



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



In the matter of:)	
)	
)	ISCR Case No. 12-04658
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

08/20/2014

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the security concerns raised under the guideline for Financial Considerations. Her request for a security clearance is granted.

Statement of the Case

On February 21, 2014, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) that cited security concerns under Guideline F (Financial Considerations). This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992) as amended; and the Adjudicative Guidelines (AG) implemented by the DOD on September 1, 2006.

In her March 14, 2014 Answer to the SOR, Applicant admitted the SOR allegations, with explanations, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on May 28, 2014. The hearing was held by video teleconference on June 11, 2014.¹ I

¹ The Directive requires that applicants receive 15 days' notice of the hearing date. (Directive 5220.6 at § E3.1.8). The hearing notice was issued 14 days before the hearing date. However, in May 2014, Department Counsel and Applicant had discussed hearing dates, and Applicant specifically requested

admitted six Government exhibits (GE 1-6). Department Counsel provided an additional document after the hearing, admitted without objection as GE 7. I also admitted into the record the Government exhibit list as Hearing Exhibit (HE) I, and a demonstrative exhibit of Applicant's debt status, prepared by Department Counsel, as HE II. I admitted five Applicant exhibits (AE A-E). I held the record open after the hearing, and Applicant timely submitted five additional documents, which I admitted as AE F-J. DOHA received the transcript (Tr.) on June 20, 2014. The record closed on July 9, 2014.

Procedural Ruling

At the hearing, I granted Department Counsel's motion to withdraw the SOR allegations listed at subparagraphs 1.g, 1.h, and 1.m to conform to the evidence. (Tr. 9-10).

In addition, I requested that Department Counsel provide the complete text of Applicant's hand-written note on page 14 of GE 2, which was incomplete. Following the hearing, he submitted the complete text of the note, which I inserted into GE 2, and marked as pages 14a and 14b.

Findings of Fact

Applicant's admissions in response to the SOR are incorporated as findings of fact. After a thorough review of the pleadings and the evidence, I make the following additional findings of fact.

Applicant is 36 years old. She earned a bachelor's degree in 1999. She married in 2000, and has two children, four and seven years of age. Applicant and her husband operated a business from 2002 to 2013. Starting in 2003, she worked part time as the company's bookkeeper, but was not compensated. Between 2003 and 2009, she worked at times in the family business, and at times for other companies. From January to June 2009, she worked about 20 hours per week as a bookkeeper for a computer memory wholesaler. From March 2009 to August 2011, she worked full time as an executive assistant for a candle company. At that point, she began her current full-time employment with a defense contractor as an executive assistant. She began at a salary of \$44,000, and currently earns \$49,600. This is her first application for a security clearance. (GE 1; Tr. 22-25)

In May 2002, Applicant's husband started a delicatessen and catering business. The business brought in about \$26,000 net per year. Applicant's husband drew approximately \$500 per week salary from the business, and his draw never increased beyond that amount. During the first year of operation, Applicant was employed outside the family business, earning about \$45,000. Later, she worked in the delicatessen. It

the June 11 date, effectively receiving timely notice of the hearing date.

was located in a property they rented. The rent repeatedly rose over time, and Applicant and her husband decided to purchase the property. In August 2005, as advised by their attorney, they created a limited liability corporation, which purchased the commercial property, and rented it back to the business. Applicant and her husband also owned a condominium rental property. (GE 2; Tr. 25-28, 44, 66)

When the nationwide recession hit in 2008, the family business declined. In 2009, Applicant decided to seek other employment to help support the family, and to provide less costly family health insurance. Applicant's husband was not able to take a full salary from the business, and Applicant's salary was the primary support for the family. Although finances remained tight, they were able to meet their expenses and mortgage payments. But their business revenues continued to decline as other companies moved from the area. Applicant's husband was forced to cut back store hours because of lack of customers. (GE 1, 2, 5; Tr. 28-30)

Applicant's mother was diagnosed with cancer, and Applicant became her primary caregiver. Around 2010, Applicant lost some time at work caring for her mother and was not paid for it. She was pregnant with her second child and out of work on maternity leave. Later, she was caring for the new infant and her older child. After her mother passed away in August 2010, Applicant inherited approximately \$60,000. Applicant's husband was not taking income from their business at the time and Applicant used the funds, in part, to pay business and personal expenses, as well as approximately \$9,000 in sales taxes. (GE 2; Tr. 45-46, 54-57)

