



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



In the matter of:)	
)	
)	ISCR Case No. 12-06952
)	
Applicant for Security Clearance)	

Appearances

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

06/17/2014

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny her eligibility for a security clearance to work in the defense industry. Applicant’s home was foreclosed upon and she has three charged-off or collection debts totaling more than \$65,000. She has paid \$150 on her delinquent accounts. The financial considerations security concerns remain. Clearance is denied.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on February 4, 2014, the DoD issued an SOR detailing financial considerations security concerns. DoD adjudicators could not make the preliminary affirmative finding that it is clearly consistent with the national interest to grant or continue Applicant’s security clearance

¹ 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 (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

due to financial considerations. On February 25, 2014, Applicant answered the SOR and elected to have the matter decided without a hearing. Defense Office of Hearings and Appeals (DOHA) Department Counsel submitted the Government's case in a File of Relevant Material (FORM), dated April 7, 2014. The FORM contained nine attachments. On April 14, 2014, Applicant received a copy of the FORM, along with notice of her opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. Responses to FORMs are due 30 days after receipt of the FORM. Applicant's response was due on May 14, 2014. As of June 9, 2014, no response had been received. On June 9, 2014, I was assigned the case.

Findings of Fact

In Applicant's Answer to the SOR, she admitted filing for bankruptcy protection in September 2007 and denied the debts listed in the SOR, and her admissions are incorporated herein. After a thorough review of the pleadings and exhibits, I make the following findings of fact:

Applicant is a 44-year-old human resource manager who has worked for a defense contractor since May 1992, and seeks to maintain a top-secret security clearance. No information as to her duty performance was submitted. In April 2011, she divorced after being married 19 years. (Item 4) There is no indication when the couple separated. She has one child who is 12.² The record does not show her annual income, but lists a monthly gross salary of approximately \$9,000.³ (Item 5) As of November 2013, her monthly net remainder (gross monthly income less deductions, monthly expenses, and monthly debt payments) was \$4,424. (Item 5)

In June 2006, Applicant and her husband purchased a home and obtained a mortgage (SOR 1.b) of approximately \$450,000. (Item 5, 6, 7, 8) In October 2006, a home equity line of credit (SOR 1.d, \$39,086) was opened with the same lender that held the mortgage. (Item 8) In March 2009, Applicant fell behind on her mortgage payments. She was going through a divorce and was unable to refinance her mortgage. (Item 5) She asserted the monthly mortgage payments had increased to \$3,611 at a time when her monthly net pay was \$4,070. (Item 5) She did not state the amount of the monthly mortgage payments prior to the increase. In August 2010, the house was offered for sale at \$320,000. (Item 5)

In November 2007, Applicant and her ex-husband, then current husband, filed for Chapter 13, Wage Earner's Plan, bankruptcy protection (SOR 1.a). (Item 5) The bankruptcy listed assets of \$615,000, which included real estate assets of \$577,000, and liabilities of \$542,000, including \$525,000 of secured debt. (Item 9) At the time of filing, the household current gross monthly income was \$10,000 and the combined

² Applicant's November 2013 Personal Financial Statement (PFS) does not indicate she is paying or receiving child support. (Item 5)

³ This gross figure appears to be overly high. Base on the provided wage statement (Item 5), Applicant's monthly gross income is approximately \$6,100.

average monthly income after deductions was \$7,500. (Item 9) The plan required \$325 monthly payments. (Item 9)

In March 2009, the bankruptcy was dismissed because the plan was not sufficiently funded.⁴ (Item 9) Before the Chapter 13 plan was dismissed, \$6,000 was paid into the plan of which \$3,000 was paid for expenses of administration. (Item 9)

In April 2012, Applicant was interviewed about her delinquent financial obligations by an investigator from the Office of Personnel Management (OPM) and completed a Personal Subject Interview (PSI). (Item 5) At that time, she indicated some of the debts had been discharged in bankruptcy. However, no debts were discharged in bankruptcy, which she should have known at the time she made her PSI since the bankruptcy was dismissed in 2009.

