
)
)
)

ISCR Case No. 17-02417

Appearances

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

09/27/2018

Decision

MALONE, Matthew E., Administrative Judge:

Applicant did not provide sufficient information in response to the Government's case to overcome the security concerns raised by her financial problems. Applicant's request for eligibility for access to classified information is denied.

Statement of the Case

On March 23, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain eligibility for access to classified information as part of her employment with a defense contractor. After reviewing the completed background investigation, adjudicators at the Department of Defense Consolidated Adjudications Facility (DOD CAF) 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 April 16, 2018, the DOD CAF issued a Statement of Reasons (SOR) alleging facts that raise security concerns addressed under Guideline F (Financial Considerations).² Applicant timely responded to the SOR (Answer) and requested a decision without a hearing. On May 24, 2018, 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 May 31, 2018, and submitted additional information in response to the FORM on July 5, 2018.⁴ The record closed on July 6, 2018, after Department Counsel forwarded Applicant's response to the FORM with objections to the admissibility of Applicant's additional information. I received this case for decision on September 19, 2018.

Procedural Issue

The additional information provided by Applicant on July 5, 2018, consisted of two documents. The first was a receipt of payment on June 29, 2018, of \$876.28 to one of Applicant's medical creditors. The other document is a letter, dated May 1, 2018, from a business services company in support of Applicant's claim that she filed a tax return in 2017. Department Counsel objected to the latter document by arguing that it is not sufficient to support Applicant's claim. Applicant also submitted the letter in question as part of her Answer. I considered Department Counsel's objection and it is overruled. The objection does not state a valid basis for the document to be excluded; rather, it goes only to the persuasive value of the exhibit. The document is admitted, and I have assigned it the appropriate weight in light of the record evidence as a whole.

Findings of Fact

Under Guideline F, the Government alleged that as of the date of the SOR, Applicant had not yet filed her federal (SOR 1.a) or her state (SOR 1.b) income tax returns for the 2009 tax year. It was also alleged that Applicant owed \$3,324 for ten delinquent or past-due debts (SOR 1.c – 1.i). Applicant denied, with explanations, all of the SOR allegations. (FORM, Items 1 and 2)

The SOR allegations are supported by Applicant's disclosures in Section 26 of her e-QIP, by the contents of two credit reports obtained during her background investigation, and by the summaries of three personal subject interviews Applicant had with government investigators between October 2016 and January 2017. (FORM, Items 3 – 6) In addition to the facts thus established, I make the following findings of fact.

Applicant is a 40-year-old employee of a defense contractor, for whom she has worked since July 2010. She has one child, age 19. In her e-QIP, Applicant disclosed that she had not yet filed her 2009 state or federal tax returns because she did not have her

² See Directive, Enclosure 2.

³ See Directive, Section E3.1.7. In the FORM, Department Counsel relies on six enclosed exhibits (Items 1 – 6).

⁴ See Directive, Section E3.1.7.

W-2 and other information needed to complete her returns. Applicant further stated that she had applied for a filing extension and that she estimated owing \$1,338 in taxes for 2009. Applicant had one employer in 2009. In response to SOR 1.a and 1.b, Applicant provided a letter dated May 1, 2018, attesting to Applicant's claim that she had filed her 2009 returns in 2017. In the FORM, Department Counsel argued that this information is not sufficient to show Applicant has, in fact, filed her tax returns. In response to the FORM, Applicant submitted only the same letter as she included with her SOR Answer. (FORM, Items 2 – 3)

When Applicant submitted her March 2016 e-QIP, she also disclosed several delinquent debts, most of which she had already resolved. Credit reports obtained by government investigators and by DOD CAF adjudicators during the ensuing background investigation documented the allegations at SOR 1.c – 1.l. The debts at SOR 1.c and 1.d were for delinquent cell phone and cable television debts, respectively. The remaining debts were for delinquent medical debts. Applicant discussed all of those debts during a personal subject interview with a government investigator in October 2016. In response to the SOR, Applicant averred she had worked to clean up her credit history in 2017 but had not seen these debts in her credit report. In support of her SOR Answer, Applicant provided information that showed she had resolved the debts at SOR 1.c – 1.g, and 1.j – 1.l. She also showed that she had made small payments on SOR 1.h and 1.i. She did not show that she was continuing to make additional payments on SOR 1.h and 1.i in order to satisfy those debts. In response to the FORM, Applicant provided information that shows she paid those debts after she received the FORM. (FORM, Items 2 – 6; Response to FORM)

Applicant did not provide any information about the current state of her finances. She has not sought or received any professional financial assistance or counseling. As to the causes of her indebtedness, it appears she has experienced some periods of unemployment since 2004; however, she has been steadily employed by the company sponsoring her request for a security clearance since 2010. Applicant attributed the medical bills addressed in the SOR to a surgery in 2007. (FORM, Items 3 and 4)

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. 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

⁵ See Directive, 6.3.

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 interest⁶ 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.⁷ If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.⁸

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.⁹

Analysis

Financial Considerations

This record reasonably raises 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

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

⁷ See Directive, E3.1.14.

⁸ See Directive, E3.1.15.

⁹ See *Egan*, 484 U.S. at 528, 531.

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, this record requires application of the disqualifying conditions 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*).

In response, Applicant presented sufficient information to show that she paid the debts at SOR 1.c – 1.i. The record also shows that Applicant was repaying other debts when she submitted her e-QIP, thus supporting application of the mitigating conditions at AG ¶ 20(d) (*the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts*). Nonetheless, Applicant did not meet her burden of persuasion regarding her unfiled tax returns. The information Applicant provided about this issue is inconclusive. Other information, such as a copy of the returns, or a tax authority transcript, or a copy of her request for a filing extension should be presented. Applicant heeded Department Counsel’s comments about Applicant’s resolution of SOR 1.h and 1.i by presenting definitive payment information. Thus, her failure to better document her claims that she filed her tax returns is significant. Available information also does not show that Applicant’s finances are currently sound. There is no pay stub or budget worksheet or other personal financial information that would alleviate the Government’s concerns about her finances.

On balance, the availability of AG ¶ 20(d), without more, is not sufficient to mitigate the security concerns under this guideline. 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). Applicant’s information did not resolve the doubts about her suitability for access to classified information that were raised by her financial problems. Because protection of the national interest is the principal focus of these adjudications, any remaining doubts must be resolved against the individual.

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.b: | Against Applicant |
| Subparagraphs 1.c – 1.i: | For Applicant |

Conclusion

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

MATTHEW E. MALONE
Administrative Judge