



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



In the matter of:)	
)	
)	ISCR Case No. 14-00151
)	
Applicant for Security Clearance)	

Appearances

For Government: Fahryn Hoffman, Esq., Department Counsel
For Applicant: *Pro se*

07/29/2014

Decision

CURRY, Marc E., Administrative Judge:

Although Applicant has made some progress in reducing her delinquent debts, it is too soon to conclude that she has mitigated the security concern given the amount that remains outstanding and an absence of a clear plan to address the remaining debts. Clearance is denied.

Statement of the Case

On February 28, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

On March 10, 2014, Applicant answered the SOR, denying all of the allegations except subparagraphs 1.c and 1.h. She requested a hearing whereupon the case was assigned to me on May 5, 2014. DOHA issued a notice of hearing on May 9, 2014, scheduling the hearing for June 3, 2014. The hearing was held as scheduled. At the hearing, I received four Government exhibits (GE 1-GE 4) and eight Applicant exhibits (AE A - AE H). Also, I took administrative notice of one document (Hearing Exhibit (HE) I), and I considered the testimony of Applicant.

At the close of the hearing, I left the record, open at Applicant's request, to allow her to submit additional exhibits. Within the time allotted, Applicant submitted nine more exhibits that I received as AE I through AE Q. DOHA received the transcript (Tr.) on June 12, 2014.

Findings of Fact

Applicant is a 41-year-old single woman with one child, age 17. She is a high school graduate and has earned some college credits. For the past 13 years, she has worked as a security guard. She has held a security clearance since 2002. (Tr. 17)

Between 2006 and 2012, Applicant incurred approximately \$23,000 of delinquent debt. These debts include a \$311 judgment (subparagraph 1.a; duplicated in subparagraph 1.b), a delinquent credit card totalling \$2,435 (subparagraph 1.c), several medical accounts totalling approximately \$1,000 (subparagraph 1.d through 1.f), two delinquent phone accounts totalling approximately \$475 (subparagraphs 1.g and 1.j), the deficiency remaining from a foreclosed time share property (subparagraph 1.h), three delinquent loans totalling approximately \$12,000 (subparagraph 1.i, 1.k, and 1.l), and a delinquent speeding ticket totalling \$300. (subparagraph 1.m)

Applicant attributes her financial problems to her separation from her significant other in 2009. (Tr. 32) They had lived together, and after the separation, Applicant was saddled with many of his bills. (Tr. 32)

The judgment listed in subparagraph 1.a stems from the breakup of an earlier romantic relationship.¹ Applicant's then-significant other purchased her a \$5,000 ring. When the relationship ended in 2006, she sued Applicant for the cost of the ring and for the cost of a number of bills they incurred jointly while living together. (GE 3 at 13) The court found in the significant other's favor, but concluded Applicant did not owe her for the cost of the ring. Ultimately, the amount of the judgment totalled \$311, and Applicant paid it in January 2007. (AE A)

Subparagraph 1.c is a credit card. Applicant fell behind on this credit card in early 2010.(GE 3) Since then, Applicant has had trouble contacting the creditor because this debt has been reassigned to several successive collection agencies. (Tr. 50) Most

¹Subparagraph 1.b is a duplicate of subparagraph 1.a.

recently, in June 2014, Applicant contacted the creditor and was informed that they no longer had a record of the debt. (AE I at 1)

Applicant satisfied subparagraphs 1.d through 1.f through a series of payments between August 2013 and January 2014. (AE B) Applicant also satisfied the delinquent phone accounts listed in subparagraphs 1.g and 1.j. (AE P and AE G, respectively)

In 2011, Applicant's significant other from whom she separated in 2009, purchased the time share property listed in subparagraph 1.h in an attempt to get back together with her. (Tr. 65) Applicant gave him permission to add her name to the contract. (Tr. 66) Shortly after purchasing the time share property, Applicant's significant other lost his job. Applicant was unable to make the payments without his help and the property went into foreclosure. The property was resold and a deficiency remained of \$9,602. (AE E) In March 2013, Applicant contacted the time share collection specialist to discuss a settlement. The time share company was willing to settle for approximately half of the deficiency (\$4,800) so long as Applicant paid the sum in 14 days. (AE E) Applicant could not afford to execute this settlement plan. Currently, Applicant and her significant other are not together, and he is not helping her resolve the deficiency.

