



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-05717
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace L. Garcia, Esquire, Department Counsel
For Applicant: *Pro se*

October 29, 2010

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant filed a Chapter 7 bankruptcy petition in February 2010, in which she listed \$52,584 in unsecured nonpriority claims, including an \$8,500 timeshare debt and \$9,466 for a leased truck that she surrendered voluntarily when she could no longer afford the payments. The case is pending and a discharge has not yet been granted by the bankruptcy court. She incurred debt after her then-fiancé was laid off in March 2007, but she also made some poor financial decisions that continue to cast doubt on her judgment. Clearance denied.

Statement of the Case

On December 3, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a statement of reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations, that provided the basis for its preliminary decision to deny her eligibility for a security clearance, and to refer the matter to an administrative judge. 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); Department of Defense Regulation 5200.2-R, *Personnel Security Program* (January 1987) as amended; and the adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

On December 23, 2009, Applicant answered the SOR allegations and requested a hearing. The case was assigned to me on March 12, 2009, to conduct a hearing and to determine whether it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. With the agreement of the parties, on April 6, 2010, I scheduled a hearing for April 22, 2010.

I convened the hearing as scheduled. Five Government exhibits (Ex. 1-5) and six Applicant exhibits (Ex. A-F) were admitted into evidence without objection, and Applicant testified, as reflected in a transcript (Tr.) received on May 3, 2010.

Findings of Fact

The SOR alleged under Guideline F, Financial Considerations, that as of December 2009, Applicant owed delinquent debt totaling \$50,826 (SOR 1.a-1.i), including \$3,639 in unpaid federal income taxes for 2005 (SOR 1.i). Applicant admitted the debts except for the tax debt, which she indicated had been satisfied in 2009. She asserted that she had filed for Chapter 7 bankruptcy and had changed her spending habits. After considering the pleadings, exhibits, and transcript, I make the following factual findings.

Applicant is a 55-year-old facility security officer who has worked for her present employer since October 2001. She seeks to retain her secret clearance. (Ex. 1; Tr. 28.)

Applicant started with her employer as an administrative assistant in its corporate headquarters. (Ex. 1.) Applicant owned a home purchased for \$69,939 in June 1994. (Ex. 4, Tr. 36.) In August 2002, she refinanced her mortgage taking on a primary loan of \$88,000 and a second mortgage of \$21,000. (Ex. 4.) By 2004, she owed about \$12,000 in retail charge card debt. With her monthly payments becoming a burden, Applicant entered into a repayment plan with a debt consolidation firm around 2004. Over the next year, payments were made to settle her accounts, some for less than the full balance. (Ex. 4, Tr. 36-38.)

In early 2005, Applicant and her then-fiancé moved to her current locale for her job. In March 2005, Applicant sold her previous residence for \$230,000. (Tr. 35.) Using all but \$10,000 of the equity, she bought a snowblower and paid off a jewelry debt and the \$3,500 balance on her fiancé's truck. (Tr. 48.) She used the rest of the equity to put down 14% of the \$169,000 purchase price for her present home in June 2005. She took out a mortgage of \$150,000. (Ex. 4; Tr. 39-40, 48.)

Applicant's fiancé began working in their new locale in April 2005, but his work was inconsistent and at wages that varied from \$10 to \$14 hourly, less than the \$18 hourly he had earned before they moved. (Ex. 2, E.) He worked until September 2005 as a maintenance technician, from March 2006 to June 2006 as a plumber's assistant, and from October 2006 to March 2007 as an electrician's assistant. (Ex. E.)

Applicant continued to spend with the expectation that her fiancé would continue to bring income into the household. (Tr. 31.) In March 2006, she financed a new motorcycle for \$8,715 through a loan with \$220 monthly payments. (Ex. 4, 5.) She also took out a home equity loan of \$35,000 with monthly repayment at \$261 per month. (Ex. 4.) In June 2006, she took out a \$4,985 loan for a 2003 model-year motorcycle. Applicant paid off this motorcycle in January 2007 with the home equity loan. (Tr. 50, 57-58.)

Around December 2006, Applicant sold a home that she had owned with three others before their deaths, and realized \$11,000 from the sale. (Tr. 62-63.) She paid off a \$11,040 loan for a 1998 model-year recreational trailer financed in September 2006. (Tr. 82-83.)

