



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 09-05508
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

April 28, 2010

Decision

MASON, Paul J., Administrative Judge:

Applicant’s inability to address approximately \$56,800 in delinquent indebtedness was caused by living beyond her means. Even when the adverse economic indicators appeared, she did not modify her spendthrift financial habits accordingly. Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted her Security Clearance Application (SCA, Item 1) on March 4, 2009. She was interviewed by an investigator from the Office of Personnel Management (OPM) on April 21, 2009. In her interrogatory answers submitted to the government on September 17, 2009 (Item 4), Applicant agreed with and adopted the investigator’s summary of her interview dated April 21, 2009. On October 7, 2009, DOHA issued a Statement of Reasons (SOR, Item 1) 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 November 2, 2009. 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 December 30, 2009. Applicant received the FORM on February 24, 2010. Her response was due on March 26, 2010. No response was received. The case file was assigned to me on April 23, 2010.

Findings of Fact

The ten delinquent debt allegations in the SOR total approximately \$56,800. The nine delinquent debts became delinquent between March 2008 and January 2009. The default judgment was obtained in October 2008 after Applicant failed to pay for her child's medical treatment in 2007. She believed her insurance company would pay the bill. When the insurance did not pay, the hospital sued Applicant and received a judgment of \$973 (SOR ¶ 1.a) against her. The SOR lists two additional medical debts, four credit card accounts, two unsecured loans, and a telephone debt. Applicant has taken no action to repay the accounts.

Applicant is 32 years old and single with two children. She has been living with her boyfriend for about nine years. Her SCA shows that from July 1996 to July 2004, she was a recruiter; from July 2004 to May 2008, she was a recruiting manager; from May 2008 to January 2009, she was a recruiter; and from January 2009 to the present, she has been a health resources specialist for a defense contractor. She seeks a secret security clearance.

When Applicant was interviewed in April 2009, she explained she has been living beyond her means for the past three or four years. The examples she provided of not being frugal with her money were in using credit cards to pay for expensive vacations and other purchases. In the past, she was able to pay off the credit debt with equity loans that she obtained by refinancing her house. However, Applicant's home has fallen in value along with the entire real estate market, and she has been unable to refinance her home. In January 2009, she stopped paying the delinquent accounts when she realized she was having trouble paying her day-to-day expenses.

Applicant also cited the loss of two jobs and her lay off/reduced income from two previous jobs before she was hired at her present position in January 2009. The job losses and lay offs could not have been long because the employment section of her SCA (Item 3) shows no gaps in employment since July 1996.

Applicant has never had financial counseling until she completed a personal management course on November 29, 2009, a requirement for filing her Chapter 7 bankruptcy petition (Item 10) on October 21, 2009. The certification (Item 11) shows that Applicant completed the course. However, she provided no details about the

content of the course. Applicant indicated that she does not dine out as much, and refrains from thoughtless spending on the children. She is trying to maintain her mortgage in a current status so her family will continue to have a home.

Character Evidence

Applicant submitted no evidence of her job performance. She supplied no character evidence of her lifestyle away from the job.

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 common sense. 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

AG ¶ 18. The Concern. "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*); AG ¶ 19(c) (*a history of not meeting financial obligations*); and AG ¶ 19(e) (*consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis*) apply.

As explained in **Policies**, after the government makes its case, the burden then switches to the applicant to rebut, explain, or mitigate the adverse evidence. Applicant explained in her interview in April 2009 that she had been living beyond her means for the last three or four years. She used credit cards to pay for expensive vacations and other purchases. In the past, she was able to repay her credit card debt with equity loans. However, because of a deteriorating real estate market, her home lost value, and she could no longer rely on this option to repay her credit card debt. Unfortunately, Applicant exhibited poor judgment by not modifying her spending habits in the face of a declining real estate market.

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*). The debts were not accumulated a long time ago. Rather, the accounts became delinquent between March 2008 and January 2009. Applicant's failure to address the debts continues to cast doubt on her trustworthiness, reliability and 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*) applies, but only on a limited basis. The medical problems of her child after birth were beyond Appellant's control, and entitle her to limited mitigation under AG ¶ 20(b). The amount of mitigation is reduced substantially because she has not provided sufficient information that explains why her insurance would not pay for the child's treatment. In addition, she has not acted responsibly under the circumstances to pay the judgment.

Applicant also claims she lost two jobs and was laid off twice. Her claims lack credibility because her SCA shows continuous employment from July 1996 to the current time. Assuming she encountered two layoffs and reduced income, these employment changes should have alerted her to make appropriate adjustments in her spending habits. After recognizing the declining real estate market, she did not make the necessary changes in her financial practices.

Applicant 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*) applies in part. Applicant exercised good judgment when she filed a Chapter 7 bankruptcy petition in October 2009. Even though she offered no details about the contents of the financial management course, she completed the course as required to authorize continued processing of her Chapter 7 petition. She is entitled to limited mitigation under AG ¶ 20(c) for filing the petition after realizing she would not be able to repay her delinquent debts.

Applicant receives some consideration under AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) for filing the Chapter 7 bankruptcy petition so that she could “otherwise resolve debts” through a discharge of approximately \$56,800 in debt. Bankruptcy is a legal option Applicant is entitled to under Chapter 7 to give her a fresh start in handling her financial responsibilities in the future. However, the extent of Applicant’s credit card abuse requires a sustained track record of financial responsibility to justify a finding that she has favorably changed her financial habits. Dining out less and reducing expenditures for her children do not provide sufficient proof of a change in financial habits.

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 to resolve the issue*). Applicant has not mitigated the judgment listed in SOR ¶ 1.a. To obtain mitigation credit under ¶ 20(e), an individual must not only have a reasonable dispute with a creditor, but she must also provide documented proof to substantiate the dispute or provide evidence of actions to resolve the issue. Applicant provided neither a sufficient explanation nor supporting documentation that the hospital should have paid for her child’s medical treatment. She furnished no evidence of any other actions to resolve the initial delinquent account or the judgment. The financial guideline is resolved against Applicant.

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.

Applicant is 32 years old. She was 28 years old when her debts began falling delinquent. Her failure to address her debts was knowledgeable and voluntary. The mitigation she receives for the unexpected medical problems of her child in 2007 is undercut by the absence of evidence explaining the insurance company's refusal to pay for the treatment. Even assuming she had the employment problems she claims, she should have made appropriate changes in her financial habits. When she discovered she could no longer refinance her home, she should have interpreted this as a sign to change her financial practices. Applicant exercised good judgment by filing a Chapter 7 bankruptcy petition. However, her anticipated discharge from approximately \$56,800 in debt does not carry the same weight in mitigation as a demonstrated track record of repayment of delinquent debts or other kinds of financial reform. Applicant has not met her ultimate burden of persuasion under the mitigating conditions of the financial considerations 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	Against Applicant
Subparagraph 1.b	Against Applicant
Subparagraph 1.c	Against Applicant
Subparagraph 1.d	Against Applicant
Subparagraph 1.e	Against Applicant
Subparagraph 1.f	Against Applicant
Subparagraph 1.g	Against Applicant
Subparagraph 1.h	Against Applicant
Subparagraph 1.i	Against Applicant
Subparagraph 1.j	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

