



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



In the matter of:)
)
) ISCR Case No. 12-10540
)
)
Applicant for Security Clearance)

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel
For Applicant: Michael Hinton, Personal Representative

03/25/2016

Decision

MASON Paul J., Administrative Judge:

Though Applicant has provided documented evidence of resolving only one of the listed six debts, she also satisfied two unlisted debts and made credible efforts to resolve the remaining debts. Applicant has removed the security concerns related to the guideline for financial considerations. Eligibility for access to classified information is granted.

Statement of the Case

Applicant completed and signed an Electronic Questionnaire for Investigations Processing (e-QIP) on May 15, 2012. She was interviewed by an investigator from the Office of Personnel Management (OPM) on July 25, 2012. On November 21, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline (Guideline F). The action was taken

pursuant to 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 Department of Defense on September 1, 2006.

Applicant submitted a notarized answer to the SOR on December 15, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 30, 2015, for a hearing on October 23, 2015. The hearing was held as scheduled. Six Government exhibits (GE 1-6) were admitted in evidence without objection. Applicant and her personal representative testified. Applicant's three hearing exhibits (AE A-C) and one post-hearing exhibit (AE-D), that Department Counsel forwarded to me on November 2, 2015, were entered into evidence without objection. Department Counsel's memorandum identifying the post-hearing exhibits is marked as Hearing Exhibit (HE) 1 and admitted into evidence. The transcript (Tr.) was received by DOHA on November 2, 2015, and the record closed on the same day.

Findings of Fact

The SOR alleges a bankruptcy in 2001 and six delinquent debts totaling about \$33,000. The debts include three medical collection accounts, a cellular phone account, a mortgage account, and a landlord-tenant account. The accounts became delinquent between May 2009 and April 2012. Applicant admitted her bankruptcy. She stated that the medical accounts at SOR 1.b and 1.d are no longer listed in her credit report. She was unable to obtain information about the medical account at SOR 1.c. The cellular phone company could not locate a delinquent bill (SOR 1.e). Though Applicant admitted the SOR 1.f and 1.g accounts, they no longer appear in her credit report.

Applicant is 59 years old and single with a 41-year-old daughter. She received an associate's degree in March 2009, and has three years of college seeking a bachelor's degree in criminal justice. According to her program manager, she has been employed as a travel management analyst since February 2014. She held a similar position from May 2006 until her current hire. From February 2000 to May 2006, she was employed as a junior analyst. Applicant has been continuously employed since February 2000. She has held a security clearance since at least 2000. (Tr. 28-29)

Applicant filed a Chapter 7 bankruptcy in March 2001. The bankruptcy was discharged in July 2001. (SOR 1.a) When questioned why she filed, Applicant gave the same explanation as she had in her answer to the SOR which was that she became overextended. She was spending more than she was earning and did not understand finances. She did not seek financial counseling after her bankruptcy discharge. However,

she decided to save enough money before paying for merchandise that she wanted, rather than paying with credit cards. She does not want to put herself in a position where she has to file bankruptcy.

Regarding the past-due medical accounts identified at SOR 1.b and 1.c, Applicant indicated in her interrogatory responses in June 2014 that she would investigate the accounts. When she called the SOR 1.b and 1.c creditors, she was informed the accounts had been sold to collection agencies. She was unable to contact the collection agencies. Concerning the SOR 1.d medical account, Applicant explained that she had a car accident. She mistakenly believed her insurance company would cover the debt. She did not mention any efforts to contact the insurance company. (Tr. 40-41)

In her response to interrogatories in June 2014, Applicant indicated she would set up a payment plan with the SOR 1.e cell phone creditor. She noted that she has had an account with the SOR 1.e creditor for seven years. She called the creditor and identified the account by the "484" posting in the 2012 credit report. (GE 4 at 16) The creditor informed her that she had no delinquent bill. (Tr. 43, 48)

Applicant explained that the SOR 1.f account relates to a condominium that was foreclosed in May 2009. Following an investigation (that may have related to the mortgage company's predatory lending practices) by an agency of the Government, a settlement was reached with Applicant resulting in a payoff on the balance of her mortgage (SOR 1.f) in July 2015. (GE 2 at 2; GE 3; AE A; Tr. 44)

Applicant explained that the SOR 1.g account resulted from a disagreement with a previous landlord. She believed she had a certain amount of time to let the landlord know that she was vacating her apartment. She testified that she had disputed the amount, but provided no documentation substantiating her dispute. (GE 3; GE 4 at 7; Tr. 45)

