



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-08097
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: John B. Glendon, Esquire, Department Counsel
For Applicant: *Pro se*

December 8, 2010

Decision

CURRY, Marc E., Administrative Judge:

Applicant’s financial problems were caused primarily by a failed business, a subsequent divorce, and a six month period of unemployment. Over the past year and a half, she has either satisfied, resolved, or implemented payment plans for her previously delinquent debts. Clearance is granted.

Statement of the Case

The Defense Office of Hearings and Appeals (DOHA) issued an undated Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. 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 December 1, 2006.

Applicant answered the SOR on June 9, 2010, admitting all of the allegations. She requested a hearing, and the case was assigned to me on July 13, 2010. On July 21, 2010, a notice of hearing was issued scheduling the case for August 13, 2010. The hearing was conducted as scheduled. I received seven government exhibits, five Applicant exhibits, and Applicant's testimony. I left the record open at the conclusion of the hearing, at Applicant's request, to allow her to submit additional exhibits. Within the time allotted, she submitted four additional exhibits that I marked and received as Applicant's Exhibits (AE) F through I. DOHA received the transcript (Tr.) on August 23, 2010.

Findings of Fact

Applicant is a 41-year-old single woman with two children, ages 15 and 12. In 2004, she and her husband divorced after ten years of marriage. Currently, Applicant has physical custody of the children.

Applicant has a high school education and has taken some college courses. (Tr. 15) She works for a defense contractor as a security guard. Her duties include defending the security of the building's perimeter and monitoring surveillance cameras. (Tr. 16) According to her supervisor, Applicant "carries out her assigned duties with professionalism, integrity, and enthusiasm." (AE A)

In 1991, Applicant and her boyfriend (whom she would later marry) started a personal training business and leased a gym. (Tr. 21) They subleased the downstairs portion of the building to a chiropractor. Subsequently, the chiropractor's business began struggling and he stopped making rental payments to Applicant and her husband, rendering them unable to meet their rental payments. (Tr. 25)

In May 1998, Applicant and her husband filed for Chapter 7 bankruptcy. (Answer) They listed approximately \$50,000 of debt. Approximately 70 percent of this debt was business-related. (GE 5 at 6) Later that year, the bankruptcy court granted the bankruptcy petition and discharged the debt. (GE 5 at 5)

After the bankruptcy discharge, Applicant and her husband continued to operate the business in a different location. (Tr. 25) In 2002, they sold the business and their home, and relocated to another state. (Tr. 27) Shortly after purchasing a new home, Applicant and her husband increasingly disagreed about their future plans. Specifically, Applicant's husband wanted to start another personal training business, whereas, she wanted to focus on becoming a police officer.

In the summer of 2003, Applicant successfully completed training to become a police officer and joined the local police force where she worked for the next four years. At or about the time she completed police officer training, she separated from her husband and filed for divorce. (Tr. 29) The divorce became final in March 2004.

Applicant maintained an amicable relationship with her ex-husband, sharing legal custody of the children. (Tr. 36) During the first few years after the divorce, Applicant's husband maintained physical custody of the children, and Applicant voluntarily provided child support payments.

In April 2004, Applicant purchased a home for \$184,000. (Tr. 29-32, 44) In 2006, she took out a second mortgage on the home for approximately \$33,000. (Tr. 45) She used this money for home improvements and to help her elderly mother. (Tr. 45)

Applicant found it increasingly difficult to make her mortgage payments and pay her bills. Consequently, she became overly reliant on credit cards. (Tr. 41) By late 2006, she had stopped making credit card payments and focused exclusively on the mortgage in an effort "to keep the roof over [her] head." (Tr. 42) As of the SOR date, three of Applicant's credit cards, totaling approximately \$18,000 as listed in SOR subparagraphs 1.a through 1.c, remained delinquent. (Answer)

In May 2008, Applicant's ex-husband lost his job, prompting Applicant to increase the financial support that she had been providing to him and their children. (Tr. 36) Later that year, Applicant's husband, along with her children, relocated to the state where he and Applicant had lived when they first got married. (Tr. 31, 38)

In July 2008, Applicant then decided to relocate also, so that she could remain in contact with her children. Consequently, she resigned from the police department, and relocated, moving in with her mother. (Tr. 31-33)

After relocating, Applicant had difficulty finding a new job. Before her current employer hired her in June 2009, she had been unemployed for six months. (Tr. 33)

