



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



In the matter of:)
)
) ISCR Case No. 09-05490
SSN:)
)
Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

October 15, 2010

Decision

MASON, Paul J., Administrative Judge:

The lack of detailed explanations of poor economic times, her son's financial problems, and her February 2007 divorce, do not provide Applicant sufficient mitigation under the financial considerations guideline. The filing of her Chapter 13 petition does not mitigate her financial problems either because there is no evidence the plan has been approved and that payments have been made under the plan. Eligibility for access to classified information is denied.

Statement of the Case

Applicant completed and certified Electronic Questionnaires for Investigations Processing (Item 5, e-QIP) on April 24, 2009. She was interviewed by an investigator from the Office of Personnel Management (OPM) on June 1, 2009. In her interrogatory answers submitted to the Government on October 29, 2009 (Item 6), Applicant agreed and acknowledged that the investigator's summary of her June 2009 interview could be used in a security clearance hearing to determine her security suitability. (*Id.*) On March 30, 2010, DOHA issued a Statement of Reasons (SOR) detailing security concerns

under financial considerations (Guideline F). 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 adjudicative guidelines (AG), implemented by the Department of Defense on September 1, 2006.

Applicant submitted her answer to the SOR on April 9, 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 June 16, 2010. She received the FORM on June 24, 2010. In an attachment to the FORM, she was advised she could object to the information in the FORM or submit additional information in explanation or extenuation. Her response was due on July 24, 2010. No response was received. The case file was assigned to me on August 10, 2010.

Findings of Fact

The SOR contains one allegation under the financial considerations guideline that Applicant denied. The allegation constitutes a delinquent second mortgage (SOR 1.a, \$29,898) on a home Applicant purchased for her son in 2001. The first mortgage on the property was \$217,000. The property went into foreclosure in late 2008 or early 2009. Applicant initially stated that both mortgages were covered by the sale of the property in March 2009. (Item 6, Interview dated June 1, 2009)

The sale was not sufficient to satisfy the second mortgage (SOR 1.a). (Item 8, Interrogatory Answers at 4) The last activity on the second mortgage was June 2008, and the account was reported delinquent in April 2009. (GE 9, 10, 11) Behind Applicant's denial of SOR 1.a is an acknowledgment of the account, and her claim that by accepting responsibility and demonstrating her willingness to repay the account through the Chapter 13 bankruptcy process, her conduct should be considered an exhibition of good judgment.

Applicant is 60 years old, and was granted a divorce from her second husband in February 2007, after marrying him in May 2004. She has two children, ages 41 and 37, from her first marriage. In May 1990, Applicant received a Bachelor's of Science degree in Business Administration. She has been employed as a property administrator and other positions during her employment with a defense contractor since 1997. (Item 5, SCA, at 16-17) Her gross income was approximately \$129,000 for 2008 and \$127,000 for 2009. (Item 12, Chapter 13 petition at 36)

In her April 2010 answer to the SOR, Applicant indicated she filed a Chapter 13 bankruptcy petition on February 8, 2010. She indicated the Chapter 13 trustee had been selected on February 9, 2010, and the confirmation of the plan was set for June 8, 2010. She did not mention that she included this account and several others in a Chapter 13 petition. The petition lists five mortgages totaling about \$509,000, three

vehicle loans totaling more than \$34,000, a speeding ticket, about \$5,850 in homeowners fees, a \$3,340 personal loan, federal taxes amounting to about \$2,500, and credit card purchases of more than \$8,840. (Item 12 at 18-24) These accounts are not listed in the SOR, and will not be considered a part of the government's case-in-chief.

The docket journal of Applicant's Chapter 13 petition reflects that on May 26, 2010, the trustee objected to confirmation of the payment plan because the plan did not adequately explain how security interest holders and creditors with priority claims were to be treated and paid. (Item 12 at 51) On June 9, 2010, the trustee also objected to confirmation of the payment plan, complaining that the plan failed to include all of Applicant's projected monthly income so that payments could be made to unsecured creditors under the plan. The trustee also objected to Applicant's failure to file a more accurate statement of income. Without a journal entry to verify acceptance of the payment plan, the plan has not been officially established. (*Id.* at 54)

Applicant blames her financial distress on the poor economy in 2008, a poor economy several years ago, her divorce in February 2007, and her son's financial problems. Applicant did not provide any details about the nature and scope of her son's financial problems, and why he could not continue to live in the home or rent the home at a competitive rate to recoup at least part of the monthly mortgage.