In September 2006, Applicant traded in her car, which she owned outright, for a 6-cylinder truck. Her monthly repayment for the truck was \$308 on a \$14,659 loan. (Ex. 4, 5.) Less than six months later, she traded in that truck for an 8-cylinder truck, which she leased for three years (SOR 1.g). (Ex. 4, 5; Tr. 43, 86.) In March 2007, her fiancé was laid off. (Ex. E.) He collected unemployment compensation for ten weeks. (Tr. 41.) Applicant provided all the income for their household for the next year. (Tr. 48.) Just before her fiancé was laid off in March 2007, Applicant took a trip to a resort and she purchased a timeshare interest through a loan of \$8,258 (SOR 1.i). (Ex. 3, 4.) She felt she could afford the \$168 monthly payment. (Tr. 45.) In November 2007, although she still had the leased truck, she financed the purchase of a 2004 model-year SUV through a loan of \$11,122, to be repaid at \$224 per month. (Ex. 4, 5; Tr. 47-48, 82.)

In 2007, Applicant was informed that she owed \$1,088 on a \$7,015 installment loan that she had taken out to install a furnace in her previous residence in 2005 (SOR 1.f). She believed she had paid off the loan when she sold her house, but she was informed that she owed unpaid finance charges. She disputed the debt to no avail. (Ex. 2, 4, 5.)

In mid-September 2007, the IRS notified Applicant that she owed \$3,639 in delinquent federal taxes for tax year 2005 because of debt that had been forgiven by her creditors (SOR 1.l). After filing amended returns, Applicant calculated her federal tax delinquency at \$3,496 and her state tax delinquency at \$443 for 2005. (Ex. 3.) Applicant repaid the IRS at \$150 per month and the state at \$50 per month. Her tax debts were satisfied in 2009. (Ex. B, C; Tr. 52.)

Due to the unexpected tax payments, and with her fiancé still unemployed, Applicant began to have difficulty making her monthly payments on several credit card

accounts that she had used for household expenses after her fiancé's layoff. She considered selling the 2003 model-year motorcycle that she owned outright, but her fiancé persuaded her not to sell it. (Tr. 58.) In December 2007, Applicant retained the services of a timeshare reseller at a fee of \$399, but she had no success in selling her timeshare. (Ex. 3.)

In May 2008, she entered into an agreement with a debt consolidation company to settle two delinquent credit card accounts delinquent since April 2008 (SOR 1.c and 1.d), and a \$7,000 debt to an investment firm. Under the agreement, Applicant was to pay \$271 per month for three years to settle \$17,075 of debt. She made the payments in May and June 2008. (Ex. 3.) In July 2008, Applicant and her fiancé terminated their relationship and he moved out. (Tr. 31.) She decided to file for bankruptcy on the advice of a consumer credit counseling agency (Tr. 27.), and she stopped paying for her timeshare and on some of her credit card accounts. In mid-July 2008, Applicant withdrew from the debt repayment plan in anticipation of a Chapter 7 bankruptcy filing. (Ex. 3.) After making her monthly loan payments (\$261 on the home equity loan, \$220 for her newer motorcycle, \$1,377 for her mortgage, \$224 for her car, \$388 for her truck), her utilities, and her food, Applicant did not have the funds to file for bankruptcy (Tr. 47.), even after selling a 14-foot boat for \$2,000 in July 2008. (Ex. A, Tr. 56.) She did not consider selling her older motorcycle because she believes she would get only \$3,000 for it, which would be "a drop in the bucket" based on her overall debt. (Tr. 60.) She listed the trailer for sale at \$6,000 and was offered \$3,000, which she considered too low, given she had paid \$11,040 for it. (Tr. 61-62.)

In 2008, Applicant borrowed a total of \$8,000 from her 401(k) account, including \$4,522 in August 2008, for home repairs, such as a new roof and a pellet stove. (Ex. A, Tr. 96-98.) In September 2008, she voluntarily surrendered her truck, terminating her lease early, because she could not afford the \$388 monthly payments. She was held responsible for the \$7,675 balance of the lease (SOR 1.g). (Ex. 4, 5.) In late 2008, she consulted with the first of several attorneys about bankruptcy. (Tr. 69.)

On January 29, 2009, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP). She disclosed that she owed four delinquent credit card debts (SOR 1.c, 1.d, 1.e, 1.h) totaling \$23,694.33 and \$8,057.86 for the timeshare. She indicated that she was "working on a payoff plan." (Ex. 1.) Applicant was interviewed about her delinquencies by a Government investigator on April 3, 2009. Applicant indicated that she began to fall behind after her former fiancé left, but the high cost of heating oil was a contributing factor as well. Applicant related that she had spoken to several attorneys about filing for bankruptcy and was in the process of retaining one. (Ex. 2.)

On April 3, 2009, Applicant paid \$598 to an agent in an effort to sell her timeshare. (Ex. 3.) As of April 2010, it had not sold. In June 2009, Applicant's current boyfriend moved in with her. (Tr. 93.) With his contribution of \$650 per month to the household, Applicant had about \$595.37 in discretionary funds each month. (Ex. 3.) Yet

she told DOHA in September 2009 that she had not yet saved the funds to pay a bankruptcy attorney. (Ex. 3.)