Applicant listed her home on the real estate market before she relocated. (GE 6 at 10) Because of the real estate market crash in 2008, her home had depreciated by nearly \$90,000. Consequently, she owed more than the home was worth and was unable to sell it. She attempted to rent it, but was unsuccessful. (Tr. 48) In April 2009, the bank initiated foreclosure proceedings. (GE 6 at 21) As of the SOR date, the mortgage balance was \$184,000 and Appellant was past due on payments in the approximate amount of \$17,972, as alleged in SOR subparagraph 1.e. During this period, Applicant's second mortgage also became delinquent, as alleged in SOR subparagraph 1.d. (Tr. 45)

In November 2009, Applicant began satisfying her delinquencies, beginning with an unlisted creditor to whom she owed \$2,700. (GE 6 at 15) Since then, she has been paying the creditor \$100 per month consistent with a payment plan that she arranged. (*Id.*)

In June 2010, Applicant entered into a settlement agreement with the collection agent for the creditor listed in SOR subparagraph 1.b. (Answer at Attachment 2) By

September 2010, she had satisfied this account through biweekly payments ranging between \$300 and \$700. (*Id.*; AE H at 2)

In June 2010, Applicant also entered into a settlement agreement with the creditor listed in SOR subparagraph 1.c. The amount she paid each month through the settlement agreement is unclear from the record. Nevertheless, she had satisfied the delinquency by September 2010. (GE F)

Now that Applicant has satisfied the two credit card debts listed in SOR subparagraphs 1.b and 1.c, she is focusing upon the largest credit card delinquency, SOR subparagraph 1.a, which is delinquent in the amount of \$9,856. On September 7, 2010, she made a \$50 payment. (GE G at 2) She intends to pay “\$50 or more” monthly until she satisfies the account. (*Id.* at 1)

In June 2010, Applicant accepted an offer from a buyer to purchase her home. Because the offer was for an amount less than what Appellant owed on the mortgage, she began negotiating a short sale of the home through the bank. (AE E) The bank finalized the short-sale in August 2010. (AE I) Both the first and second mortgages on the home, as listed in SOR subparagraphs 1.d and 1.e, were satisfied through the short sale process. (Answer, Attachment E)

Currently, Applicant earns \$75,000 annually. She has between three to five hundred dollars of after-expense income remaining each month. (Tr. 57) She keeps up with her incoming monthly expenses and has accrued no further delinquencies. (Tr. 57)

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions.

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. 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.”

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 for obtaining a favorable security decision.

Analysis

Guideline F, Financial Considerations

Under this guideline, “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 (AG ¶ 18). Over the past 20 years, Applicant has experienced two major episodes of financial difficulty. The first episode began in the early to mid-1990s and the second began in 2006. AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” and 19(c), “a history of not meeting financial obligations,” apply.

The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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;

(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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

Applicant’s first episode of financial difficulty related primarily to the struggles she and her husband experienced with operating a business, which were exacerbated when their tenant defaulted on rental payments. The second episode stemmed from the financial disruption caused by Applicant’s divorce, her inability to sell her home after moving in 2008, and a six month period of unemployment in early 2009.

Since Applicant began working at her current job, she has satisfied two of her credit card delinquencies entirely (SOR subparagraphs 1.b and 1.c), and has begun paying the third (SOR subparagraph 1.a) through monthly payments. She satisfied both mortgages through the short sale process.

Applicant has ample disposable income to satisfy her remaining debt, and she is keeping current with all of her recurring monthly expenses. AG ¶¶ 20(b) through 20(d) apply. I conclude Applicant has mitigated the financial considerations security concern.

Whole-Person Concept

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at 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 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.

Applicant experienced financial problems in the 1990s that compelled her to pursue the Chapter 7 bankruptcy process in 1998. Approximately eight years later, Applicant again accrued delinquent debt. Neither the circumstances precipitating the bankruptcy filing nor the circumstances leading to the accrual of delinquencies several years later related to any extravagant spending. Conversely, they were not entirely beyond Applicant's control. Specifically, not all of the debts discharged in the bankruptcy were business-related, and the 2004 divorce was only tangentially related to her financial problems. In sum, however, these factors together with Applicant's inability to sell her home after the 2008 real estate market crash, and her six-month unemployment constitute significant mitigating factors.

I remain perplexed at the small amount of money Applicant has designated per month to pay her remaining credit card debt, particularly in light of the large sums of money she paid each month to satisfy the other two credit card debts. On balance, however, the steps taken thus far outweigh any lingering concern. Given the primary cause of her financial problems and the steps she has taken to satisfy the two credit card debts and to resolve her outstanding mortgages, I am confident she will satisfy the one remaining debt. Upon considering this case in the context of the whole-person concept, I conclude Applicant has mitigated the security concern.

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:	FOR APPLICANT
Subparagraphs 1.a - 1.f:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY
Administrative Judge