In Applicant's response to written financial interrogatories, dated November 20, 2013, she included a copy of an IRS form 1099-A, Acquisition or Abandonment of Secured Property. A 1099-A form is typically generated when a home goes to foreclosure. The balance of principal outstanding was \$249,000 and the fair market value (FMV) of the home was \$236,000. No IRS form 1099-C, Cancellation of Indebtedness Income, was included in the FORM material. A lender is required to file a 1099-C if more than \$600 of debt has been cancelled.

In a November 2013 letter (Item 3), the creditor holding the \$20,520 debt (SOR 1.a) chose to charge off the debt. (Item 6, 7) Applicant reached a settlement agreement with the creditor listed in SOR 1.e (\$7,602). The creditor agreed to settle the debt, then \$8,935, for \$4,492 with \$50 monthly payments to be made on the 15th of each month starting on November 15, 2013, and ending on September 15, 2020. (Item 3, 6, 7, 8) Applicant submitted documents showing \$50 payments were made on November 15, 2014, January 3, 2014, and February 10, 2014. (Item 3)

Applicant submitted a November 2013 letter from a creditor (Item 3) indicating that the referenced account was closed and had a zero balance. Her credit report lists this account as an automobile loan opened in November 2006, which was in collection and had been charged off. (Item 6, 7) There is no evidence Applicant has received financial counseling, debt counseling, or has had recent contact with her creditors on her delinquent accounts other than the November 2013 offer of settlement previously discussed.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief

⁴ In Chapter 13 plans, a motion to dismiss can be filed when insufficient funds have been paid to the Trustee to pay all the creditors that must be paid pursuant to the terms of the confirmed plan and the Trustee's fees for administering the case.

introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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 interests of 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

Adjudicative Guideline (AG) ¶18 articulates the security concerns relating to financial problems:

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 overextended is at risk of having to engage in illegal acts to generate funds.

An individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behavior in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage her finances to meet her financial obligations.

Applicant's history of delinquent debt is documented in her credit reports, her PSI, and her SOR response. In September 2007, she sought bankruptcy protection. Her home was foreclosed upon and she has three charged-off or collection debts totaling more than \$67,000. The evidence supports application of disqualifying conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations."

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20 are potentially applicable:

(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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

In 2007, Applicant and her husband entered into a Chapter 13 bankruptcy plan. Even though, at the time of filing, the household's gross monthly income was \$10,000 and the combined average monthly income after deductions was \$7,500, they failed to make the required \$325 monthly payments. The plan was dismissed in 2009. All obligations listed in the bankruptcy remain valid and enforceable following a dismissed bankruptcy.

If a Chapter 13 plan is dismissed, creditors may immediately initiate or continue with state court litigation pursuant to applicable state law to foreclose on the petitioner's property or garnish their income. If a bankruptcy case is dismissed, the legal affect is that the bankruptcy is deemed void. If a Chapter 13 plan is completed successfully, the petitioner will earn a discharge. Discharge means that all debt listed in the Chapter 13 plan is satisfied; and therefore, creditors may not pursue additional collection actions pursuant to applicable state law.

At the time Applicant's home went to foreclosure, the balance on the mortgage was \$249,000 and the FMV of the home was \$236,000. She submitted a copy of an IRS form 1099-A, asserting this establishes the debt was cancelled. She submitted no IRS form 1099-C, Cancellation of Indebtedness Income. She failed to provide sufficient documentation to establish the debt has been cancelled.

The debts listed in SOR 1.b (\$20,520) and SOR 1.e (\$7,602) have been charged off. Applicant has a mistaken believe that this means she no longer owes the debt. The term charged off refers to removing a delinquent account from the creditor's balance sheet. The original obligation was an asset to the creditor. A debt is charged off when the debt becomes severely delinquent⁵ and can no longer be listed as an asset.