Applicant testified that she has never attempted to ignore her bills and always tries to pay them on time. Her methodology for paying the bills is either to pay them via the internet or through her bank. She believes her credit rating is good. Except for the SOR 1.f creditor, she has never received any bills from the listed creditors or collection agencies.¹ When the Government informed Applicant in May 2014 of two delinquent credit card debts (not listed in the SOR), she satisfied the debts in June 2014. She checks her credit report on a monthly basis. (GE 2; AE C; Tr. 46-48)

¹ One reason could be that she has moved eight times since 2001. (GE 5 at 1)

Applicant's personal financial statement (PFS) shows that her net monthly income is \$5,116, and her total monthly expenses are \$3,986, leaving a net monthly remainder of \$1,127. (GE 3)

Character Evidence

Prior to her hire in February 2014, Applicant's program manager interviewed her to work in the travel management support and financial section of the office. The program manager has always received positive reviews of Applicant because of her dependable work ethic and team player attitude. Applicant has committed no security violations since she was hired into the office. Even though the program manager knows little about Applicant's financial issues, he recommends her for a security clearance. (Tr. 26-36)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the potentially disqualifying and mitigating conditions of the AG. These conditions should be evaluated in the context of nine general factors known as the whole-person concept to bring together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision regarding security clearance eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to the potential, rather than actual, risk of compromise of classified information.

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. . . ." An applicant has the ultimate burden of persuasion of establishing that it is clearly consistent with the national interest to grant her a security clearance.

Analysis

Financial Considerations

The security concern for financial considerations is set forth in AG ¶ 18:

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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The applicable disqualifying conditions under AG ¶ 19 are:

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

On November 21, 2014, the date of the SOR, Applicant had six delinquent accounts totaling approximately \$33,000. The accounts became delinquent between May 2009 and April 2012. AG ¶¶ 19(a) and 19(c) are applicable.

The potentially pertinent mitigating conditions under AG ¶ 20 are:

- (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 reliability, trustworthiness, and good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control 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.

Applicant's failure to responsibly manage her finances led to her bankruptcy in 2001. Though she did not seek financial counseling after her bankruptcy discharge, she made an important decision regarding her financial practices. She decided not to spend more money

than she earned. To accomplish that objective, she decided to wait until she had enough money to pay for merchandise, rather than paying immediately with credit cards. She incurred no subsequent financial problems until May 2009 when her condominium went into foreclosure, a problem that may have been the result of predatory practices of the lender. (SOR 1.f) When Applicant was asked by the Government in May 2014 about action she had taken to address eight delinquent debts (two unlisted debts and six debts listed in the SOR), she indicated that she would investigate and seek to resolve the delinquencies. In early June 2014, six months before the issuance of the SOR, she resolved the two unlisted credit card debts. Since the SOR 1.f mortgage debt was satisfied in July 2015, she only owes about \$2,051 to five creditors. AG ¶ 20(a) applies in part based on the substantive change Applicant made in her financial practices. The second prong of AG ¶ 20(b) applies.

Though Applicant has never had financial counseling, the 2001 bankruptcy was a compelling reason for her to alter her profligate financial practices. She does not purchase anything until she has the money. She checks her credit reports monthly. I am confident that she will file a formal dispute online with one of the three credit agencies regarding the remaining accounts. Since she admitted the SOR 1.g account, she still owes the debt. While the debt may have been removed from her credit report because it is no longer enforceable, paying the debt demonstrates good judgment and financial responsibility. She should contact the management company and make arrangements to pay the account. AG ¶¶ 20(c) and 20(d) apply in part. AG ¶ 20(e) does not apply due to the lack of documentation to support Applicant's claim that she had a time period to vacate the premises.

Whole-Person Concept

I have examined the evidence under the disqualifying and mitigating conditions of the financial guideline. I have also weighed the circumstances within the context of nine variables known as the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

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

Applicant is 59 years old. Since 2006, she has been working in the travel offices of two defense contractors. The program manager of her current employer has consistently received positive comments of Applicant's dependable performance and team player attitude. He recommends her for a security clearance. Given the exemplary character evidence and her satisfaction of the SOR 1.e debt in July 2015, I am confident Applicant will take the recommended steps to resolve the remaining debts. She is advised to obtain financial counseling that sharpens her financial practices to ensure the financial problems do not happen again. Considering the evidence in the context of the whole person factors, Applicant has successfully overcome the security concerns arising from the financial considerations guideline.

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-g:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Paul J. Mason
Administrative Judge