



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



In the matter of:)
)
) ISCR Case No. 10-01192
)
)
Applicant for Security Clearance)

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel
For Applicant: *Pro se*

February 25, 2011

Decision

MASON, Paul J., Administrative Judge:

Beginning in 2003, Applicant encountered some financial problems that were caused primarily by events beyond her control. She suffered severe neck and back injuries in a 2003 car accident, requiring her four back vertebrae to be fused in March 2005. She could only work part-time after a long period of convalescence. A few months later, she had a hysterectomy. In July 2006, her youngest son totaled her car in an accident. He had no car insurance. Applicant's sister-in-law was killed when a car hit her. Applicant incurred transportation costs to visit her grieving brother. She has provided funds to help her mother handle medical and living expenses after her father died in August 2009. In 2008, instead of paying down or paying off her delinquent debt, she withdrew \$10,000 in home equity for renovations. In early 2009, she tried but failed to sell her home. To reduce her monthly mortgage and pay her delinquent debt, she applied for three loan modifications. In early May 2010, her third application was approved, but after learning the monthly mortgage

payments would be more than her original mortgage, she declined to sign the agreement. The foreclosed house was auctioned on May 17, 2010. Her security clearance was revoked on May 24, 2010 for failure to return the security clearance package by the suspense date. Given the unforeseen events and a loss of income, Applicant's Chapter 7 bankruptcy action was the only reasonable and responsible way of addressing her financial problems. Eligibility for access to classified information is granted.

Statement of the Case

Applicant completed and certified her Electronic Questionnaire for Investigations Processing (e-Qip)(GE 1) on October 2, 2009. She was interviewed by an investigator from the Office of Personnel Management (OPM) on December 21, 2009. A summary of this interview appears in her interrogatory answers dated May 28, 2010. Applicant agreed with the investigator's summary and that the summary could be used at a hearing to determine her security suitability.

On October 6, 2010, DOHA issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F). 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 September 1, 2006.

Applicant submitted her answer to the SOR on October 28, 2010. DOHA issued a Notice of Hearing on November 29, 2010, for a hearing on December 9, 2010. The hearing was held as scheduled. At the hearing, seven exhibits (GE 1 through 7)¹ were admitted in evidence in support of the Government's case. Applicant and one witness testified. Her 19 exhibits (AE A through AE T) were admitted without objection. AE R through AE T were retained by Department Counsel to generate copies for the parties. On January 4, 2011, Department Counsel submitted AE R through AE T, and AE U through AE X. Department counsel interposed no objection to the exhibits. Applicant's exhibits AE A through AE X are now in the record. DOHA received the transcript (Tr.) on December 20, 2010. The record closed on January 4, 2011.

¹ The exhibit will be cited by the alphabetical letter of the exhibit, and, when appropriate, a handwritten page number appearing at the lower right hand portion of the page.

Findings of Fact

The SOR contains eight allegations under Guideline F (financial considerations). These allegations show a deficiency balance (\$130,000.19) after sale of Applicant's foreclosed home, and seven delinquent credit card accounts totaling \$10,024. The credit bureau reports (GE 5, 6, 7) reflect that the last activity on six of the seven credit card accounts before becoming delinquent was in December 2008 or early 2009. (GE 5 through 7) The last activity on the delinquent account identified in SOR 1.b is August 2007. Applicant admitted all allegations including the foreclosure. She denied she owed a deficiency balance on her foreclosed home because the mortgage was underwritten by a Federal National Mortgage Association (Fannie Mae) loan. (Tr. 91) The lender confirmed Applicant's testimony that Fannie Mae guidelines do not allow a deficiency judgment to be filed against the mortgagor. (AE V) Applicant does not owe the deficiency balance.

Applicant is 53 years old. She married in January 1986 and divorced in December 1995. She has two children from the marriage. Their ages are 29 and 25. She has been working for the same contractor from July 2000 until March 2010, when a new contractor assumed the contract. She began as an administrative assistant and is currently a senior project coordinator.

Applicant served in the United States Marines from April 1978 to April 1981, when she was honorably discharged. She received her associate's degree in May 2004 and anticipates she will receive a bachelor's degree in December 2010. Applicant has held a security clearance since August 2003.

During the March to May 2010 period, Applicant had several events occurring simultaneously. In March 2010, her then employer lost the defense contract to her new employer. She was working on several new contracts and closing out other contracts. She was trying to finish school. She was awaiting the outcome of her third loan modification application to save her home and pay her delinquent bills. (Answer to SOR, GE 2 at 119-121) Her new employer notified Applicant that she had to file a new security clearance. She was sent a security package on April 8, 2010, to be returned within 20 days. She missed the filing deadline and her security clearance was revoked. She accepts full responsibility for the oversight. (Answer to SOR, GE 2) Even though her earnings stopped on June 14, 2010 (AE Q), she was kept on the payroll without pay by her new employer. She began receiving unemployment compensation in July 2010. (Tr. 95-97; AE C) She filed a Chapter 7 bankruptcy petition on November 12, 2010.