Despite these difficulties, Applicant was able to maintain her credit between 2008 and 2012. Her 2011 credit bureau report shows all accounts in good standing, but for one small account in collection status. However, by summer 2012, Applicant and her husband were unable to meet the mortgage payments on the commercial property. She notified the mortgage company of their difficulties. In August 2012, they started making partial mortgage payments. The lender initiated foreclosure proceedings in about late 2012. In October 2012, Applicant and her husband contacted an attorney for financial advice. The attorney advised them to file for bankruptcy protection because, given the real estate market decline, the sale of the commercial property would not yield sufficient proceeds to resolve their mortgage debts. Applicant provided a copy of a letter her attorney sent to her employer, explaining that he had advised her to stop making bill payments because of her intended bankruptcy filing. (GE 2 at 1, 20; Tr. 28-31, 42-43, 46) Applicant stated in her Answer,

[W]e are going to have to file personal bankruptcy since there will not be anything left to pay [the creditors]. This was against everything I believe in and have worked for in my life, but our business unfortunately could not endure these financial burdens. (GE 2 at 1)

In January 2013, they placed the commercial property on the market seeking a short sale. They received offers of \$80,000, \$90,000, and \$120,000. They accepted the

highest offer, but the buyer reneged. They continued to pay their debts until about spring 2013. (GE 2 at 1; Tr. 28-31, 42-43, 46)

In March 2013, Applicant and her husband closed their business. Applicant's husband was unemployed for two months. After a short full-time job of four months, he was unemployed from September 2013 to June 2014. On March 13, 2014, Applicant and her husband filed a Chapter 7 bankruptcy petition. Their debts were successfully discharged on July 3, 2014. (AE J; Tr. 58, 64)

Applicant noted in her Answer to the SOR:

These credit cards and loan payments were manageable had our business kept generating revenue above our expenses; however, that didn't happen. We had to use inherited money from my mother's estate to pay commercial expenses instead of reducing our personal debt. This was in the hopes that the economy would turn around and bring people back out to spend money at local retailers. That unfortunately did not happen during this time and we suffered the loss of our business of almost eleven years, as well as sacrificed our personal credit and money.

Applicant and her husband live in a house owned by her father-in-law. They do not pay rent, but pay \$934 monthly for property taxes. Applicant's current gross annual salary is \$49,600. Her husband began a new position as a chef in June 2014, and his annual gross salary is \$40,000. As of late 2013, they were receiving \$1,500 per month in rental income. (GE 2 at 23) She also provided their family budget showing net monthly income of \$4,916, which includes her husband's net salary, but not the income from their rental property. With monthly expenses of \$3,312, Applicant currently has a net monthly remainder of \$1,604. Applicant and her husband do not have any open credit card accounts, and use cash to pay for expenses. They have not been late on any home or car payments in 2014. As of March 2014, they had approximately \$45,000 in retirement accounts. Applicant and her husband each completed a financial management course in June 2014 as part of the bankruptcy process. (GE 2; AE F, G, H; Tr. 47-53)

The SOR debts appear in four credit reports dated 2011 through 2014. (GE 3-6) The status of Applicant's SOR debts follows.

PROPERTY-RELATED DEBTS:

1.b – Condominium fee, \$880. Included in bankruptcy petition. Applicant owed an annual condominium association fee in 2012 for her rental property. When she was informed the debt was \$2,180, she thought the association had made an error. After contacting the creditor, she learned that it had filed two claims in two different county courts. However, in 2013, her attorney advised her not to pay the debt because of her

pending bankruptcy filing. The current debt of \$2,200 is discharged. (GE 4, 6; AE D, I; Tr. 40-42)

1.k, 1.l – Line of credit loans. Included in bankruptcy petition. In 2005 or 2006, Applicant opened a line of credit for business equipment. In 2013, it was delinquent, with a balance of \$20,135 (allegation 1.k). She also obtained a home equity loan of \$73,405 in 2002 (allegation 1.l). It was 120 days delinquent as of August 2013. Both loans are discharged in her bankruptcy petition. (GE 2-6; AE D)

1.n – Property taxes, \$5,908. Unresolved. This debt for property taxes on Applicant's condominium is not included in her bankruptcy petition. The property is collateral for her commercial property loan. Applicant is unsure how this property will be handled when the commercial property is foreclosed. She plans to consult with her attorney about how to resolve it. (Tr. 43-44, 48)

