



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



In the matter of:

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)	
)	ISCR Case No. 09-08381
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard A. Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

May 25, 2011

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

On August 24, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) for a security clearance required for her position as owner of a business seeking defense contracts. After an investigation conducted by the Office of Personnel Management (OPM), the Defense Office of Hearings and Appeals (DOHA) issued an interrogatory to Applicant to clarify or augment potentially disqualifying information in her background. After reviewing the results of the background investigation and Applicant's response to the interrogatory, DOHA could not make the preliminary affirmative finding required to issue a security clearance. DOHA issued a Statement of Reasons (SOR), dated July 21, 2010, to Applicant detailing security concerns for financial considerations under Guideline F. These actions were 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) effective within the

Department of Defense on September 1, 2006. Applicant acknowledged receipt of the SOR on July 25, 2010.

Applicant answered the SOR on August 24, 2010. She admitted four and denied four of the eight allegations under Guideline F. Department Counsel was prepared to proceed on February 2, 2011, and the case was assigned to me on February 10, 2011. DOHA issued a Notice of Hearing on February 15, 2011, scheduling a hearing for March 8, 2011. I convened the hearing as scheduled. The Government offered four exhibits that I marked and admitted without objection as Government Exhibits (Gov. Ex.) 1 through 4. Applicant testified, and offered one exhibit that I marked and admitted without objection as Applicant Exhibit (App. Ex.) A. I left the record open for Applicant to submit additional documents. Applicant timely submitted four documents, which I marked and received as App. Ex. B through E. Department Counsel had no objection to the admission of the documents. (Gov. Ex. 5, Memorandum, dated March 30, 2011) DOHA received the transcript of the hearing (Tr.) on March 16, 2011.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is a 56-year-old entrepreneur seeking defense contract business. She is a college graduate. She has never married, but does assist in supporting a nephew. She worked for another government agency from 1971 until 1977 and held a security clearance. She worked at various positions until she started and managed her own retail businesses from 1989 until 2005. She managed two different retail businesses, purchased real estate as an investment, and managed rental properties. She did not have financial support except for her use of credit cards to run the businesses. She closed the businesses in 2005 because they were no longer profitable as a result of the economic downturn in the business community. She decided to start a company to do business solely with the federal government providing personnel to federal agencies as needed. Her company has one government contract under a small minority owned business set aside providing support personnel to a military command. The contract is a requirements contract but there has not been much requirement for the type of support she provides. She hopes to be awarded other contracts. She does not draw compensation from the one contract and her only source of income is approximately \$978 monthly in unemployment benefits. Her monthly expenses are approximately \$736 leaving her approximately \$250 monthly in discretionary income. She filed on time past tax returns, but as of the date of the hearing had not filed her 2010 tax returns. Her business tax filings are current. (Tr. 20-28, 42-48; App. Ex. A, Statement, dated March 8, 2011)

Credit reports (Gov. Ex. 3, dated September 26, 2009; and Gov. Ex. 4, dated March 30, 2010) show the following delinquent debts for Applicant: a \$34,546 home equity loan past due more than 180 days (SOR 1.a); a mortgage of \$232,734 past due more than 120 days (SOR 1.b); a credit card account past due more than 120 days in

the approximate amount of \$13,938 (SOR 1.c); a credit card in collection for \$20,646 (SOR 1.d); another credit card in collection for \$12,230 (SOR 1.e); two accounts in collection to the same creditor for \$696 (SOR 1.f), and \$444 (SOR 1.g); and an account in collection for \$17,684. The debts are two delinquent mortgage payments, and six credit card or time share maintenance accounts. The credit card debts at SOR 1.d and SOR 1.h are duplicate debts. The total amount of the non-duplicate debt is approximately \$46,000.

In 2007, Applicant sold two of the properties she had purchased. Another property was foreclosed. The tenant in another property left without notification. The unit required extensive repairs, and could not be rented. She had to pay the mortgage and condominium fees out of savings. She therefore did not have funds to invest in her new government contracting business. Also, the amount of business she received from the government was not sufficient to make the business profitable. She does have the potential of three new contract awards. She is required to have a facility clearance for her company to work on these contracts. (Tr. 22-25)