Financial Considerations - Background

Applicant's financial problems began in 2003 when she had a serious car accident in which another car rear-ended her. (Tr. 56; GE 3 at 131) She suffered severe neck and back injuries that required therapy for the next two years. In March 2005, she had four sections of her backbone fused. (Tr. 57-58). In May 2005, she had a hysterectomy and could not work for a long period and could only work part-time. (Tr. 58) She enrolled in the Family Medical Leave Act because she exhausted her vacation and medical leave. (*Id.*)

In March 2006, Applicant was arrested and pled guilty to driving while under the influence of alcohol (DUI). The court fines and attorney fees cost approximately \$5,000. (AE K) *See also*, GE 2 at 146. Four months later, her youngest son destroyed her car in a bad accident that left him with a crushed face, other broken bones, and in a coma for about three days. (Tr. 60) Because he had no medical insurance, the major surgery to his body was paid by unidentified public grants. Applicant provided care for him and paid some of the smaller medical bills. (*Id.*) In September 2006, Applicant's sister-in-law was walking on a street when she was hit and killed by a car. (Tr. 60) Applicant did not foresee paying transportation costs for trips to visit her grieving brother. (Tr. 61)

In January 2008, the housing market improved in Applicant's area (*Id.*), so she tried but could not sell her home. (Tr. 103-104) She decided to refinance her home because she wanted to remodel her 20-year-old kitchen. She withdrew approximately \$10,000 in home equity to pay for renovations. (Tr. 61, 104-105)

In early 2009, Applicant's debt was increasing. She tried to sell her home after discovering a terrible housing market and no more equity in her home. (Tr. 61) Since she could not sell her home, she was unable to get out of debt. (Answer to SOR). She consulted Consumer Credit Counseling (CCC) about repaying the debts. CCC recommended filing a Chapter 13 bankruptcy petition. (*Id.*) From May 2009 to the end of the year, she spoke with four different bankruptcy attorneys about filing a Chapter 13 petition because she was bargain shopping, and she felt she was being overcharged. (Tr. 101-102)²

Applicant also tried to reduce her debt load in May 2009 when she applied for her first loan modification agreement. She was advised unofficially to let her mortgage default to increase her chances of getting a loan modification agreement. The application was unsuccessful. (Tr. 35-36) Applicant's second loan application was filed in October 2009, and was rejected in January 2010 because Appellant was earning too much and had just received a promotion. (Tr. 37) The third loan modification was offered to Applicant in

² Applicant terminated services with one of those bankruptcy attorneys in December 2009. (AE R)

January 2010. It was approved on May 7, 2010, but actually increased her monthly mortgage. (GE 2 at 142; Tr. 40) Applicant rejected the third loan because “common sense is that if I was struggling and fell behind with my current mortgage, I didn’t see how I would get caught up with an increased [mortgage] payment plus the \$18,000 unsecured debt.” (Answer to SOR) Applicant’s house was foreclosed then sold at auction on May 17, 2010. (*Id.* at 136-142)

On November 12, 2010, Applicant filed a Chapter 7 bankruptcy petition (AE A) that included all delinquent obligations in the SOR. (AE B) Regarding creditors not listed in the SOR, she made six credit card payments in 2010 on her credit union credit card account. (AE W) Applicant also has an unlisted account balance of approximately \$7,133 with the Small Business Association (SBA) for a loan she received in 2004 to repair the damage to her home caused by a hurricane. (AE S) She still owes about \$955 to the Internal Revenue Service (IRS) for tax year 2007. Her 2009 tax return refund was impounded by the IRS as partial payment for her 2007 taxes. (AE D)

Applicant completed a debt management course that helped her reduce her spending. (Tr. 52, 99) She stopped using credit cards in 2009. (Tr. 53)

Applicant realized she demonstrated financial irresponsibility in taking out the home equity loan in 2008 for renovations. She acknowledged the delinquent debts in the SOR demonstrated additional irresponsibility. (Tr. 100) Like her parents, Applicant has not handled money well. However, with the help of her psychologist, whom she has consulted for the last year for stress, Applicant understood she has to be more responsible with her money. (Tr. 101; AE P)

Character Evidence

Applicant’s performance evaluation for 2006/2007 was “4.59,” with “5” the highest numerical score. She was considered outstanding in technical competence, and dedicated to completing her tasks without error. Applicant also submitted a performance evaluation for 2008/2009. The evaluation is incomplete, and the last page of the exhibit shows a pay increase that applies to the 2006/2007 evaluation period. (AE L)

In a letter of congratulations dated August 16, 2007, a product manager at a military training facility singled out Applicant for her professionalism in guiding a particular project through initial setbacks to successful completion. (*Id.*) On November 19, 2008, a customer support executive congratulated Applicant for her contributions to an annual training conference. (*Id.*) On March 31, 2008, Applicant received a \$500 grant from a charitable organization for her efforts in raising money to fight a disease of the nervous system. (*Id.*)

