



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



In the matter of:)
)
) ISCR Case No. 09-04366
)
) SSN:)
)
)
) Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

July 30, 2010

Decision

MASON, Paul J., Administrative Judge:

Since July 2008, Applicant has accumulated 14 delinquent debts totaling approximately \$115,000. Her husband's unemployment and underemployment since 2005 establish extenuating reasons for her financial delinquencies. Applicant exercised good judgment by obtaining employment and working overtime to stay on top of the current expenses. Applicant realized she and her husband could not repay the debt and decided to file Chapter 7 bankruptcy. However, she terminated the bankruptcy, the only reasonable course of action to resolve the delinquent debts. By not pursuing the bankruptcy, Appellant's evidence in mitigation is insufficient to meet her burden of demonstrating under the guidelines and the whole person that she is a suitable candidate for security clearance access. Eligibility for access to classified information is denied.

Statement of the Case

Applicant's Security Clearance Application (Item 4, SCA) was certified on March 5, 2009. Applicant signed the SCA on March 10, 2009. She was interviewed by an

investigator from the Office of Personnel Management (OPM) on April 18, 2009. In her interrogatory answers submitted to the Government on October 1, 2009 (Item 2), Applicant agreed with the investigator's summary of her April 2009 interview, and acknowledged that it could be used in a security clearance hearing to determine her security suitability. (Item 8, Interrogatory answers) On January 27, 2010, DOHA issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F). The action was taken pursuant to 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).

Applicant submitted her answer to the SOR on February 25, 2010. She requested a decision be made on the record in lieu of a hearing. A copy of the Government's File of Relevant Material (FORM, the government's evidence in support of the allegations of the SOR) was sent to Applicant on April 1, 2010. Applicant received the FORM on April 9, 2010. In an attachment to the FORM, Applicant was advised she could object to the information in the FORM or submit additional information in explanation or extenuation. Her response was due on May 9, 2010. No response was received. The case file was assigned to me on June 24, 2010.

Findings of Fact

Under Guideline F, the Government alleges Applicant owes approximately \$115,000 for 14 delinquent debts. Applicant admitted all the delinquent debts. Based on Applicant's response to the SOR, the transcript and exhibits, I make the following additional factual findings.

Applicant is 46 years old. She has been married since April 1987. She has an eight-year old daughter. She has been employed in production support since October 2008. Before her current job, Applicant was a bus driver and a janitor at her daughter's school in 2007 and 2008. Her job record shows she has worked for medical companies in records and collections. She seeks a security clearance.

In about 2001 to 2005, Applicant and her husband had good credit. Applicant's husband had a good-paying job in construction management, allowing Applicant to take care of their daughter. Soon after August 2005, the housing market, which had been booming, began to slow. People stopped buying houses and construction jobs disappeared. Applicant's husband was laid off. He found another job, but it did not pay as well. (Item 8, OPM interview, April 2009)

The couple steadily accumulated an increasing amount of delinquent debt even though Applicant was also working. According to the credit reports dated March and June 2009 (Items 5 and 6, respectively), in late 2008, Applicant and her husband stopped paying their credit bills. Though there is no record of filing under Applicant's social security number (Item 10, Bankruptcy case locator), Applicant believed they filed

a Chapter 7 bankruptcy petition in early 2009. (Item 8, OPM interview, April 2009) They abandoned their bankruptcy intentions for several reasons. In August 2009, Applicant indicated they were experiencing unexplained problems with the bankruptcy attorney. Applicant and her husband decided to handle the delinquent debts separately. She provided documentation from the SOR 1.l creditor for the purpose of demonstrating efforts at negotiating a settlement. (Item 7, Interrogatory answers, August 2009) There are numbers written in a column on the exhibit suggesting a payment schedule. But, there is no verification that payments were actually made to the creditor. (*Id.*) Then, Applicant's husband lost his job. (Item 8, Section 5, additional comments)

Most of the delinquent debts listed in the SOR represent personal and business credit card accounts. (Item 8, OPM interview, April 2009) Two delinquent debts are mortgage-related accounts. For most of the accounts, Applicant is identified as a "joint user" or "authorized user." (Item 5 and 6, Credit reports) All the debts except for two became delinquent in February and March 2009. SOR 1.f became delinquent in July 2008. (*Id.*)

Applicant indicated she was able to pay current bills, and has not collected any additional delinquent debt. She was saving money and living on a budget. She indicated that after her future bankruptcy discharge, she and her husband planned to take the appropriate steps to prevent a recurrence of their financial problems. As a prerequisite to their bankruptcy filing, they received financial counseling. (Item 8, OPM interview, April 2009)