1.o – Mortgage, \$242,697. Included in bankruptcy petition. In February 2013, the lender prevailed in a judgment against Applicant and her husband for the delinquency related to the commercial property mortgage. Applicant's pay was garnished approximately \$520 per month. The lender ultimately initiated foreclosure proceedings on the property. The primary mortgage loan on Applicant's commercial property is listed at \$243,000 in her bankruptcy petition, which describes the property as being, in March 2014, "in the late stages of foreclosure." (GE 2 at 3; AE D)

CREDIT CARD ACCOUNTS:

1.e, 1.f, 1.i, and 1.j – totaling \$7,948. Included in bankruptcy petition. Applicant and her husband used credit cards to pay business and family expenses. When finances were tight, she paid minimum amounts on the balances. She was able to bring some cards to a current status, but others became delinquent. She stopped paying on these balances, on her attorney's advice. All were discharged through her bankruptcy. Applicant and her husband no longer use credit cards. (GE 2, 3, 4, 6; AE D)

INCOME TAX:

1.a – Internal Revenue Service, \$3,691. Paid. Although Applicant did not have sufficient documentation to file a complete income tax return for tax year 2011, her accountant timely filed the return, which indicated Applicant owed \$2,799. The amended return showed Applicant's tax liability was reduced by \$2,693. With about \$40 in interest and penalties, Applicant owed an adjusted tax of \$145.22. She provided evidence that the tax is paid. (Attachment to Answer at pages 4-8; GE 2; Tr. 31-35, 39-40)

MISCELLANEOUS:

1.c – Medical debt - Unresolved; 1.d, Gym - included in bankruptcy petition. The SOR alleges a medical debt of \$139 (1.c), and a gym membership debt of \$249 (1.d).

Applicant testified that the debts are included in the bankruptcy petition. The gym debt is included in Applicant's bankruptcy petition. However, no entry listed in the petition appears to relate to the medical debt. However, even if the debt is not included, the small balance of \$139 is not security-significant. (GE 2, 4; AE D, I; Tr. 44)

In Applicant's performance evaluations of 2012 and 2013, her supervisor of the past two years noted that she is committed, thorough, timely, and engages in due diligence on her projects. She is praised by project administrators as a diplomatic communicator and a valuable member of the team. Applicant's current program manager is a retired Marine Corps major. He noted that Applicant was candid about her business failure. He also stated that she has been promoted to provisioning analyst, based on her outstanding performance. Another program manager opined that Applicant has demonstrated high moral values and personal ethics in her work. Applicant's mentor described her as intelligent and dedicated, with a reputation for excellent work. A project lead at her current company described Applicant as hard-working and honest, with a strong work ethic. The president of a retail business where Applicant worked stated Applicant is trustworthy, because he trusted her to handle the company's financial transactions in his absence. He stated that during the financial crisis, Applicant was the primary support for her family. The mayor of Applicant's township has known her for more than 10 years. He described her as "a great asset to our community" who is trustworthy and displays sound judgment. (AE A-C)

Policies

Each security clearance decision must be an impartial, commonsense determination based on examination of available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.² Decisions must also reflect consideration of the "whole-person" factors listed in ¶ 2(a) of the Guidelines.

The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the adjudicative factors addressed under Guideline F (Financial Considerations).

A security clearance decision is issued only to resolve the question of whether it is clearly consistent with the national interest³ 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

² Directive. 6.3.

³ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

to deny or revoke a security clearance. Additionally, the Government must prove controverted facts alleged in the SOR. If the Government meets its burden, it falls to the Applicant to refute, extenuate, or mitigate the Government's case. Because no one has a "right" to a security clearance, applicants bear a heavy burden of persuasion.⁴ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness to 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.⁵

Analysis

Guideline F (Financial Considerations)

AG ¶ 18 expresses the security concern about financial considerations:

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. An individual who is financially over-extended is at risk of having to engage in illegal acts to generate funds. . .

Applicant's financial difficulties began when the business she and her husband operated was negatively affected by the nationwide recession in 2008. Her debts started becoming delinquent in about 2012. The record contains no evidence of debts related to gambling, alcohol or drug abuse, or other negative conduct. The following disqualifying conditions apply under AG ¶ 19:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

I have also considered the mitigating factors under AG ¶ 20, especially the following:

- (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;

⁴ See *Egan*, 484 U.S. at 528, 531.