The debt listed at SOR 1.a is for the mortgages on the investment property abandoned by a tenant. Applicant has a first and second mortgage on the property. The first mortgage was for approximately \$161,000, and the second was for approximately \$30,000. She sold the property at a short sale for approximately \$130,000. She received a cancellation of debt from the first mortgage holder and included that as income as required on her 2009 tax return. She is still indebted for the amount of the second mortgage which is the amount in SOR 1.a. She included this debt in a Chapter 13 bankruptcy filing. (Tr. 29-32, 49-50)

The mortgage debt at SOR 1.b is for the mortgage on her personal residence. She reached a mortgage forbearance agreement with the creditor for which she pays only 40% of the mortgage monthly. Her monthly mortgage payments went from \$1,741 to \$944. Her last full mortgage payment of \$1,741 was in July 2009. In her agreement with the mortgage company, She agreed that the mortgage payments would report the payments as late on credit reports Her current arrears are approximately \$35,000 and the property will shortly be foreclosed. She is not current on her condominium fees. (Tr. 32-35, 43-44, 50-51)

The debt at SOR 1.c is a credit card debt that has been cancelled by the creditor in the amount of \$10,098. She received a cancellation of debt notice and paid the tax as required on this amount as income. (Tr. 35-36, 51) The credit card debt at SOR 1.d is to the same creditor and is included in the Chapter 13 bankruptcy filing. It is also a duplicate of the credit card debt at SOR 1.h. (Tr. 36-37, 41-43, 51, 55-57)

The debt at SOR 1.e is for a credit card opened in 2002. The creditor initially filed a claim against Applicant, but it was dismissed in August 2010 when the Chapter 13 bankruptcy petition was filed. It is included in the Chapter 13 bankruptcy filing. (Tr. 37-39, 52-54)

The debts at SOR 1.f and 1.g are maintenance fees on a time share that were due in 2006 and 2008. Applicant purchased the time share in 1999 when she attended a promotional lecture. She intended to use the time share every three years but used it only once. She is no longer the owner of the original time contracted for in the time share. The debts have been dismissed by the creditor without any action by Applicant. (Tr. 39-42, 54-55)

At the hearing, Applicant stated she had filed a Chapter 13 bankruptcy in mid-2010, and many of her debts were included in the bankruptcy. The wage earner plan under the Chapter 13 bankruptcy required her to pay the bankruptcy trustee \$540 monthly. She made four payments starting in September 2010, ending in December 2010. In November 2010, she was notified by the bankruptcy court that her Chapter 13 would be dismissed since she did not provide the court with the appropriate financial documents. (Tr. 58-61)

After the hearing, Applicant provided documentation concerning both bankruptcy filings. The Chapter 13 bankruptcy documents list \$246,165.78 of secured creditor claims, with \$89,381.78 being unsecured. Most of this claim was for her residence. Also listed was \$133,576.12 in unsecured non-priority claims. Her listed assets were approximately \$163,000 with over \$156,784 being the value of her residence. Most of the debts listed on the SOR were included in the list of creditors. The documents also show that Applicant received the appropriate financial counseling required for an individual requesting bankruptcy protection. While the Chapter 13 bankruptcy was still active at the time of the hearing, she had not made any wage earner plan payments since December 2010. The bankruptcy trustee objected to confirmation of the wage earner plan on December 22, 2010, because Applicant had failed to attend a required hearing, had not filed all payment information, failed to make all required payments, and the payment of one debt under the payment plan was beyond the time limit for payment of claims in bankruptcy.

The bankruptcy documents also show that there were process issues with the bankruptcy from the start. The Chapter 13 petition was filed on August 2, 2010. Her original attorney asked for and was granted permission to withdraw his representation of Applicant on October 22, 2010. Applicant hired a second attorney but dismissed him in January 2011. His withdrawal was approved by the bankruptcy court on February 10, 2011. Applicant said this attorney did not tell the bankruptcy judge the correct information so she terminated him. On February 10, 2011, this attorney requested permission to withdraw as her counsel. The request was granted on March 2, 2011. A Chapter 7 bankruptcy petition was filed by a third attorney on March 16, 2011. (App. Ex. B, C, D, E, fax cover and bankruptcy documents, various dates) No documentation was provided concerning any further action on the Chapter 7 petition.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief

introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must 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 overarching 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 are reasonable, logical, and based on the evidence contained in the 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 in seeking 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Analysis

Financial Considerations:

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. (AG ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified

information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but she is required to manage her finances in such a way as to meet her financial obligations. The delinquent debts established by credit reports and partially admitted by Applicant raise Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts); and FC DC AG ¶ 19(c) (a history of not meeting financial obligations). Some of these debts originated as early as 2002 and are still unresolved. Her failure to resolve these debts indicate a history of both an inability and an unwillingness to satisfy debt.