Character Evidence

Applicant had an opportunity to respond to the FORM. She could have provided additional information about her decision to forego her Chapter 7 bankruptcy that she appeared to be close to filing. She could have sought the services of another bankruptcy lawyer. She declined to provide any information. Applicant provided no character evidence from individuals or supervisors on her job, or individuals in the community.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. Each guideline lists potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

The administrative judge's ultimate goal is to reach a fair and impartial decision that is based on commonsense. The decision should also include a careful, thorough evaluation of a number of variables known as the "whole-person concept" that brings together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture. Decisions include, by necessity,

consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to the potential, rather than actual, risk of compromise of classified information.

Under Directive ¶ E3.I.14., the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.I.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

Financial Considerations

The security concern for financial considerations is set forth in AG ¶ 18:

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.

The Government has the responsibility of presenting sufficient information to support all allegations of the SOR. Based on the credit reports, Applicant's interrogatory responses, and her answers to the SOR, the Government has presented sufficient information to establish all the allegations in the SOR. AG ¶ 19(a) (*inability or unwillingness to satisfy debts*); and AG ¶ 19(c) (*a history of not meeting financial obligations*) apply.

AG ¶ 19(a) applies based on Appellant's inability to pay the 14 delinquent accounts. AG ¶ 19(c) applies even though Appellant's delinquent debt history is less than one and one-half years old.

Four mitigating conditions are potentially applicable. No mitigation is available under AG ¶ 20(a) (*the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, and good judgment*). Most of the listed debts became delinquent in March 2009, less than 18 months ago. None of the listed accounts became delinquent under unusual circumstances. Applicant's unexplained decision to

terminate the most reasonable option in resolving her delinquent debt raises concerns regarding her judgment.

The loss of employment in 2005 or early 2006, then under employment, then loss of employment a second time by Applicant's husband in September 2009, entitles Applicant to mitigation under AG ¶ 20(b) (*the conditions that resulted in the financial problem were largely beyond the person's control and the individual acted responsibly under the circumstances*). She initially acted responsibly under the circumstances by obtaining employment to help pay the bills. While she was not able to pay the delinquent accounts, she was able to stay current on the day-to-day expenses, and her use of a budget enabled her to save money. However, Applicant's decision to give up the Chapter 7 petition cannot be considered responsible action, particularly when she has formulated no other plan to address the debts. She receives only limited credit under the AG ¶ 20(b).

Applicant's familiarity with a budget and saving money, especially after her husband lost his job, and the financial counseling she received as she was preparing to file her bankruptcy, demonstrate that Applicant has incorporated sound financial principles in the management of the household finances. However, because the listed debt delinquencies have not been addressed, she receives only partial mitigation under 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*).

AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies to conventional ways of paying debts individually or under some type of debt consolidation plan handled by a private company or by the bankruptcy courts. If a person is unable to repay her delinquent debts by the aforementioned methods, AG ¶ 20(d) allows for a Chapter 7 discharge of those debts as another way to resolve them. Though this course of action does not provide the same level of mitigation as a sustained track record of repayment of delinquent debts, it allows the debtor a fresh start to rebuild financial responsibility. Appellant's decision not to pursue the Chapter 7 discharge precludes the application of AG ¶ 20(d). She has not met her burden of persuasion under the financial guideline.

Whole-Person Concept

I have examined the evidence under the disqualifying and mitigating conditions in my ultimate finding against Applicant under the financial considerations guideline. I have also weighed the circumstances within the context of nine variables known as the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

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 the participation was 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.

In September 2005, Applicant's husband lost his construction management job. Fortunately, he was able to obtain other employment, but at reduced pay. Applicant exercised good judgment by obtaining employment to the help pay the bills. Even though they both were employed for an unknown amount of time, they still had to use credit cards to pay past due debts. Predictably, the credit cards became delinquent after the credit limits were reached. Applicant and her husband stopped paying the credit bills entirely in 2008. She demonstrated good judgment by deciding to resolve her delinquent debts through a Chapter 7 bankruptcy. However, after completing the financial counseling, she decided against the Chapter 7 because she could not get along with the attorney. By not pursuing the last viable choice available to her for delinquent debt resolution, her current financial problems will continue in the future. See AG ¶¶ 2(a)(1) through AG ¶¶ 2(a)(9). Having weighed and balanced the entire record in a commonsense manner, I conclude that Applicant has not overcome the adverse evidence under the financial guideline.

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 to 1.n **Against Applicant**

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge