



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-03631
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie Mendez, Esquire, Department Counsel
For Applicant: *Pro se*

December 17, 2009

Decision

CURRY, Marc E., Administrative Judge:

Applicant mitigated the security concern generated by her financial delinquencies. Clearance is granted.

Statement of the Case

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

On July 24, 2009, DOHA received Applicant's Answer. She admitted all of the allegations except SOR subparagraphs 1.c. and 1.e. The case was assigned to me on

August 2, 2009. On August 12, 2009, Department Counsel amended the SOR striking subparagraphs 1.a and 1.g. On September 4, 2009, a notice of hearing was issued scheduling the case for September 30, 2009. The hearing was conducted as scheduled. I received four government exhibits and four Applicant exhibits. I left the record open at the close of the hearing, at Applicant's request, to allow her to submit additional exhibits. Within the time allotted, she submitted seven additional documents that I incorporated into the record. DOHA received the transcript on October 7, 2009.

Findings of Fact

Applicant is a 45-year-old single woman. She earned a bachelor's degree in marketing in 1987, and a master's degree in systems engineering in 2006 (Tr. 22). In 1990, she enlisted in the U.S. Navy and served for four years (Tr. 24). She was honorably discharged. Since leaving the Navy, she has worked in the systems engineering field.

Applicant has worked for the same employer, a defense contractor, for the past nine years (Tr. 24). Her direct technical lead who worked with her daily from 1999 through 2003, and intermittently since then, testified. He characterized Applicant as a steadying influence on other employees and a capable systems engineer whose only weakness is that "she does not toot her own horn as much as she probably should, so that a lot of people underestimate her capabilities" (Tr. 18, 20).

Applicant has approximately \$57,000 of delinquent debt. Applicant never had any financial problems before 2006 (Exhibit 2 at 12). That summer, however, she started a business that struggled for a year before failing the following year (Answer at 3; Tr. 52). All of Applicant's delinquencies relate to the failed business.

Applicant's business involved providing school transportation services for special needs children (Tr. 71). Under Applicant's business plan, she planned to purchase a fleet of vans and bid on a transportation contract with a school district. Applicant designated her stepsister, who had previous experience operating a transportation company, to manage the business. Applicant chose to operate the company in the state where her stepsister lived. Applicant began organizing the business in the summer of 2006 with the goal of servicing children in the 2006-2007 school year.

Through much of the time Applicant's business operated, she was incapacitated by an illness that required major surgery (Tr. 90). Consequently, she was uninvolved in its daily operations, relying upon her stepsister for periodic updates as to the business' viability.

In July 2006, Applicant began preparing for the upcoming school year by leasing a van from the automobile company listed in SOR subparagraph 1.f (Tr. 46). The state, however, required transportation contractors to own their vehicles (Tr. 46). Consequently, Applicant was unable to begin transporting students when school began

in September 2006, and the state imposed fines on Applicant's company for not having the vehicle ready on time (Tr. 26, 51).

Applicant's credit bureau report (Exhibit 4 at 14, 20) indicates that she purchased two vans in September 2006, as listed in SOR subparagraphs 1.c and 1.e, and two vans in November 2006, as listed in SOR subparagraphs 1.b and 1.d. Applicant denies purchasing the vehicles listed in SOR subparagraph 1.c and 1.e. She testified that she knew her stepsister had purchased two additional vehicles for the business, but thought she purchased them in her name, rather than Applicant's name (Tr. 73).

Applicant admits financing the purchase of two vans through the automobile dealer referenced in SOR subparagraphs 1.b and 1.d (Tr. 52). After the purchase, however, the automobile company prepared the title to one of the vehicles incorrectly,¹ listing the wrong owner (Exhibit C). The state then fined her company for failing to title the vehicle correctly. (Tr. 60).

Applicant soon became irrevocably behind on her operational expenses, compelling her to dissolve her business in approximately August 2007 (Exhibit G). Within six months, she voluntarily returned the vehicles listed in SOR subparagraphs 1.b, 1.d, and 1.f (Tr. 81). The respective creditors resold them (Tr. 83). Applicant is responsible for the combined deficiencies totalling approximately \$40,000 (Tr. 28; Answer at 1-2).

Some time in the fall of 2007, as the creditors listed in SOR subparagraphs 1.c and 1.e began contacting Applicant, she discovered that her stepsister forged her name on the purchase contracts for the vehicles (Exhibits A, L). Also, at or about the same time, Applicant discovered that her stepsister had not consistently paid the employees while the business was in operation, despite receiving money from Applicant for this purpose (Tr. 28). Applicant never recovered the vehicle that her stepsister allegedly financed fraudulently, as listed in SOR subparagraph 1.e. Applicant owes this creditor approximately \$10,500 (Exhibit 4 at 18).

Applicant's stepsister remained in contact with Applicant after the business failed in August 2007. However, her stepsister became less accessible as Applicant gradually began discovering management irregularities. By 2008, Applicant completely lost contact with her stepsister (Tr. 54; Answer at Attachment 6). In May 2008, she filed a police report against her (Answer at 10). After investigating the matter, the police concluded it was a civil issue, and referred Applicant to civil court (*Id.*). Applicant has not pursued litigation against her stepsister because she "do[es] not think it would do any good" (Tr. 91).

