



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 10-00632
SSN:)
)
Applicant for Security Clearance)

Appearances

For Government: Candace Le'i Garcia, Esquire, Department Counsel
For Applicant: *Pro se*

January 13, 2011

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ Applicant's clearance is denied.

On 8 July 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant listing security concerns under Guideline F, Financial Considerations.² Applicant timely answered and requested a decision without hearing. The record in this case closed 17 November 2010, the day Applicant's response to the Government's FORM was due. Applicant provided no additional information. DOHA assigned the case to me 9 December 2010.

¹Consisting of the File of Relevant Material (FORM), Items 1-9.

²DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on 1 September 2006.

Findings of Fact

Applicant admitted the SOR financial allegations.³ She is a 42-year-old, administrative manager—slated to be the company facility security officer (FSO)—employed by a U.S. defense contractor since September 2009. She was employed full time with the company through a temporary employment agency from July 2009 to September 2009. She has also been employed part-time since August 2005 as an independent sales representative for a well-known, door-to-door cosmetics company. She has not previously held a clearance.

The SOR alleges, Applicant admits, and government exhibits substantiate, 9 delinquent debts totaling over \$50,000. The debts alleged are four collection accounts, two charged-off accounts, two past-due accounts (one of which is Applicant's second mortgage), and a judgment. Applicant intends to resolve her seven unsecured debts through bankruptcy.

Applicant has taken no action to address her debts, except for the SOR 1.b judgment, the SOR 1.g unsecured cash loan, and her SOR 1.h second mortgage. The SOR 1.b creditor obtained a judgment in February 2009, and filed a lien on her house in March 2009. Applicant claims, without corroboration, to be paying \$50 per month on this account. The SOR 1.g debt is an unsecured cash loan of \$9,336 Applicant obtained in August 2008. She was to begin repaying about \$76 per month in October 2008. She appears to have made the first payment, but none after. In August 2009, the creditor sent her a demand letter for 10 past-due payments since November 2008, plus late fees, for a total of \$783 past-due, on an account balance of \$9,300. Applicant will include this debt in her bankruptcy. Applicant's second mortgage fell delinquent in August 2007, and a \$26,198 balance was sold to a different creditor in February 2008. By then the balance had grown to \$27,314, and the creditor demanded payment in full. Applicant may have made some payments of \$180 per month up to July 2008, when her balance was \$26,054. However, in November 2009, the creditor referred a \$28,335 balance to collection. Applicant claims, without confirmation, that her attorney is working with the collection agent to arrange a repayment schedule.

Applicant married in May 1994, and divorced in April 2004. She had two children with her husband, a son born prematurely in December 1996, and another son born in January 2000. After they divorced, her ex-husband did not provide any child support until December 2007. Applicant did not work after her first son was born in December 1996, and her husband was later laid off from his job. With no income, they fell behind with their bills, and filed for Chapter 7 Bankruptcy protection in February 1998. They received a discharge of their dischargeable debts in June 1998.

³Applicant admitted that she owed the debt at SOR 1.h, but denied that the second mortgage was in foreclosure. The debt at SOR 1.k is the same debt as SOR 1.e (account number exact match). Accordingly, I find SOR 1.k for Applicant.

From September 2000 to September 2006, Applicant owned a daycare center. She ran a full-time program except from December 2002 to June 2005, when she taught Pre-K in a church-run daycare center. During this time, she only opened in summer months. In September 2006, she closed the business because she did not have enough full-time children in her center and it was no longer financially feasible to continue. She got a full time job, which she kept until April 2008. Her company then merged with another company, and her position was being eliminated. However, she was able to move to another company in April 2008—before the other job was eliminated—only to have that company eliminate her position in July 2008.

Applicant was unemployed from July 2008 to October 2008. She obtained full-time work in October 2008 through a temporary employment agency, and stayed there until July 2009—albeit at a lower salary than her last job. In July 2009, she moved to a temporary assignment with her current employer, and was then hired directly by the company in September 2009. However, between 2007 and 2009 the debts alleged in the SOR became delinquent. Her first mortgage also became delinquent, but she used a state-mandated mortgage mediation law to get a loan modification which took effect in May 2010, and allowed her to remain in her house.

