



**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. 18-00817

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

10/09/2018

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 October 30, 2017, 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 19, 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 June 21, 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 July 2, 2018, and timely submitted additional information in response to the FORM.⁴ The record closed on July 10, 2018, after Department Counsel forwarded Applicant's response to the FORM without objections to the admissibility of Applicant's additional information. I received this case for decision on September 24, 2018.

Findings of Fact

Under Guideline F, the Government alleged that owed \$80,859 for 25 delinquent or past-due debts (SOR 1.a – 1.y). The debts alleged at SOR 1.e – 1.x are for past-due student loans totaling \$72,202, or about 90 percent of the total debt at issue. Applicant admitted, with explanations, all of the SOR allegations. In addressing her student loan debts, Applicant averred she is in a repayment plan and provided a copy of her agreement with a federal student loan servicing organization. With her response to the FORM, Applicant provided additional information showing payments made as part of that agreement. Her responses established that Appellant made initial plan payments of \$193 each month between November 2017 and January 2018. Since then, she has made \$73 monthly payments as required by the agreement. (FORM, Items 1 and 2; Response to FORM)

The SOR allegations are supported by Applicant's admissions in response to the SOR, by her disclosures in Section 26 of her e-QIP, by the contents of two credit reports obtained during her background investigation, and by the summary of a personal subject interview (PSI) Applicant had with a government investigator on November 16, 2017. (FORM, Items 2 – 6) In addition to the facts thus established, I make the following findings of fact.

Applicant is a 28-year-old employee of a defense contractor. In her e-QIP, Applicant disclosed the debts at SOR 1.a, 1.c, and 1.y. In her SOR Answer and her e-QIP, she also explained that she was working with those creditors in an effort to resolve them through monthly payment plans. During Applicant's November 2017 PSI, she explained that her delinquencies resulted from a period of insufficient income after 2012. Applicant opened credit card accounts and financed the purchase of a car but soon found she was not able to meet the required payments on those obligations. (FORM, Items 2 and 3)

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.

At the time of her PSI, Applicant had begun the student loan rehabilitation program described above. During the PSI, she claimed that she was in contact with her creditors and intended to resolve some of the debts discussed by early 2018; however, the record does not contain any information that corroborates those claims or that shows she has made any progress in resolving those debts. (FORM, Items 2 and 4; Response to FORM)

Applicant did not provide any information about the current state of her finances. The record does not contain information about her current income, her regular expenses, and other facts relevant to an assessment of her ability to resolve her remaining debts. She has not sought or received any professional financial assistance or counseling.

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 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

⁵ See Directive, 6.3.

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.

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 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*) and 19(c) (*a history of not meeting financial obligations*).

In response, Applicant presented sufficient information to show that she is repaying the student loans addressed at SOR 1.e – 1.x. It appears her efforts in this regard began at or near the time she submitted her e-QIP. While Applicant heeded Department Counsel's comments about production of documentation of payments on her student loans, she did not provide any information about efforts to resolve her other debts. 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.

Applicant benefits from application of AG ¶ 20(d) (*the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts*) to

⁹ See *Egan*, 484 U.S. at 528, 531.

her student loan rehabilitation. Nonetheless, without more, this is not sufficient to mitigate the security concerns under this guideline. Although Applicant's claim of insufficient income might invoke AG ¶ 20(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)*), she did not establish that she acted responsibly under the circumstances. Further, none of the remaining AG ¶ 20 mitigating conditions apply. Applicant's financial problems are recent in that several delinquencies remain unresolved, and Applicant did not establish that her financial situation is improved and unlikely to be of concern in the future. On balance, she did not provide sufficient information 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.d, 1.y:	Against Applicant
Subparagraphs 1.e – 1.x:	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