In October 2007, Applicant sold her home, earning a \$313,000 profit that she used to repay outstanding loans and other operational expenses (Tr. 84-85). In November 2007, Applicant consulted an attorney (Exhibit 2 at 68; Answer at 4). The

¹It is unclear from the record which vehicle was titled incorrectly.

attorney drafted a lawsuit that he is preparing to file against the automobile company that financed Applicant's purchase of two vans in November 2006 (Exhibit L). The draft complaint alleges, among other things, "problems with financing, titling, and registration," "vehicles delivered in defective condition," "forged signatures," and "consumer fraud" (see *generally*, Exhibit L). Applicant's counsel has neither filed the complaint yet, nor provided Applicant with a compensatory damages estimate (Tr. 60). He did, however, provide a summary of the litigation to a mortgage loan officer when Applicant was considering purchasing a home approximately 18 months ago² (Answer at 8). Also, in a November 2007 e-mail, he told Applicant that such litigation often takes several years to complete (Exhibit 2 at 63). More recently, he advised her not to contact the dealer until the dispute is resolved (Tr. 33).

Applicant notified her company's security office both when she started her business, and when it started struggling (Tr. 15). She maintains a budget (Exhibit 2 at 15). She makes \$103,000 annually and has no dependents (Tr. 98, 102). She owns one car that is paid for in its entirety (Tr. 100). She has \$10,000 in savings, and \$51,000 in her 401k account (Tr. 99). She has approximately \$1,000 of monthly, after-expense income (Tr. 101).

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, which are useful in evaluating an Applicant's eligibility for access to classified information.

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 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

²Whether or not Applicant's application for a home loan was rejected, or whether she decided not to purchase a home, is unknown from the record.

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).

Applicant’s accrual of \$57,000 of delinquent debt between 2006 and 2008 triggers the application of AG ¶ 19(c), “a history of not meeting financial obligations.” All of Applicant’s debt relate to a failed business venture. Applicant had never experienced any financial problems before starting her business.

Applicant kept her employer informed of her business from its inception to its demise. Many of the problems the business experienced resulted from her stepsister’s mismanagement. Although Applicant should have been more actively involved in the business’ daily operations, her designation of her stepsister as its manager was reasonable given her stepsister’s previous experience with similar businesses. Also, Applicant’s illness prevented her from more actively managing the business. Once she concluded that her stepsister was defrauding her, Applicant attempted to locate her, then filed a police report.

Applicant’s delinquent debt consists of the deficiencies owed for five vans that either she or her sister had purchased for the business’ operation. As part of the process of dissolving the business, she voluntarily returned three of the vehicles to the respective dealers. She retained an attorney to file a complaint against the automobile company that, among other things, allegedly allowed her sister to fraudulently purchase the vans by forging her name on the sales contract. Based on the advice of her attorney, Applicant is taking no further action related to the payment of the deficiencies on any of the vans until her dispute is resolved. 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,” applies.

The draft complaint is convoluted and confusing. At the hearing, Applicant identified her stepsister’s misfeasance, rather than the automobile company’s negligence, as the primary reason for the business’ failure. The draft complaint, however, lists the automobile company as the defendant.

Applicant’s attorney has not filed the complaint even though he has been working with her for two years. Also, Applicant could not provide an estimate of her compensatory damages.

Nevertheless, Applicant provided evidence of communication with her attorney detailing the merits of the complaint and explaining the delay in filing it. Consequently, I conclude that although Applicant's claim is not strong, it is not unreasonable. AG ¶ 20(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," applies.

When Applicant's business began failing, she sold her home, and used the profit to repay start-up loans and other expenses. AG ¶ 20(c), ". . . there are clear indications that the problem is being resolved or is under control," applies.

The remaining delinquencies, as listed in the SOR, constitute finance costs for five vans. Applicant does not intend to satisfy them. AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," does not apply. Her decision not to satisfy them, however, was based upon her attorney's advice.

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.

Applicant's financial problems were not caused by exorbitant, irresponsible spending. Instead, they were caused by a business that failed because of her underestimation of its operating costs, her stepsister's misfeasance, and mistakes made by one of the loan companies that financed the purchase of two vehicles used for the business.

Applicant's delinquent debts are limited to the deficiencies remaining on five vehicles she purchased for her business, which the creditors voluntarily repossessed when the business failed. The Applicant has pursued litigation against one of the creditors listed in the SOR, and paid creditors unlisted in the SOR through the sale of her home.

Applicant's belief that the litigation she has been pursuing will remedy all the remaining delinquencies is unfounded. However, Applicant has ample disposable income to resolve the delinquencies regardless of whether her litigation is successful.

Applicant did not manage her business well, and the legal advice she has received since its dissolution has been questionable. However, she managed the business transparently, informing her employer both when she started it, and when it began struggling. The potential for pressure, coercion, exploitation, or duress is minimal.

Applicant's business was the sole source of her financial problems. Because she dissolved it, and had never previously experienced financial problems, they are unlikely to recur. Upon evaluating this case in the context of the whole person concept, I conclude that Applicant has mitigated the financial considerations security concern.

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:	WITHDRAWN
Subparagraphs 1.b - 1.f:	For Applicant
Subparagraph 1.g:	WITHDRAWN

Conclusion

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

MARC E. CURRY
Administrative Judge