



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



In the matter of:)
)
) ISCR Case No. 09-05710
SSN:)
)
Applicant for Security Clearance)

Appearances

For Government: James F. Duffy, Esq., Department Counsel
For Applicant: *Pro se*

August 26, 2010

Decision

MASON, Paul J., Administrative Judge:

Applicant lost her job in November 2008. She accumulated 10 delinquent debts totaling \$35,433 between November 2008 and June 2009. During the period, she also was indebted to a bank creditor for a first real estate mortgage in the amount of \$215,000, and a second real estate mortgage for \$53,876. Applicant's case in mitigation is insufficient to meet her ultimate burden of persuasion under the financial guideline because she presented no documentation. Eligibility for access to classified information is denied.

Statement of the Case

Applicant signed and certified her Security Clearance Application (SCA, Item 5) on May 15, 2009. She was interviewed by an investigator from the Office of Personnel Management (OPM) on June 18, 2009. In her interrogatory answers submitted to the Government on September 22, 2009 (Item 2), Applicant agreed with the investigator's summary of her June 2009 interview, and that it could be used in a security clearance hearing to determine her security suitability. (Interrogatory answers, Item 6) On January

11, 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's undated answer to the SOR was received by DOHA on February 4, 2010. 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 29, 2010. She received the FORM on May 4, 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 June 3, 2010. No response was received. The case file was assigned to me on August 4, 2010.

Findings of Fact

Under Guideline F, the Government alleges Applicant owes approximately \$35,433 for 10 delinquent debts. A review of Item 7 (credit report dated August 14, 2009) and Item 8 (Credit report dated May 14, 2009) disclose that the 10 delinquent accounts are credit card accounts. Applicant admitted the validity of the credit card accounts. The SOR also alleges she is indebted for two real estate mortgages totaling \$268,876 that are at least 120 days delinquent. Applicant admitted that both mortgages were delinquent, and that the house carrying the two liens was foreclosed on and repossessed. (Answer to SOR) All the accounts became delinquent between December 2008 and May 2009.

Applicant is 51 years old. She has been married for 19 years. She has no children. Applicant has been employed as an electronic records/reference librarian since June 2009.¹ She was also an electronic records librarian while employed by her previous employer. She received a master's degree from a local university in July 1998. She seeks a secret security clearance.

After learning her mother was ill in late 2008, Applicant requested time off in December 2008 to travel to the foreign country to console her mother. (Item 6, June 2009 interview) Because she was a contractor employee, her employer could not accommodate the amount of leave she requested, but did provide her with a good reference. She was unemployed and stopped making payments on the credit accounts from December 2008 until May 2009. (*Id.*)

¹ In her SCA (Item 5), Applicant indicated she has been employed by her current employer since May 2008. That information is deemed incorrect as it is contrary to the Applicant's statements in her interview, the credit reports, and her answer to the SOR. Therefore, I find that Applicant unintentionally entered the wrong information on the form regarding her current employment.

In her June 2009 interview, Applicant indicated she began her current job in June 2009 (*Id.*), and would be able to pay her financial obligations. She had arranged a consolidation of six of her credit accounts to two listed creditors, and was making a monthly payment to each creditor at reduced interest rates. She noted that she answered "no" to all the financial questions of her SCA (Item 5, May 15, 2009) because she did not know her debts were delinquent when she signed and certified the SCA. Applicant provided no documentation showing an agreement with the creditors or a record of payments to the creditors.

Character Evidence

Applicant indicated her previous employer gave her a glowing character reference for prospective employers. She did not provide the reference or any other independent 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 sound and prudent judgment. 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. 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 (showing the delinquent debts listed in the SOR), Applicant's interrogatory responses (including her June 2009 interview), 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 delinquent accounts. Having 10 delinquent accounts and two mortgage foreclosures dating to December 2008 activates AG ¶ 19(c).

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*). All 12 debts became delinquent within the last two years. The amount of delinquent debt and the lack of documented action to address the debt foreshadows the likelihood the financial delinquencies will persist in the foreseeable future. The recency, number, and amount of delinquent debts, continues to cast doubt on Applicant's reliability, trustworthiness, and good judgment

The unexpected medical emergency of Applicant's mother entitles her to some 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*). The serious illness of her mother requiring Applicant's travel to see her is entitled to mitigation under the condition. However, as a contract employee, Applicant knew that her employer could not grant her the amount of leave she wanted. Therefore, her decision to take the unauthorized leave was entirely within her control when she could have taken leave in reduced amounts and/or at different times.

In her June 2009 interview, she appeared to use good judgment to consolidate six of her credit accounts with two creditors so that she could make two monthly payments at reduced interest rates. In her undated answer received by DOHA on February 4, 2010, she provided an explanation claiming she partially paid some creditors while attempting to enroll in some kind of debt consolidation plan regarding other creditors. However, her claims of consolidation and paying off some creditors do not carry any probative weight under the last element of AG ¶ 20(b) of “acting responsibly under the circumstances” because she provided no documentation to support her claims. Applicant receives limited mitigation under AG ¶ 20(b).

Applicant’s undocumented claims of consolidation of the delinquent debt and payment of some of the debt renders the essential element of AG ¶ 20(d), “a good-faith effort to repay overdue creditors or otherwise resolve debts,” inapplicable. Without any evidence of payment of creditors individually or collectively in a debt consolidation plan, the financial considerations guideline is found 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 listed in 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 was 49 years old when she lost her employment in December 2008. She must have performed her job at a satisfactory level in order to obtain the favorable

character reference for future employment. Her success in persuading the two primary creditors to consolidate the payment amounts and reduce the interest rate on multiple credit accounts demonstrates good judgment. It also shows she must have developed a credible payment history with the creditors in order to obtain the favorable treatment regarding the six delinquent credit card debts.

The problem with Applicant's evidence in mitigation is that it is unsupported by documentation that would prove some debts were satisfied while others received partial payments. A key element in the whole-person analysis of financial cases is whether an applicant has launched a meaningful track record of reducing her debts. While the track record does not mean that all debts have to be resolved at the same time, the track record should demonstrate a plan and measurable efforts to implement the plan. In certain instances, a reasonable plan could be payment of delinquent debts one at a time. Considering the evidence as a whole, Applicant has presented no independent evidence corroborating that she paid off any of the listed delinquent debts. Without a comprehensive plan to deal with her creditors, her current financial problems will continue in the future. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9). Applicant has not met her burden of persuasion under 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 to 1.l	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