



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-01158
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro Se*

September 25, 2008

Decision

WESLEY, Roger C., Administrative Judge:

History of Case

On March 24, 2008, the Defense Office of Hearings and Appeals (DOHA), pursuant to Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, and Department of Defense (DoD) Regulation 5200.2-R, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on April 4, 2008, and elected to have her case decided on the basis of the written record. Applicant received the File of Relevant Material (FORM) on May 15, 2008. Applicant did not submit any information in response to the FORM. The case was assigned to me July 21, 2008.

Procedural Issues

Department Counsel requests that official notice be taken of the Equifax Training Brochure (ex. 15) included in the FORM. There being no objections from Applicant, and good cause being shown, Department Counsel's request is granted.

Summary of Pleadings

Under Guideline F, Applicant is alleged to have (a) petitioned for Chapter 13 bankruptcy relief in September 2006 (dismissed in December 2006), (b) petitioned for Chapter 13 bankruptcy relief in November 2006 (dismissed in January 2007, ©), (c) petitioned for Chapter 13 relief in February 2007 (dismissed in April 2007), and (d) incurred five delinquent debts exceeding \$120,000.00. These allegations are framed by subparagraphs 1.b through 1.i (subparagraph 1.a is missing). For her answer to the SOR, Applicant denied each of the allegations without explanation.

Findings of Fact

Applicant is a 46-year-old associate for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are adopted as relevant and material findings. Additional findings follow.

Applicant married her first husband (H1) in September 1992 (see ex. 6). She and H1 filed for divorce in December 1996 (finalized in September 1998). Applicant and H1 continued to cohabit after they determined to file for divorce. They needed their joint income to cover their mortgage and continued to live in their home while they endeavored to sell it (see ex. 6). Their home was appraised at the time at \$40,000.00 below the balance owed on their mortgage (about \$101,000.00). Because their lender would not approve a short sale, they could not avert a default on their mortgage. Their mortgage, in turn, was foreclosed in April 1997. At public auction in July 1997, their property was sold for more than the loan value of the property (leaving no potential deficiency balance). After the foreclosure, Applicant and H1 moved into a townhouse to be closer to their respective jobs (ex. 6). Applicant vacated the townhouse in October 1997 (see ex. 6).

Applicant's divorce decree with H1 provided for each spouse to take full responsibility for their respective car payments (see ex. 6). When H1's car was later repossessed, Applicant agreed to repay one-half of the deficiency balance (estimated to be \$6,950.00) and satisfied her share of the debt. H1 never paid his share of the remaining debt, according to Applicant, and the lender, in turn, looked to Applicant for the deficiency (see ex. 6).

Applicant remarried in February 2004 (ex. 4). In October 2007. Applicant and her husband (H2) have no children from this marriage.

Experiencing unemployment and associated income shortages, Appellant petitioned for Chapter 13 relief on four separate occasions between April 2006 and February 2007 (see exs. 11 and 13). Before filing her first petition, Applicant sought and obtained financial counseling (see ex. 8). Appellant's bankruptcy schedules report \$27,835.00 in personal property and \$340,397.00 in real property. Reported liabilities include \$37,653.00 in secured claims and \$5,952.00 in unsecured claims (see ex. 7). Each of her Chapter 13 petitions was dismissed.

Applicant's credit reports lists each of the dismissed Chapter 13 bankruptcy filings and delinquent debts covered in the SOR (see exs. 11, 12 and 13). Her credit reports include a fourth Chapter 13 petition (filed in April 2006 and dismissed in August 2006) that was not listed in the SOR.

Applicant provided no documentation in her behalf to support any further progress in the resolution of her debts. She provided no endorsements or performance evaluations.

Policies

The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

Financial Considerations

The Concern: 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. Adjudication Guidelines (AG) ¶ 18.

Burden of Proof

By virtue of the precepts framed by the revised Adjudicative Guidelines, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

Analysis

Following their divorce in 1996, Applicant and her husband encountered financial setbacks that resulted in the foreclosure of their home, repossession of her husband's vehicle, defaults in their other debts, and a series of unsuccessful Chapter 13 petitions (four in all between April 2006 and February 2007). Applicant has not provided any documentation of her repayment efforts. Absent documented discharge or payment initiatives with her listed creditors, these debts raise security significant concerns.

