



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-02031
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Tovah A. Minster, Esquire, Department Counsel
For Applicant: *Pro se*

October 27, 2010

Decision

CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the security concern raised under Guideline F, financial considerations. Clearance is denied.

On February 22, 2010, the Defense Office of Hearings and Appeals (DOHA) 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 revised adjudicative guidelines (AG).

Applicant answered the SOR on March 12, 2010, admitted all of the allegations and requested an administrative determination. On April 21, 2010, Department Counsel prepared a File of Relevant Material (FORM). Applicant received it on April 27, 2009, and was instructed to file any objections or additional information within 30 days of receipt. She did not reply. On July 7, 2010, the case was assigned to me.

Findings of Fact

Applicant is a 60-year-old single woman with one adult child. She is divorced. She has a high school diploma. For the past two years, she has worked as a travel assistant/voucher examiner.

Applicant has a history of troubled finances. In 1997, she filed for Chapter 7 bankruptcy protection. (Item 4 at 1-10) She listed \$117,000 of secured debt, which constituted the primary and secondary mortgage on her home. In 1999, the home was foreclosed, and the following year, the court dismissed the bankruptcy without granting Applicant a discharge of her debts. (Item 4 at 1)

Between 1999 and 2008, Applicant accrued approximately \$118,000 of delinquent debt, including \$14,200 of debt that is not listed on the SOR, a \$325 medical bill (SOR subparagraph 1.l), \$66,000 of unpaid federal income taxes from tax years 2000 to 2003 (SOR subparagraphs 1.c -1.f), \$42,000 of income tax delinquencies owed to two state taxing authorities (SOR subparagraphs 1.b, 1.g - 1.i, 1.k), and a judgment for unpaid business property taxes totalling \$2,784 owed to a municipal taxing authority (SOR subparagraph 1.j)

Applicant alluded to a health crisis in 2004, but provided no details. The record does indicate, however, that Applicant was unemployed between January 1997 and January 1999 and November 2005 and November 2006. (Item 5 at 14)

Over the past two years, Applicant has been attempting to satisfy her debts. Specifically, she satisfied the debt listed in SOR subparagraph 1.l. (Item 4 at 32) As for the \$14,200 of unlisted debts, approximately 80 percent constitutes a delinquent car note. (Item 9 at 12) In September 2008, she negotiated a reduction in the payoff amount to \$5,952, and has been making monthly payments since then. It is no longer in a delinquent status. (Item 9 at 12-14) She satisfied the remaining \$3,000 of unlisted debts. (*Id.*)

In August 2009, the United States Internal Revenue Service garnished Applicant's wages. Through the garnishment, Applicant has been paying \$778 monthly toward her federal income tax delinquency. (Item 12 at 18-21) As of February 2010, she had paid \$5,064 toward the delinquency.

Applicant owes approximately \$38,000 of her state income tax delinquency to State 1 and the remainder to State 2. The State 1 income tax delinquency is for tax years 1999 through 2004 and 2007. (Item 4 at 7) Applicant provided documentation dated December 9, 2008 from the State 1 taxing authority detailing a payment plan agreement under which Applicant was to pay \$1,589 monthly beginning in February 2009. (Item 7 at 5) She provided no proof that she initiated the proposed plan. She did, however, provide proof of two payments, totalling \$270, that she made in May 2009. (Item 7 at 7)

The \$3,755 income tax delinquency Applicant owes to State 2 is for tax years 2005 and 2006. (Item 4 at 11-15) In May 2009, Applicant crafted a payment plan under which she will pay State 2 \$100 monthly. Consistent with the plan, she made the first payment that month. (*Id.*) She provided no evidence of any additional payments.

As for the judgment that Applicant owes to a municipality, a representative contacted her In March 2010, offering to reduce the delinquency to \$1,500, provided Applicant pay \$200 immediately and the balance within 60 days of receipt of the offer. (Item 4 at 43) Applicant made the initial payment. (*Id.*) She provided no evidence of any additional payments.

As of May 2007, Applicant earns \$51,607 annually, and her after-expense income totalled \$2,643 monthly. (Item 9 at 4) Applicant provided this after-expense income estimate to a security clearance investigator before she had implemented any of her income tax payment plans.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, 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 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). Moreover, "an individual who is financially overextended is at risk of having

to engage in illegal acts to generate funds” (*Id.*). Applicant’s financial delinquencies trigger the application of AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” and 19(c), “a history of not meeting financial obligations.”

Two lengthy periods of unemployment and a health crisis contributed to Applicant’s financial troubles. Given the nature of the debts that she allowed to become delinquent (federal, state, and local taxes) and the length of time that they remained in delinquent status, I cannot conclude that she acted responsibly under the circumstances. AG ¶ 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” does not apply.

In 2008, Applicant began contacting creditors whom she owed approximately \$14,200 of debt that is not listed in the SOR. Since then, she has been paying them steadily. Currently, these unlisted debts are either satisfied or no longer in delinquent status.

Since 2009, Applicant has reduced her federal income tax deficiency by approximately \$5,000 through monthly payments. She satisfied the delinquency listed in SOR subparagraph 1.I, negotiated a payment plan with State 1, made payments toward the debt owed to State 2, and made a payment to the municipality toward the satisfaction of the delinquent business property tax.

Applicant’s Chapter 7 bankruptcy filing predated her tax delinquencies. Her federal income tax payments occurred through a garnishment. Also, she failed to comply with the State 1 payment plan, and her progress in satisfying the remaining delinquencies has been marginal. I conclude that AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” applies, but not AG ¶ 20(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.”

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 failed to provide enough detail regarding the accrual of her delinquencies given their nature and seriousness. Moreover, although she has made some progress in satisfying them, it is minimal in light of the amount due, and their recurrent nature. Upon considering this case in the context of the whole-person concept, I conclude Applicant has not mitigated the security concern about her finances.

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:	AGAINST APPLICANT
Subparagraphs 1.a - 1.k:	Against Applicant
Subparagraph 1.l:	For 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