In December 2009, Applicant retained a lawyer for a Chapter 7 bankruptcy. (Ex. F.) She paid his retainer and the filing fees at \$500 in December 2009 and \$900 in February 2010 with her income tax refund. (Tr. 34, 65.) On January 13, 2010, the creditor identified in SOR 1.g was awarded a judgment against her in the amount of \$9,465. (Ex. A.) On February 26, 2010, Applicant filed a Chapter 7 bankruptcy petition, listing \$52,584 in unsecured nonpriority claims, including the consumer credit debts in the SOR (SOR 1.a to 1.k). Among her debts was a \$2,600 balance owed to a local motorcycle shop from May 2008 that was not alleged in the SOR. She indicated her intent to reaffirm her primary mortgage and the loan for the 2006 motorcycle, and to continue to make her payments on the SUV financed in November 2007. Applicant reported annual wages from her employment of \$54,803 in 2008 and \$59,280 in 2009, which was insufficient to cover all her expenses. She reported a net monthly deficit of \$473 based on her income without any contribution from her boyfriend. (Ex. A.)

In conjunction with her bankruptcy filing, Applicant completed online and telephone credit counseling on February 17, 2010. (Ex. A, Tr. 22.) As of her hearing on her security clearance eligibility, she had yet to take a course in personal financial management required for a bankruptcy discharge. (Tr. 66.) A meeting of her creditors was held on April 2, 2010. (Ex. A; Tr. 27-28.) It is unclear whether any creditors objected. The deadline for any objections to discharge was June 1, 2010. (Ex. A; Tr. 29.)

Applicant has been current in her payments on her primary mortgage, which had a principal balance of \$140,717 as of February 2010. (Ex. 4, A; Tr. 25.) She was also making her home equity loan payments on time (Tr. 26.), although it had been late as recently as the summer of 2008. That loan had a balance of \$26,849 as of February 2010. (Ex. 4, 5, A; Tr. 25.) Applicant continued to pay on the motorcycle and car loans. (Ex. 5; Tr. 57.) She wants to keep the motorcycle but is not sure whether she can continue the \$220 monthly payments. (Tr. 57.) As of mid-April 2010, Applicant was repaying her 401(k) loan at \$188 per month. (Ex. A; Tr. 98.) She has not used any credit cards since she bought Christmas gifts in December 2009. (Tr. 86-87.) She purchased a carpet cleaner on credit in the fall of 2009. (Tr. 92.) Applicant had about \$10 in savings as of mid-April 2010, and was relying on her boyfriend paying her \$650 per month to make ends meet. (Tr. 53-54, 92-94.) He has his own business, and during the winter of 2010, he did not always pay his share of the rent on time. (Tr. 94.) Applicant has been looking for a second housemate to share expenses. (Tr. 53.) Applicant understands the concerns about her financial stability and she intends to stick to her budget. (Tr. 33.)

Applicant has not allowed her personal financial problems to negatively affect her work performance. The Defense Security Service rated the overall security posture of Applicant's facility as commendable in 2007, 2008, 2009, and again in 2010. Applicant

was found to be “very effective” in administering the National Industrial Security Program. (Ex. D.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered 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 in conjunction with the factors listed in the adjudicative process. The administrative judge’s overall arching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious 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.” In reaching this decision, I have drawn only those conclusions that reasonable, logical, and based on the evidence of record. 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 Applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information. Section 7 of Executive Order (EO) 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern about finances is set out 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.

Applicant settled some retail credit card accounts for less than their full balances in 2005, and it led to her owing \$3,496 in federal and \$443 in state income taxes (SOR 1.i). After she moved to her present locale, she continued to spend without regard to what she could reasonably afford. She took on debt of \$13,700 for two motorcycles, \$11,040 for a recreational trailer, and \$8,258 for a timeshare between March 2006 and March 2007. She took out a home equity loan of \$35,000, used in part to pay off the loan on the older motorcycle, but also to pay living expenses. In 2008, she could no longer make even her monthly minimum payments on her credit cards (SOR 1.a to 1.e, 1.h, and 1.j), and she stopped paying on the timeshare loan (SOR 1.i). In September 2008, she terminated her truck lease prematurely, and the lender eventually obtained a judgment against her in January 2010 (SOR 1.g). As of April 2010, Applicant was seeking a discharge in bankruptcy of \$52,584 in delinquent unsecured debt, including the debts in SOR 1.a through 1.k. Potentially disqualifying conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG 19(c), "a history of not meeting financial obligations," apply.

