



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-02110
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro se*

January 27, 2010

Decision

CURRY, Marc E., Administrative Judge:

Applicant’s accrual of more than \$30,000 of delinquent debt and her failure to disclose it, as required, on a security clearance application trigger security concerns under the Financial Considerations and Personal Conduct guidelines. She failed to mitigate the concerns. Clearance is denied.

On June 30, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F, Financial Considerations, and E, Personal Conduct. 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) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on March 1, 2009, admitting all of the allegations except SOR subparagraphs 1.g and 1.k. She requested a hearing, and the case was assigned to me on August 31, 2009. On September 4, 2009, a Notice of Hearing was issued scheduling the case for October 15, 2009. The hearing was held as scheduled. I received six government exhibits, identified as Government Exhibits (GE) 1-6, and four Applicant exhibits, identified as Applicant's Exhibits (AE) A-D. Also, I received Applicant's testimony. The transcript was received on October 22, 2009.

Findings of Fact

Applicant is a 29-year-old single woman. A six-year marriage ended in divorce in 2006. She has no children. Applicant served in the U.S. Army from 1998 to 2005. She was honorably discharged (Tr. 21). She has intermittently taken some college courses, and to date, has earned 80 credit hours (Tr. 19). Currently, she is taking a college class in computer information systems.

Since leaving the Army, Applicant has worked for a defense subcontractor in the communications field (Tr. 21). Currently, she is a shift supervisor (Tr. 21). According to a coworker, she is trustworthy and reliable (Tr. 84).

Shortly after Applicant and her husband divorced in 2006, she purchased a house for \$325,000 (Tr. 24; GE 2 at 15). Applicant financed the entire purchase (Tr. 31). Shortly after purchasing the home, Applicant financed the purchase of living room furniture, bedroom furniture, and patio furniture, including a grill (Tr. 24, 26).

Applicant quickly became overwhelmed. Subsequently, her monthly mortgage payments began to fall behind (Tr. 22). Applicant then began sharing the home with a roommate, and charging her rent. For approximately nine months, this helped Applicant offset her expenses. Over time, however, she was unable to sustain any long-term relationships with tenants, and her mortgage payments continued to fall behind (Tr. 27).

By July 2007, Applicant's delinquent mortgage payments exceeded \$9,000 (GE 2 at 15). By June 2008, she had stopped making payments entirely (Tr. 37). In March 2009, the lender foreclosed upon the home (GE 2 at 15). The lender resold the home, and Applicant owes no deficiency balance (*Id.*).

At or about the time Applicant's mortgage payments became delinquent, various other credit accounts became delinquent including a bank loan (SOR subparagraph 1.a), two medical accounts (SOR subparagraphs 1.a and 1.h), five department store accounts (SOR subparagraphs 1.c, 1.e, 1.i, 1.j, and 1.m), a credit card (SOR subparagraph 1.d), and a line of credit (SOR subparagraph 1.f).

Applicant applied for and received the bank loan, listed in SOR subparagraph 1.a, in December 2006 (Tr. 32).¹ She used the money for miscellaneous purchases.

¹SOR subparagraph 1.k is a duplicate of SOR subparagraph 1.a.

Approximately six months later, the debt became delinquent (GE 6 at 2). In June 2007, the creditor sued Applicant. The government's evidence is conflicting as to the disposition of the judgment. Two credit reports that the government submitted corroborated that the creditor filed suit (GE 2 at 15 and GE 5 at 2). However, neither indicate the lawsuit's disposition. GE 6, a record of the judgment from an online search engine, similarly lists the judgment filing without specifying the disposition. Applicant admits that the creditor filed suit for approximately \$1,800 as the government alleged, but contends the parties agreed to settle the matter before the court date. She provided documentation that this account was satisfied for \$363 in October 2009 (AE C). I accept Applicant's explanation, and incorporate it into the factual findings.

SOR subparagraphs 1.b and 1.h are medical bills, collectively totalling approximately \$1,200, that Applicant accrued after she broke her wrist during a 2007 skiing accident (Tr. 23). Unbeknownst to Applicant when she received the treatment, her health insurance did not entirely cover the treatment costs. Currently, she is negotiating a settlement to resolve SOR subparagraph 1.b (Tr. 23). She contends she paid SOR subparagraph 1.h (\$135), but provided no supporting documentation.

Applicant owes the creditor listed in SOR subparagraph 1.c approximately \$1,000. She contends that she is working on resolving it with the help of a credit repair company (Tr. 24, 42). She provided no evidence of any steps taken.

SOR subparagraph 1.d is a credit card Applicant opened while in the military through a military credit union (Tr. 24). The account became delinquent after she left the military, in part, because she failed to notify the creditor of her new address after relocating (Tr. 24). By the end of 2006, the delinquency totalled approximately \$4,300 (GE A). Applicant satisfied this debt largely through the creditor's interception of her 2006 and 2007 tax returns (Tr. 24). In August 2009, Applicant satisfied the remaining balance (\$994.09) through a personal payment (GE A).