Applicant's friend testified that he met her in 1999, after she joined his cycling group. They have become good friends. Applicant told him that she missed a filing deadline to transfer her security clearance. (Tr., 30-31) He recommends her for a position of trust based on the fact he leaves his grandchildren with her when he travels away. (Tr. 27-31)

Nine friends provided letters of reference for Applicant. All were impressed by either her dedicated and goal-oriented attitude and her honesty. (AE N) Eleven coworkers and supervisors furnished favorable statements about Applicant's character. One of her coworkers recalled Applicant was hired into quality control. Currently, she is heavily involved in the training program that provides training for more than 43 occupational specialties. (AE O) The current director has found her to be very qualified and committed to the mission. Other coworkers praised her disposition, trustworthiness and dependability. (*Id.*)

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 required to be used to the extent they apply 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 common sense. 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. Likewise, 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about the potential, rather than actual, risk of compromise of classified information.

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

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.

The record reflects that between August 2007 and early 2009, Applicant allowed seven credit card accounts to become delinquent in the amount of \$10,024. AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) applies because she is unable to satisfy the debt. AG ¶ 19(c) (*a history of not meeting financial obligations*) applies because the delinquencies occurred at different times between August 2007 and early 2009, showing a history of delinquent debts.

Four conditions under AG ¶ 20 could potentially mitigate Applicant's delinquent indebtedness: 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*); AG ¶ 20(b) (*the conditions that resulted in the financial problem were largely beyond the person's control, and the person acted responsibly under the circumstances*); 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*); and AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Except for the creditor identified in SOR 1.b, the other six accounts became delinquent within the last two years. However, the debts became delinquent under circumstances that are unlikely to recur. In early 2009, Applicant knew that payment of the listed and unlisted debts hinged on reducing the monthly mortgage payment or selling the house. Her first two loan modifications were rejected, and she could not accept the third application that required a larger monthly payment than her original mortgage. A poor housing market prevented her from selling her home. In her present unemployment status, she clearly cannot resolve her delinquent debts. A Chapter 7 discharge eliminates the delinquent debt and gives her a fresh start in responsibly managing her finances. AG ¶ 20(a) applies in part.

Applicant's unforeseen family tragedies after 2003 played a large part in her financial problems. However, her DUI in March 2006 and her home equity loan in January 2008, were events within her control, and represented approximately \$15,000 she could have used to pay down her existing debt. In early 2009, Applicant acted responsibly when she tried to unsuccessfully to establish a Chapter 13 bankruptcy petition. She also showed good judgment from early 2009 to May 2010, by trying to sell her home or reach a home modification agreement. After considering the change of employers in March 2010, the project workload during the period, suddenly being notified in May 2010 her clearance was revoked and she was no longer earning a living, I conclude she acted responsibly during the time before concluding the Chapter 7 petition she filed in November 2010 was the only viable solution to her financial dilemma. AG ¶ 20(b) applies.

Applicant's debt management course should help her avoid similar financial difficulties in the future. The pending Chapter 7 petition should lead to a discharge that will remove her current delinquent accounts. Additional counseling will help her avoid future situations where she places her family's needs ahead of her own solid financial health. Applicant's Chapter 7 petition should accomplish her objective of resolving her delinquent debt under AG ¶ 20(d). Under the circumstances of this case, I find for Appellant under the financial considerations guideline.

Whole-Person Concept

In evaluating Applicant's security clearance worthiness, I have examined the evidence under the disqualifying and mitigating conditions. 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:

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.

Family problems since 2003 have been traumatic for Applicant. After her car accident in 2003, she had to have complicated back surgery in March 2005, and the hysterectomy in May 2005. In July 2006, her youngest son almost lost his life in a car accident. Applicant took care of him and paid the smaller medical bills. After her sister-in-law was killed in September 2006 by a hit-and-run-driver, Applicant had to spend money

for travel to see her grieving brother. She has been periodically providing funds to her mother for living and medical expenses since August 2009.

After using poor judgment in January 2008 by obtaining a home equity loan for kitchen repairs, she began to show financial responsibility in filing a Chapter 13 petition. In May 2009, she unsuccessfully filed her first home loan modification application. Her second loan modification application was also declined. Finally, her third home loan modification was approved on May 7, 2010, ten days before her home was auctioned. She declined the modification agreement because the monthly mortgage payment was higher than her original mortgage. On May 24, 2010, she discovered her security clearance was revoked for not submitting her package on time.

Under the unique circumstances of this case, and because of the impressive character evidence of Applicant's outstanding community and charitable achievements, and her job performance, it is clearly consistent with the national interest to grant Applicant a security clearance.

Formal Findings

Paragraph 1 (Guideline F): FOR APPLICANT

Subparagraph 1.a through 1.h: For Applicant

Conclusion

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

Paul J. Mason
Administrative Judge