I considered Financial Considerations Mitigating Condition (FC MC) 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), and FC MC AG ¶ 20(b) (the conditions that resulted in the financial problems 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). Both mitigating conditions do not apply. Applicant incurred debt when she operated her own business using credit. The business became unprofitable and she could no longer pay her debts. She purchased investment property for which she could not continue to make either the mortgage payments or pay the maintenance fees. While the debts were incurred many years ago, they have not been paid and are still outstanding. The conditions causing the delinquent debts were not beyond her control and are likely to recur. As a business owner, she should have been reasonably and responsibly prepared to meet the eventuality of increased and unknown expenses and declining sales. Her financial history in managing a business for many years indicates that she could again incur delinquent debt in the management and operation of her new business venture as a government contractor. Applicant has not acted responsibly in managing her delinquent debts. She filed a Chapter 13 bankruptcy that was dismissed at the request of the bankruptcy trustee after four months. She recently filed Chapter 7 bankruptcy that has not been considered by the bankruptcy court.

I considered FC MC ¶ 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). This mitigating condition partially applies. Applicant received the financial counseling required of a person filing a bankruptcy petition. However, she has not presented information to indicate that she implemented any of the financial practices from the counseling, and there is no indication her debts are resolved or under control.

I considered FC MC AG ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For FC MC AG ¶ 20(d) to apply, there must be an “ability” to repay the debts, the “desire” to repay, and “evidence” of a good-faith effort to repay. A systematic method of handling debts is needed. Applicant must establish a "meaningful track record" of debt payment. A "meaningful track record" of debt payment can be established by evidence of actual debt payments or reduction of debt through payment of debts. An applicant is not required to establish that she paid each and every debt listed. All that is required is that Applicant demonstrates an established plan to resolve her financial problems and show she has taken significant actions to implement that plan. Applicant has not presented information to establish she paid any of her delinquent debts. She established that some of her creditors have cancelled some debts but the cancellations were not because she paid the debts. Some properties have been foreclosed and the mortgage debt resolved.

Applicant filed a Chapter 13 bankruptcy that was dismissed because of her lack of action. Two attorneys asked to withdraw representing her in the Chapter 13 bankruptcy. I considered her letters to her attorneys, as well as the bankruptcy courts orders, and determined that Applicant's lack of action on her bankruptcy was a significant reason for the bankruptcy court's action dismissing the bankruptcy. Applicant recently filed a Chapter 7 bankruptcy petition that has not been acted on by the bankruptcy court. While, bankruptcy is a legal and legitimate method to resolve financial problems, I am not convinced that Applicant's bankruptcy filings demonstrate her responsible financial management. The Chapter 13 documents and her attorneys' actions indicate she is not prepared to meet the requirements of the bankruptcy system. Because her Chapter 7 has been filed so recently there is no indication that it will be carried to completion to discharge her debts. If the Chapter 7 is completed, Applicant has an opportunity to again request within the allotted timelines access to classified information.

Applicant's finances do not indicate she has sufficient funds to resolve her delinquent debts. Her failure to manage these debts in the past indicates an irresponsible attitude toward her delinquent debts. While she filed a Chapter 13 bankruptcy, it was dismissed because of her lack of action. She has filed a Chapter 7 bankruptcy not yet considered by the bankruptcy court. These documents do not show responsible financial behavior. She has not provided significant and credible information to establish a meaningful track record of debt payment and a good-faith effort to repay her creditors or resolve debt. Her past delinquent debts reflect adversely on her trustworthiness, honesty, and good judgment.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's prior federal service. I considered that Applicant's failure to resolve delinquent debts, and her attempt to resolve them by Chapter 13 bankruptcy. This action was dismissed because of her lack of action. Her Chapter 7 bankruptcy request is too recent to establish reasonable and responsible steps to resolve her delinquent debts. Applicant failed to properly manage her past finances, indicating she may not be concerned, responsible, and careful regarding classified information. Overall, the record evidence at this time leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude that Applicant failed to mitigate security concerns arising from her finances, and she should not be granted access to classified information.

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
Subparagraphs 1.a - 1.h:	Against Applicant

Conclusion

In light of all of the circumstances presented by 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.

THOMAS M. CREAN
Administrative Judge