Furthermore, Applicant's spending habits implicate 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." Applicant was unable to file for bankruptcy before 2010 because she did not have the funds to do so. Applicant's expenses exceed her income by \$473 each month, and she is meeting her living expenses only because of loans and contributions from her live-in boyfriend. The Government's case for application of AG ¶ 19(b), "indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt," is less persuasive. If Applicant's debts are discharged in her no-asset bankruptcy, her creditors will not be paid. That said, Applicant does not have a history of spending without any intent to pay her debts. She struggled to make the monthly minimums on several accounts while her then-fiancé was unemployed until she could no longer do so, and with limited exception, has been current on her mortgage, home equity, 401(k), and vehicle loans.

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 current reliability, trustworthiness, or good judgment,” cannot reasonably apply in mitigation, even in the event of a Chapter 7 bankruptcy discharge. Her financial problems are extensive and too recent to favorably consider AG ¶ 20(a).

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 in limited part. After some lenders forgave her debt in 2005, Applicant had to repay tax debt totaling \$3,939 that she perhaps should have expected, but did not, when her former fiancé was out of work. Applicant had no control over the job prospects for her fiancé in their locale, and she was the sole supporter for the household for over one year after his unemployment ran out. In 2008, she incurred some home-repair expenses (e.g., roof) that could not reasonably be deferred. Yet, AG ¶ 20(b) does not mitigate her financially irresponsible decisions. Her fiancé was out of work from July 2006 until October 2006. Yet in September 2006, Applicant purchased a trailer for \$11,040. In September 2006, she traded in her car, which she owned outright, for a 6-cylinder truck. Her monthly repayment for the truck was \$308 on a \$14,659 loan. Less than six months later, she traded in that truck for an 8-cylinder truck, which she leased for three years (SOR 1.g). Just before her fiancé was laid off in March 2007, Applicant took a trip to a resort and she purchased a timeshare interest through a loan of \$8,258 (SOR 1.i). Assuming she did not know that her fiancé was going to be laid off, she certainly knew that he was not bringing much income into the household. Her decision to take on new debt for a timeshare was not reasonable. Then, in November 2007, after she had been notified by the IRS of her tax debt, she financed the purchase of her current vehicle, a 2004 model-year SUV through a loan of \$11,122, when she was already leasing a truck.

Applicant’s satisfaction of her tax debts, including the debt in SOR 1.I, falls within AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Around March 2008, Applicant entered into a debt repayment plan to resolve about \$17,075 of delinquent debt, including SOR 1.c and 1.d. She made two payments that reflect a good-faith intent to pay her creditors. But she did not follow through after her fiancé left, electing instead to file for bankruptcy. Assuming Applicant’s unsecured debt is discharged in the bankruptcy, she will be relieved of a significant debt burden. But while bankruptcy is a legal remedy, it is not a substitute for a track record of repayment. Under a Chapter 7 discharge, it is likely that only the creditors holding debts reaffirmed by Applicant will be paid. AG ¶ 20(d) cannot be fully applied.

A bankruptcy discharge could implicate 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.” But Applicant had not yet completed personal financial counseling required for the bankruptcy. It would be premature to apply AG ¶ 20(c) without a discharge and a sustained showing by Applicant that she can live within her means.

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,” was not satisfied. While Applicant disputed the debt in SOR 1.f with the credit bureaus because she paid off the loan when she sold her previous residence, she subsequently learned that she satisfied the loan too late to avoid finance charges, which are unpaid.

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 conduct and all the relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a).¹ Applicant’s finances were adversely affected by the lengthy unemployment of her fiancé. She incurred home-repair costs that could not be deferred. Yet, Applicant clearly lived beyond her means. And there is little expectation that she will regain financial stability in the near future, even if she is granted a bankruptcy discharge. She is unable to meet her present expenses on her income. Despite knowing that her financial problems could lead to the revocation of her clearance and loss of employment, she remains reluctant to part with her motorcycles. She rejected an offer of \$3,000 for the trailer because it was too low, and she has had no success in selling her timeshare. As recently as the fall of 2009, Applicant was still relying on consumer credit cards for discretionary purchases like a carpet cleaner. She has not used any consumer credit cards since she bought gifts for the holidays in December 2009. She has also been responsible and reliable at work in implementing the policies and procedures for the protection of classified information within her facility. But concerns persist about whether Applicant can be counted on to make sound financial decisions going forward. I am unable to conclude that it is clearly consistent with the national interest to continue her access to classified information.

¹The factors under AG ¶ 2(a) are:

- (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.

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
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant

Conclusion

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

Elizabeth M. Matchinski
Administrative Judge