The delinquency listed in SOR subparagraph 1.e is an account Applicant opened to purchase a computer in 2007 (GE 2 at 16). Applicant contends she satisfied it, but provided no supporting documentation (Tr. 25).

Applicant opened the line of credit listed in SOR subparagraph 1.f shortly after purchasing her home in 2006 (GE 2 at 16). She owes approximately \$8,900, and has not yet begun to satisfy it (Tr. 25).

Applicant denies accruing the charges to the creditor listed in SOR subparagraph 1.g (Tr. 26). She has not made any formal efforts to either contest it, or have it removed from her credit report (Tr. 51).

SOR subparagraph 1.i is the account Applicant opened to purchase patio furniture, as described earlier. Approximately \$3,500 is outstanding (Tr. 52). Applicant contends that she negotiated a settlement agreement in August 2009, and has been

paying the creditor \$150 per month since then (Tr. 52). She provided no corroborating documentation.

SOR subparagraph 1.j is a credit account Applicant opened with a boutique women's clothing store. By July 2009, she had satisfied the delinquent balance (\$940) (GE B).

As of September 2009, Applicant owed the creditor, listed in SOR subparagraph 1.m, \$2,144 (GE D). She arranged a payment plan, and has been paying \$192 monthly (*Id.*).

In October 2008, Applicant consulted a credit repair company (Tr. 45). On Applicant's behalf, the company contacts creditors and negotiates payment agreements (Tr. 43). Applicant paid the company \$137 monthly for the service until the start-up fee was satisfied (Tr. 43). Although Applicant has paid the start-up fee entirely, she could recall neither the total fee amount, nor the number of months she paid the fee (Tr. 74). None of the fee is applied toward debt repayment. Applicant provided no evidence documenting either her agreement with the company or the payments she allegedly made to the company (Tr. 43, 45).

Applicant maintains a budget (GE 2 at 64). As of June 2009, she had approximately \$400 of monthly after-expense income. Since then, she moved to an apartment with her boyfriend (Tr. 66). Because he pays half the rent, her monthly after-expense income has increased to \$1,400 (Tr. 66).

When completing her security clearance application in October 2008, Applicant answered "no" to Section 27d, requiring her to disclose whether she had any judgments entered against her in the past seven years that were unpaid (GE 1 at 24). Applicant also answered "no" to Section 28a which required her to disclose whether she had been 180 days delinquent on any debt within the seven years before completing the security clearance application. Applicant contends the omissions were unintentional.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised 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, these guidelines 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 as to 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).

When the bank foreclosed Applicant’s mortgage and resold the home, no deficiency remained. Consequently, Applicant no longer has a delinquent account with the bank, as alleged in SOR subparagraph 1.a. I resolve SOR subparagraph 1.a in Applicant’s favor. The remaining delinquencies, however, trigger the application of AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” and 19(c), “a history of not meeting financial obligations.”

Applicant’s financial problems occurred after she financed the purchase of a home and overextended her credit furnishing it. Although she experienced a divorce within the past five years, her accounts did not become delinquent until after the divorce was finalized. 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.

Applicant’s payment of the military credit union account, listed in SOR subparagraph 1.d., the most significant debt that she has satisfied to date, occurred mainly through the interception of her federal tax returns, and consequently has limited probative value. Applicant provided minimal documentation supporting her contention that she has resolved several of her delinquent accounts. Although Applicant consulted a credit repair company that has been identifying creditors and negotiating settlement agreements on her behalf, she provided no documentation of their efforts. I conclude that AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” applies, but that Applicant’s failure to provide adequate corroborating documentation of her efforts makes 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,” inapplicable.

Guideline E, Personal Conduct

Under this guideline, “conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified information” (AG ¶ 15). Applicant’s security clearance application omissions raise the issue of whether AG ¶ 16(a), “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities,” applies.

The government’s evidence established that the creditor listed in SOR subparagraph 1.a filed suit against Applicant for an allegedly delinquent debt. The evidence did not, however, establish whether the court entered a judgment. Notwithstanding whether the court entered a judgment against Applicant, she provided evidence that she paid it. Consequently, Applicant did not falsify Section 27d of the security clearance application.

Both Applicant’s mortgage and the account with the military credit union had clearly been more than six months delinquent when Applicant completed her security clearance application in October 2008. Given the significance of these debts, Applicant’s contention that their omission was unintentional is not credible. This lack of credibility undermines the credibility of her explanations regarding the remainder of the delinquent debts that she omitted. AG ¶ 16(a) applies without mitigation to Applicant’s response to Section 28a of her security clearance application.

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 the 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.

The positive security inference generated by Applicant's efforts at rehabilitating her finances are outweighed by the amount that remains outstanding, and the questionable judgment demonstrated by falsifying her security clearance application. Upon considering this case in the context of the whole person concept, I conclude Applicant has failed to mitigate 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:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b - 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e - 1.j:	Against Applicant
Subparagraphs 1.k - 1.l:	For Applicant
Subparagraph 1.m:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	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