Applicant's second divorce in February 2007 relieved her of responsibility for any debts created during the marriage. The only debts she was responsible for were those she incurred individually, which included the three real estate properties, and a \$36,000 vehicle loan when she purchased a car in June 2006, after she separated from her second husband. (Item 6, Interrogatory Answers, October 29, 2009)

Concerning Applicant's poor economic times explanations, the record reflects that in February 2005, she and her second husband purchased a new home for approximately \$429,000. (Item 9 at 3-4, Item 10 at 3-4) As noted in the preceding paragraph, she received a \$36,000 loan in June 2006 to purchase a vehicle. Notwithstanding Applicant's deficient descriptions of the poor economic times, she has experienced uninterrupted employment since 1997.

Character Evidence

Applicant had an opportunity to respond to the FORM with objections to the contents of the FORM, or by submitting any additional material she wanted me to consider. She could have provided additional information about her Chapter 13 bankruptcy petition, specifically why she had not furnished more detailed information to the bankruptcy court about her income. After confirmation of the payment plan, she could have presented probative information of having made payments under the plan. Alternatively, if she had decided to abandon the plan and pursue a Chapter 7 discharge, that information could carry some weight to show she was on a path to resolve her indebtedness one way or another. Instead, Applicant provided nothing.

Furthermore, she advanced no character statements from individuals or supervisors on her job, or individuals in the community. Other kinds of character evidence, such as awards, certificates of recognition and/or letters of commendation, do not appear in the record either.

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 significant period of a person's life with 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. 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.

Based on the credit reports and Applicant's admission of the delinquent status of second mortgage, the Government has met its responsibility of presenting sufficient information to support the allegation of 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 Applicant's inability to pay the delinquent debt identified in SOR 1.a. The reason for application of AG ¶ 19(c) is that since April 2009, when the second mortgage became delinquent, Applicant has made no payments on the account.

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*). With no documentary evidence showing payment of the second mortgage, it is likely that the delinquent debt will remain for the foreseeable future. Applicant's inability to provide credible income numbers to the trustee on at least two occasions continues to cast doubt on her reliability, trustworthiness, and good judgment.

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*) does not apply. As a general rule, an event that brings about the financial problem, and activates the condition, is unforeseen or unanticipated. Under the mitigating condition, once the events are discovered, the applicant then has a responsibility to act responsibly under the circumstances. Applicant has not shown in detail how the economic downturns, her son's unexplained financial problems, and the divorce, have impacted her financially. Her demonstration of good judgment in filing a Chapter 13 petition in February 2010 has become poor judgment in not taking the necessary steps to officially launch the Chapter 13. AG ¶ 20(b) does not apply.

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*). Although the Chapter 13 docket journal reflects that Applicant received financial counseling as a condition of filing her Chapter 13 petition, she provided no information about the scope and detail of the counseling. Assuming she had provided some information about the financial counseling she received, there is still no basis to conclude that Applicant's financial problems are being resolved or under control. AG ¶ 20(c) does not apply.

An approved Chapter 13 plan contains a track record of payments to the specified creditors under the plan. Whether the plan consists of one payment or 100 payments, it represents probative evidence that an applicant is committed to repay her creditors. Applicant did not supply a record of payments to demonstrate a good-faith effort to repay credit creditors. AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) does not apply. Applicant has not met her burden of persuasion under the financial considerations 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.

The Chapter 13 petition reflects that Applicant has accumulated substantial delinquent debts over the last two years. Along with the second mortgage identified in the SOR, Applicant has four other mortgages, three car loan accounts, and delinquent credit card accounts. The filing of the Chapter 13 petition represents a step in the right direction to resolve her overdue debt. However, the filing of the petition is a meaningless part of the process unless the plan is approved and payments are made under the plan.

Applicant exercised poor judgment by not disclosing her accurate income to the trustee. There may be several explanations for her failure to turn over critical information. However, the only reasonable explanation is that she does not want the trustee to know she has more income than she disclosed. Her apparent resistance demonstrates poor judgment and raises doubt about whether she is truly committed to resolving the listed debts. Applicant has presented insufficient evidence to justify complete confidence in her suitability for a security clearance.

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	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