In December 2009, Applicant retained a bankruptcy attorney to address SOR debts 1.c–1.g and 1.i–1.k through a bankruptcy filing. The record does not reveal whether the filing will be under Chapter 7 or Chapter 13 (Wage Earner Plan) of the bankruptcy code. Nevertheless, the bankruptcy filing was delayed because her younger son was diagnosed with a life-threatening illness in spring 2010, requiring surgery in mid-April 2010. After her son’s recovery, Applicant resumed the bankruptcy process with her attorney in May 2010. However, the record contains no documentation of further progress, specifically whether Applicant paid the attorney’s bill sent in May 2010. Applicant’s mid-August 2010 answer to the SOR, executed four months after she supposedly restarted her bankruptcy process, stated she hoped to file the petition by late September 2010. Applicant’s personal financial statement (PFS) shows \$630 positive monthly cash flow.

Policies

The adjudicative guidelines (AG) list factors to evaluate a person’s suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also show a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). The applicability of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific guidelines should be followed when a case can be measured against them, as they are policy guidance governing the grant or denial of a clearance. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline F (Financial Considerations).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government

must prove, by substantial evidence, disputed facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the required judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels deciding any reasonable doubt about an Applicant's suitability for access in favor of the Government.⁴

Analysis

The Government established disqualifying conditions under Guideline F, and Applicant did not mitigate the security concerns. Applicant has an extensive history of financial difficulties, which continue.⁵ Her plan to resolve eight debts through bankruptcy has not progressed to the point of filing, despite the fact that Applicant intended to restart the process in May 2010. She has reached no repayment agreement with the collection agent on her second mortgage, despite the fact that the loan has been in default since August 2007. Finally, she has not corroborated her claimed \$50 per month payment on her judgment.

Applicant meets none of the mitigating factors for financial considerations. Her financial difficulties are both recent and multiple.⁶ She attributes her financial problems to the misfortunes that have befallen her between September 2006 and April 2010. This is an impressive list of misfortune, and certainly contributed to her financial problems.⁷ However, there are substantial periods of time between each event, and no evidence from Applicant how she dealt with her circumstances as they arose.

Applicant has not established how the debts were due to circumstances beyond her control as each circumstance occurred. Her 2004 divorce occurred when she was working full time in a Pre-K program. She cites no financial problem aside from her husband not paying child support, and her credit reports show no delinquent accounts dating to the divorce. Applicant closed her daycare center in September 2006 for financial reasons, but again, she immediately got full-time work, and there are no delinquent accounts dating back to September 2006. Six delinquent accounts occurred

⁴See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵¶19 (a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations;

⁶¶20 (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

⁷However, her son's 2010 illness seems only to have delayed Applicant's beginning the bankruptcy process.

in 2007, when Applicant was employed full time. Two were in 2008, when she had regained full-time work, and one was in 2009, when she moved to her current employer.

The debts at SOR 1.b, 1.c, and 1.h fell delinquent in August 2007, when she was employed full time. Her debt at SOR 1.d fell delinquent in October 2008, when she had gotten a new job after her three-month unemployment. Her debt at SOR 1.e. fell delinquent in June 2007. The account at SOR 1.f fell delinquent in May 2007. She opened the account at SOR 1.g in August 2008, when she was unemployed. It was a straight cash loan, perhaps to tide her over her unemployment. However, the first payment was not due until October 2008, when she got a new job. She made only one payment and then stopped, ignoring the creditor's August 2009 demand letter, which came after she went to work for her current employer. The debt at SOR 1.i fell delinquent in July 2007. The debt at SOR 1.j fell delinquent in August 2009. She has not acted responsibly to resolve her debts.⁸ She does not claim to have received any credit counseling, and she has not otherwise brought the problem under control.⁹ None of her debts has been paid in a timely, good-faith effort.¹⁰ Further, given that she has not sought or used effective financial counseling, although she will receive financial counseling if she files bankruptcy, nothing in the record suggests that Applicant will obtain financial stability after her bankruptcy, if or when it is filed. She will still have nearly \$31,000 unresolved secured debt. I conclude Guideline F against Applicant.

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs a-j:	Against Applicant
Subparagraph k:	For Applicant

Conclusion

Viewing the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance denied.

JOHN GRATTAN METZ, JR
Administrative Judge

⁸¶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;

⁹¶20 (c) the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;

¹⁰¶20 (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.