Applicant's finances

Security concerns are raised under the financial considerations guideline of the revised Adjudicative Guidelines where the individual appellant is so financially overextended as to indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, which can raise questions about the individual's reliability, trustworthiness and ability to protect classified information, and place the person at risk of having to engage in illegal acts to generate funds. Applicant's accumulation of delinquent debts and her inability to successfully address them warrants the application of two of the disqualifying conditions (DC) of the Guidelines for financial considerations: DC ¶ 19(a) "inability or unwillingness to satisfy debts" and DC ¶ 19(c) "a history of not

meeting financial obligations.” These disqualifying conditions cover the core concern of AG ¶ 18: poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, which, both individually and collectively, can raise questions about an individual’s reliability, trustworthiness and ability to safely occupy a position of trust.

Applicant’s accumulated debts are attributable in part to set backs associated with her divorce, foreclosure of her home, unemployment and other considerations not explained. Based on her very limited accounts of her financial set backs, partial application of MC ¶ 20(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,” is warranted here.

At this time, none of Applicant’s covered debts are documented to have been paid, disputed, or settled. They exceed \$120,000.00 in the aggregate and represent a considerable debt load based on her current income sources. While her financial counseling and unsuccessful Chapter 13 efforts represent some positive steps to resolve her financial difficulties, she provides no evidence of any follow-through in addressing her outstanding debts. Her dismissed petitions and still unsatisfied debts preclude the assignment of any significant mitigation weight to her efforts to date.

Without more documented information to demonstrate Applicant is addressing her significant debt accumulation, she cannot mitigate the Government’s financial concerns. Holding a security clearance involves the exercise of important fiducial responsibilities, which include the expectancy of consistent trust and candor. Financial stability in a person cleared for access to classified information is required precisely to inspire trust and confidence in the holder of the clearance. While the principal concern of a clearance holder’s demonstrated financial difficulties is vulnerability to coercion and influence, judgment and trust concerns are important concerns as well.

Use of a whole person assessment that takes into account all of the facts and circumstances surrounding Applicant’s debt repayment efforts is insufficient to enable her to surmount security concerns independent of the express disqualifying conditions covered by AG ¶ 18. Without more exhibited repayment and work-out efforts to demonstrate progress in resolving her debts, it is difficult to draw convincing conclusions about her overall trustworthiness based on factors not covered in the mitigation conditions of the guideline for financial considerations.

In evaluating Guideline F cases, the Appeal Board has stressed the importance of a “meaningful track record” in the management of an applicant’s finances, which certainly includes evidence of actual debt reduction through repayments. See ISCR Case No. 05-01920, at 5 (App. Bd. Mar. 1, 2007). True, an applicant’s good-faith debt repayment does not require that she demonstrate repayment of each and every listed debt. All that is required is that the applicant demonstrate that she developed a plan to resolve her debts and taken significant actions to implement the plan. See ISCR Case

No. 07-16013, at 2 (App. Bd. May 21, 2008); ISCR Case No. 04-09684, at 2 (App. Bd. July 6, 2006).

Applicant fails to meet Appeal Board requirements for repayment progress with her listed creditors. Absent some tangible form of payments and/or repayment plans on her listed debts, safe predictive judgments about her finances cannot be made at this time.

Taking into account all of the facts and circumstances surrounding Applicant's unsatisfied debts and overall presentation of payment histories, Applicant does not mitigate security concerns related to her still outstanding debts. Unfavorable conclusions warrant with respect to the allegations covered by sub-paragraphs 1.b through 1.i.

In reaching my decision, I have considered the evidence as a whole, including each of the E2.2 factors enumerated in the Adjudicative Guidelines of the Directive.

Formal Findings

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE F: (FINANCIAL CONSIDERATIONS): AGAINST APPLICANT

Sub-paras. 1.b through 1.i: **AGAINST APPLICANT**

Conclusions

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

Roger C. Wesley
Administrative Judge

