



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



In the matter of:)	
)	
)	ISCR Case No. 14-01031
)	
Applicant for Security Clearance)	

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

08/27/2015

Decision

CURRY, Marc E., Administrative Judge:

Although Applicant has made progress in reducing her delinquent debt, it is too soon to conclude that she has mitigated the financial considerations security concerns, considering the amount of delinquent debt that remains outstanding. Clearance is denied.

Statement of the Case

On April 30, 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.

Applicant answered the SOR on June 4, 2014, admitting all the allegations and requesting a hearing. The case was assigned to me on March 4, 2015. On April 14,

2015, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing scheduling the case for May 18, 2015.

At the hearing, I received five Government exhibits marked as Government Exhibits (GE) 1 through 5, and I received 29 Applicant exhibits that I marked as Applicant Exhibits (AE) A through CC. Also, I considered the testimony of Applicant. DOHA received the transcript (Tr.) on May 27, 2015.

Findings of Fact

Applicant is a 46-year-old woman with an adult child. She was married from 2005 through 2010. The marriage ended in divorce. (GE 1 at 26)

Applicant graduated from college in 2001 with a bachelor's degree in business management. Since 2012, she has worked for a defense contractor as a facility security officer (FSO). She has held a security clearance for 24 years. (Tr. 31)

Since 2008, Applicant has incurred \$215,000 of delinquent debt, as listed in the SOR. Approximately \$53,000 constitutes delinquent mortgage payments (subparagraph 1.g) and \$98,000 constitutes delinquent credit card accounts (subparagraphs 1.a-1.f, 1.h, and 1.i). The remainder constitutes delinquent federal income taxes for tax years 2010 and 2011, as alleged in subparagraphs 1.j and 1.k, and for tax years 2012 and 2013, as Applicant testified. (Tr. 41-43)

Although Applicant had no delinquencies before 2008, her financial situation was vulnerable, in retrospect. Specifically, she and her then husband were entrepreneurs who financially overextended themselves with several business ventures. (Tr. 31, 35) Because her husband had bad credit, they opened all of the credit card accounts in her name. (Tr. 24)

In 2008, Applicant's husband suffered a work-related injury that rendered him unable to work for three years. (Answer at 2) Subsequently, Applicant became increasingly dependent on credit cards to make ends meet. (Answer at 2) In 2009, after Applicant's husband recovered from the workplace accident, he received a disability settlement from his employer. (Answer at 2; Tr. 33) Rather than use the settlement proceeds to satisfy their debts, he chose to keep the money and separate from Applicant. (Tr. 32; Answer at 2)

Shortly after Applicant and her husband separated, her live-in mother's health began deteriorating, leaving her unable to care for herself. (Tr. 32) Applicant had to hire a caretaker to watch her mother while she was at work. (Tr. 32)

When Applicant began struggling financially, she withdrew money from her 401(k) retirement account and obtained a part-time job to make ends meet. However, she encountered new financial problems, as her part-time employer's failure to withhold

enough of her income, together with 401(k) early withdrawal penalties led to income tax bills that she could not afford to pay.

In January 2010, Applicant retained a credit counselor. (Answer, attachment 5) She met with the counselor three times that year, and once annually from 2011 through 2013. (Answer, attachment 5) With the counselor's help, she began negotiating settlements with her creditors. Since then, she has satisfied the debts listed in subparagraphs 1.a, 1.d, 1.f, and 1.i. (See AEs B-D; Answer, attachment 3) These debts originally totalled \$27,150.

Applicant entered an agreement to pay subparagraph 1.b, totalling \$17,042. The first payment was scheduled for one month after the hearing date. Applicant has been paying subparagraph 1.c, totalling \$13,293, with \$400 monthly payments since August 2014. (AE L at 2; Tr. 59) Subparagraph 1.e, totals \$34,340. Per an agreement reached in September 2014, Applicant was paying \$340 monthly. (AE L at 4) Recently, the debt was assigned to another creditor. (Tr. 60) Applicant renegotiated an agreement with the assignee. Under the new agreement, she is to make \$300 monthly payments, that will begin in July 2015, after the close of the record. (Tr. 60)

Subparagraph 1.g is Applicant's mortgage delinquency. She purchased the home from her mother for \$200,000 in 2005. (Tr. 50) Shortly thereafter, Applicant refinanced the mortgage using approximately \$200,000 of the equity to remodel the home. (Tr. 52)