⁵ See *Egan*; Adjudicative Guidelines, ¶ 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, 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's delinquencies resulted from a combination of her financial dependence on a family-owned business, and a nationwide recession that negatively affected its earnings. Applicant has closed the business. Both she and her husband have full-time jobs. It is unlikely they will be in a similar situation in the future. Her current judgment and trustworthiness are not in question. AG ¶ 20(a) applies.

AG ¶ 20(b) focuses on delinquencies that result from events that an applicant could not control. Here, several events affected Applicant's ability to maintain financial solvency. Her business successfully supported the family for several years. But it started to decline significantly as a result of the recession that began in 2008. Because of the nationwide real estate crisis, her property value declined steeply, and her mortgage loan was underwater. In 2010, Applicant became the primary caregiver when her mother had cancer. At the same time, she was caring for two young children, and working full-time outside the home. Also in 2010, her husband could not afford to take a draw from the delicatessen business. They finally had to close the business in 2012. Applicant's husband was out of work for nine months.

Applicant acted responsibly under the circumstances. She took steps to respond to the decline in income from the delicatessen. In 2009, she returned to full-time work outside the family business. She became the family's main financial support. Her outside job provided steady income. It also allowed Applicant to lower the family's previous high health insurance costs. These steps, and Applicant's four years of efforts to keep her debts under control during the recession and the decline of her family business from 2008 to 2012, demonstrates her good-faith efforts to meet her financial obligations. When she was no longer able to pay as required, she informed her lender she would only be able to make partial payments. AG ¶¶ 20(b) and (d)⁶ apply.

⁶ Applicant's bankruptcy discharge does not fall under AG ¶ 20(d), as the Appeal Board has held that "[a]n applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the good faith mitigating condition]." It more accurately falls under AG ¶ 20(c), showing that the financial problems are either resolved or under control.

Applicant sought financial guidance and counseling about how to handle the debts from her attorney. Although her attorney advised her to stop paying her debts because of the bankruptcy petition she would be filing, she did not want to seek bankruptcy protection and she continued to pay them until spring 2014. However, she then followed her attorney's advice and filed a Chapter 7 petition. Applicant's debts are under control, as the bulk of her debts were discharged in July 2014. Although Applicant has two debts totaling approximately \$6,000 that are not included in her bankruptcy petition, the Appeal Board has held that an applicant is not required to have paid every debt.⁷ Moreover, Applicant and her husband are now both employed, and they have a substantial monthly remainder, not including rental income. Applicant has had a viable plan to use a legitimate means to resolve her debts, and she has acted on it. Applicant has brought her financial situation under control. AG ¶ 20(c) applies.

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate the applicant's security eligibility by considering the totality of an applicant's conduct and all the circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant is an intelligent, hardworking, and responsible woman. She was open and candid throughout the investigation, and credible in her testimony. She and her husband opened a business in 2002. Initially, it was successful and she had solid credit. However, starting in 2008, a succession of events caused financial difficulties, especially the 2008 recession that produced a steady decline in Applicant's business. She showed strength of character by caring for her mother during her mother's final illness, at the same time working full time, and caring for two small children. Applicant

⁷ See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). "[A]n Applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously." An applicant must act responsibly, develop a reasonable plan, and show action to effectuate the plan.

used an inheritance and her salary to supplement the declining delicatessen revenue and keep her accounts in good standing for several years. However, by 2012, she was no longer able to keep up and accounts became delinquent. After she and her husband closed the business, he was unemployed for nine months and Applicant continued to be the primary support for her family.

Applicant did not ignore her creditors. She notified her lender, and started making partial mortgage payments. The lender eventually initiated foreclosure proceedings. Applicant reluctantly filed a chapter 7 bankruptcy petition. It was discharged in 2014, and Applicant is no longer liable for the debts. Given her demonstrated maturity, stability, and substantial monthly remainder, I conclude such a situation will not recur.

Overall, the record evidence satisfies the doubts raised about Applicant's suitability for a security clearance. For these reasons, I conclude she has mitigated the security concerns raised by the cited adjudicative guideline.

Formal Findings

Paragraph 1, Guideline F	FOR APPLICANT
Subparagraphs 1.a – 1.f	For Applicant
Subparagraphs 1.g, 1.h	WITHDRAWN
Subparagraphs 1.i – 1.l	For Applicant
Subparagraph 1.m	WITHDRAWN
Subparagraphs 1.n – 1.o	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is granted.

RITA C. O'BRIEN
Administrative Judge