Applicant contends that she will apply money currently earmarked for paying a car note towards the deficiency once the car note is satisfied. (Tr. 43) Currently, she is one month behind on her car note payments. (Tr. 44)

Applicant was forced to short sale her previous home in 2006 after an earlier relationship ended. Shortly before the short sale, the bank had initiated foreclosure proceedings. (Tr. 66)

Subparagraph 1.i is an account Applicant opened to purchase an exercise machine. It totals \$2,361. Using money borrowed from a friend, Applicant satisfied this account. (AE F)

Applicant contends that she negotiated a settlement to satisfy subparagraph 1.k for \$2,300, approximately half the amount listed as delinquent on the SOR. (Tr. 60) Although Applicant provided evidence that she satisfied a debt owed to the same creditor as the one listed in subparagraph 1.k, the account numbers do not match. (*Compare* GE 2 at 5 with AE L) I find that subparagraph 1.k remains outstanding.

Applicant contends that subparagraph 1.l is a duplicate of subparagraph 1.i, as discussed above. However, GE 2 indicates that she had two different accounts with the same creditor. (GE 2 at 13) Applicant contacted the creditor and confirmed that this bill represents only one debt, and that the second listing on her credit report is erroneous. (AE J) Currently, she is working to get it removed from her credit report. I find that subparagraphs 1.i and 1.l are duplicates.

SOR subparagraph 1.m, totalling \$300, is a speeding ticket. Applicant paid this bill in December 2013. (AE H)

Applicant does not receive any child support from her son's father.² This makes it difficult for her to balance paying her delinquencies more quickly with keeping current on unexpected expenses such as unusually high dental bills. (Tr. 43)

Applicant earns between \$68,000 and \$70,000 annually. Her income is variable depending upon how many hours she works on her part-time job. She does not maintain a written budget, and is living paycheck to paycheck. (Tr. 42-44)

Policies

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by department counsel. . . ." The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

Analysis

Guideline F, Financial Considerations

Under this guideline, "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." (AG ¶ 18) Over the past five years Applicant has incurred approximately \$23,000 of delinquent debt. AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

The following mitigating conditions under AG ¶ 20 are potentially applicable:

²He owes Applicant approximately \$13,000 in back child support. (Tr. 34)

(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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(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 attributes her financial problems to the 2009 dissolution of her relationship with her live-in significant other who abdicated his responsibility to help satisfy bills that were incurred jointly. However, this was not the first time a relationship ended and led to financial problems. In 2006, the dissolution of a relationship nearly led to the foreclosure of Applicant's home. Also, two years after breaking up with her most recent significant other and experiencing related financial problems, she reconciled with him and jointly purchased a time share property. Ultimately, the time share property was foreclosed upon, Applicant and her significant other have separated again, and she is once again saddled with a debt that they incurred jointly, but that he is failing to help her pay. The recurrent nature of these problems renders AG ¶¶ 20(a) and 20(b) inapplicable.

Currently, the only outstanding debts are the credit cards listed in subparagraphs 1.c and 1.k, and the time share property debt listed in subparagraph 1.h. However, these debts constitute 82% of the total SOR debts. Moreover, Applicant does not maintain a budget, and she is a month behind on her car note. Although the debt owed to the creditor with whom she is financing her car was not alleged, it is relevant because she testified that she will begin satisfying the time share account as soon as she satisfies the car loan. Also, it demonstrates that her financial situation is not under control and calls into question whether she is in a position to begin addressing the remaining delinquent SOR debts. Consequently, Applicant's payment of \$4,100 of her delinquent debt is sufficient to trigger AG 20(c), but is insufficient to apply AG ¶ 20(d).

Whole-Person Concept

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They are as follows:

(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 recurrence of Applicant's financial problems together with the absence of a clear plan to satisfy her remaining debts renders her an unacceptable candidate for a security clearance at this time.

Formal Findings

Formal findings for or against Applicant 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.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraphs 1.d-1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraphs 1.i - 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraphs 1.l-1.m:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

MARC E. CURRY
Administrative Judge