The current mortgage balance is \$400,000. (Tr. 52) In April 2014, applicant consulted an attorney to help her obtain a loan modification. (Answer, attachment 1) With the help of the attorney, Applicant successfully obtained the loan modification. Her current payments are \$2,500 monthly. (Tr. 53) As of March 2015, the account was current. (AE Y)

Subparagraph 1.h totals approximately \$3,200. Applicant contacted the creditor, and was referred to its retail recovery department. (Tr. 28) She contacted this department and they had no record of her delinquency. (Tr. 29)

The SOR alleges that Applicant's tax delinquency stems from tax years 2010 and 2011, and totals \$27,900. In 2011, Applicant began making \$500 payments monthly. (Tr. 45) These payments were sporadic, as she became sidetracked with other financial problems. By 2013, she had made minimal progress. (Tr. 46)

In August 2014, Applicant consulted a company that specializes in helping people negotiate tax settlements. (AE I) With the help of the tax resolution company, Applicant negotiated a payment plan. Under the plan, she is to pay the Internal Revenue Service \$1,700 monthly. The new payments were scheduled to begin in June 2015, after the close of the record. (Tr. 29) Her current balance, including a 2013 delinquency, is between \$70,000 and \$80,000. (Tr. 42)

Between 2007 and 2014, Applicant frequented casinos. She would take between four and five hundred dollars and go “every couple of months.” (Tr. 35) Casino records indicate that she spent between \$10,000 and \$17,000 annually between 2007 and 2012. (AE 4) Applicant does not dispute these sums. Rather she contends that it was not her money that was being spent. Specifically, Applicant purchased three or four comp cards from various casinos. (Tr. 35) On each trip, she would travel with four friends. (Tr. 62) They would transfer their money to Applicant’s comp cards and then use the cards to gamble. As they won or lost, the transactions would be reflected on the cards. (Tr. 35-38; AEs T, CC) This enabled Applicant to avail herself of casino gaming perks such as free spa treatments, complementary hotel rooms, free meals, and free shows. (Tr. 35) According to one of Applicant’s friends, they used Applicant’s comp cards because “she seemed to be the one that was always available to go,” and they were told by a casino employee that “the more you put on your card, the better the rewards.” (Tr. 40) Applicant’s most recent casino getaway was six months ago. (Tr. 40)

Applicant earns approximately \$6,000 per month after taxes. She owns a car and financed its purchase with a loan, which requires the payment of \$600 per month toward its satisfaction. (Tr. 66) Applicant has student loan debt, currently in forbearance, totalling \$8,000. Payments are scheduled to resume in the fall of 2015.

Applicant continues to pay a home health care aid to support her mother. Payments total \$1,200 per month. (Tr. 32)

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) Since 2008, Applicant has incurred more than \$200,000 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:

- (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.

Although the evidence does not fully establish that Applicant’s gambling caused her financial problems, her multiple casino trips per year, spending up to \$500 per trip while simultaneously incurring significant delinquent debt, epitomizes irresponsible money management and bad judgment. Consequently, although circumstances beyond Applicant’s control contributed to her financial problems, and she acted responsibly by consulting debt and tax counselors, AG ¶ 20(b) only applies partially.

Through the help of Applicant’s counselors, she has satisfied subparagraphs 1.a, 1.d, 1.f, and 1.i. Also, after obtaining a mortgage modification, her home loan is no longer delinquent, as alleged in subparagraph 1.g. I resolve these subparagraphs in her favor.

The satisfaction of the aforementioned delinquencies, together with the establishment of payment plans for subparagraphs 1.b, 1.c, 1.e, 1.j, and 1.h, triggers the application of AG ¶ 20(d).

Although Applicant has made progress in reducing her delinquencies, more than \$120,000 remains outstanding. Moreover, if she begins making all of the debt payments by the fall of 2015, as promised, her expenses will substantially exceed her monthly

income. Under the circumstances, AG ¶ 20(c) is only applicable insofar as she has been working with credit and tax counselors.

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.

Applicant has held a security clearance for nearly 25 years. Circumstances beyond her control contributed to her financial problems. Conversely, the amount of debt that she incurred was extremely high. Moreover, her decision to frequent casinos and gamble over part of the same period that she was ostensibly unable to pay her debts represents a serious lapse in judgment. Ultimately, given the recency of her last gambling trip, and the amount of debt that still remains outstanding, it is too soon to conclude Applicant has mitigated the security concerns.

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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraphs 1.f-1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant

Subparagraphs 1.j-1.l:

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 eligibility for a security clearance. Eligibility for access to classified information is denied.

MARC E. CURRY
Administrative Judge