The accounting move by the creditor to charge off the balance due on the account in no way affects Applicant's responsibility to pay what is owed. Even though a debt is charged off, the debt is still legally valid and is owed until it is paid or becomes unenforceable through bankruptcy, application of the statute of limitation, or application of some other legal bar to recovery. The creditor has the right to legally collect the full amount for the time periods permitted by the statutes of limitations. Additionally, in November 2013, she entered into a repayment agreement with the creditor listed in SOR 1.e. She was required to pay \$50 monthly until September 2020. She showed three payments, only one of which complied with payments to be made on the 15th of

⁵ Federal regulations require creditors to charge off installment loans after 120 days of delinquency, while revolving-credit accounts must be charged off after 180 days. If no payment has been made in that amount of time, the accounting rule requires, because it is unlikely it will be paid in the near future, the obligation cannot be carried on the books as a current asset.

each month as required in the repayment plan. Applicant has provided no documentation that the equity line of debt listed in SOR 1.d has been paid.

Applicant has not presented sufficient evidence to warrant the application of any of the financial considerations mitigating conditions. Because she has multiple delinquent debts and her financial problems are continuing in nature, she receives minimal application of the mitigating condition listed in AG ¶ 20(a). Applicant's handling of her finances, under the circumstances, casts doubt on her current reliability, trustworthiness, or good judgment.

Applicant receives only limited application of the mitigating condition listed in AG ¶ 20(b). While Applicant's divorce may have contributed to her difficulty, it does not entirely explain the delinquent accounts or her sporadic efforts to resolve them. She was divorced approximately three years ago, in 2011 and but the bankruptcy was filed more than six years ago, in 2007.

Even though Applicant's current monthly net income is more than \$4,400 and she has known of the Government's concern about her delinquent debts since her April 2012 PSI, she has documented payment of only \$150 on her debts. There is little documentary evidence establishing how Applicant was substantially affected by the divorce other than her statement that she was unable to pay her debts due to the divorce. There was no loss of employment. Applicant has been employed by the same employer for the past 22 years. She failed to resolve her debts and failed to reduce her delinquencies.

The mitigating condition listed in AG ¶ 20(c) does not apply because there is no evidence of financial counseling, nor is there any indication that the delinquent debts listed in the SOR are being addressed. The mitigating condition listed in AG ¶ 20(d) does not apply because three \$50 payments is insufficient to establish a good-faith repayment plan. Applicant has made minimal efforts to address the remaining delinquent SOR accounts. The mitigating condition listed in AG ¶ 20(e) does not apply because Applicant has failed to provide documented proof to substantiate the basis of the four disputed accounts.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

Because Applicant chose to have this matter handled administratively, I am unable to evaluate her demeanor, appearance, or credibility. In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, however, she failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding her circumstances, articulate her position, and mitigate the financial security concerns. She failed to offer evidence of financial counseling or provide documentation regarding her past efforts to address her delinquent debts. By failing to provide such information, and in relying on only a scant paragraph of explanation, financial considerations security concerns remain.

Applicant has held a security clearance without incident. Applicant has known of the Government's concern over her delinquent accounts since April 2012. In the two years since her PSI, she has documented \$150 in payments. The Government does not have to prove that an applicant poses a clear and present danger to national security, or that an applicant poses an imminent threat of engaging in criminal acts. Instead, it is sufficient to show that an applicant has a history of unresolved financial difficulties that may make her more vulnerable to financial pressures.

I must reasonably consider the entirety of Applicant's financial situation and her actions. She is not required to make payment on all outstanding debts simultaneously. Rather, a reasonable plan may provide for payment on such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR. She has made little payment on her delinquent debts. Her failure to repay her creditors, at least in reasonable amounts, or to arrange payment plans, reflects traits which raise concerns about her fitness to hold a security clearance.

The issue is not simply whether all Applicant's debts have been paid – they have not – it is whether her financial circumstances raise concerns about her fitness to hold a security clearance. (See AG ¶ 2(a)(1).) Overall, the record evidence leaves me with substantial doubt as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from her financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by Section E 3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Financial Considerations: AGAINST APPLICANT

Subparagraphs 1.a – 1.e: Against 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 a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge