



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



In the matter of:)	
)	
)	ISCR Case No. 10-01264
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

03/28/2012

Decision

CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns generated by her history of financial delinquencies. Clearance is denied.

Statement of the Case

On August 29, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines 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 September 1, 2006.

Applicant answered the SOR on November 10, 2011, denying all of the allegations and requesting a hearing. The case was assigned to me on January 3, 2012. A notice of hearing was issued on January 20, 2012, scheduling the case for

February 8, 2012. I held the hearing as scheduled and received nine Government exhibits, marked as Government Exhibits (GE) 1 through 9, and 10 Applicant exhibits (AE) marked as AE A through J. Also, I considered the testimony of Applicant and three witnesses.

At the close of the hearing, I left the record open, at Applicant's counsel's request, for the submission of additional exhibits. Within the time allotted, he submitted 12 additional exhibits marked as AE K through V. DOHA received the transcript (Tr.) on February 16, 2012.

Preliminary Ruling

Department Counsel moved to amend the SOR by striking subparagraphs 1.c and 1.d, and replacing them with the following:

1.c. You are indebted to [creditor] for an account that is in collection in the approximate amount of \$558. As of the date of the Statement of Reasons, it remains unpaid.

1.d. You are indebted to the [creditor] for at least nine student loans that are 150 days or more past due. Your outstanding student loan debt is approximately \$30,800. As of the date of this Statement of Reasons, these loans are delinquent.

Also, Department Counsel withdrew subparagraph 1.n. Applicant did not object, and I granted the motion.

Findings of Fact

Applicant is a 32-year-old single woman. She is a project manager for a digital media storage company. She manages a team of seven people. (Tr. 80) She attended college for about one a half years during the early 2000s before dropping out. She is currently attending college part-time and working toward a project management certification. (Tr. 42)

Applicant is highly respected on the job. According to the company president, the quality of her service is impeccable. (AE E at 2) Her previous supervisor characterized her as talented, honest, and committed to the job. (GE E at 3)

In 2002, while working as a cashier at a computer store, Applicant allowed a friend on two occasions to remove merchandise, valued at \$3,700, without paying. (GE 8 at 21; Tr. 69) Approximately two days after the second incident, her manager confronted her, and she confessed. Subsequently, Applicant was charged with embezzlement, a felony in the state where she was charged. Applicant pleaded guilty and was sentenced to two years imprisonment (suspended) and placed on probation for two years.

Because of the felony conviction, it was difficult for Applicant to obtain a stable, well-paying job. (Tr. 75) For the next several years, Applicant struggled to find well-paying employment, and frequently switched from one low-paying job to the next. She gradually began falling behind on her debts.

By 2009, Applicant had accrued approximately \$50,000 of delinquent debt, including \$30,000 in student loans (subparagraph 1.d), a \$9,600 automobile delinquency (subparagraph 1.o), debts owed to banks totalling approximately \$6,200 (subparagraphs 1.a, 1.f, 1.j, 1.k, 1.p), \$4,000 in utilities and cell phone bills (subparagraphs 1.a - 1.c, 1.e, 1.i, and 1.q), and several miscellaneous debts (subparagraphs 1.g, 1.h, 1.l, 1.m, 1.o, and 1.r). Later in 2009, Applicant got a job paying \$60,000. She then began paying her delinquencies.

Currently, Applicant has satisfied subparagraphs 1.a through 1.c, 1.e, 1.i, 1.j, and 1.p. These debts total approximately \$4,500. She contends that she is current on her student loans (subparagraph 1.d), and has paid subparagraphs 1.h, 1.k, 1.q, and 1.r, totalling \$750. Also, she contends that she is paying subparagraph 1.f, totalling \$3,180, through a payment plan.

Applicant referenced a letter from her student loan creditor that indicates that her student loan account is current. However, the letter predates the date of the SOR delinquency. (*Compare* GE 4 at 2 with AE 7) I find that Applicant's student loan account is still in delinquent status.

Applicant references a credit report (AE D at 28) in support of her contention that she satisfied subparagraph 1.k. Although the credit report indicates that a debt owed to this creditor was satisfied, the account number does not match the account number of the SOR delinquency. I find that subparagraph 1.k remains unresolved.

Applicant's assertions regarding subparagraphs 1.f, 1.h, 1.q, and 1.r are unsupported by documentary evidence. I find that they remain unresolved.

The disputed debts, as alleged in subparagraphs 1.g, 1.l, and 1.m total approximately \$1,790. Applicant did not provide documentation establishing the basis of her disputes or any evidence that she contacted the alleged creditors,

Applicant contends she completed a debt counseling course. (Tr. 40) She provided no supporting documentary evidence. Applicant provided a yearly cash flow statement and a financial summary setting forth her net worth. She has approximately \$6,500 in checking and savings accounts, and \$63 in a retirement account. The evidence was inconclusive as to her discretionary monthly income. (AE H)

Applicant currently earns \$110,000 annually. She lives with her fiancée and splits the household expenses with him.

Policies

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, they are applied together 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). Applicant’s history of financial delinquencies and her 2002 embezzlement conviction trigger the application of the following disqualifying conditions under AG ¶ 19;

- (a) inability or unwillingness to satisfy debts,
- (c) a history of not meeting financial obligations, and
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statement, and other intentional financial breaches of trust.

Applicant was in her early twenties when she embezzled from her employer. Such criminal behavior has not recurred since then. She is now a mature individual who is well respected by her employer, family, and friends. I conclude Applicant has mitigated subparagraph 1.s.

As for the remaining allegations, 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;

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

(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.

Employment instability contributed to Applicant's financial problems. However, her job marketability was limited by her criminal record. This does not constitute a circumstance beyond her control. AG ¶ 20(b) does not apply.

Since gaining a stable, well-paying job in 2009, Applicant has begun satisfying her delinquencies. She asserts that all of the debts she acknowledges have either been satisfied or are being paid through payment plans. However, she only provided documentary evidence proving that seven of the SOR debts, totalling \$4,500, were paid (1.a through 1.c, 1.e, 1.i, 1.j, and 1.p). Moreover, she disputed several alleged delinquencies, but provided neither any documentary evidence setting forth the basis of the disputes, nor any evidence of correspondence with the disputed creditors. Under these circumstances, AG ¶ 20(d) applies, but none of the remaining mitigating conditions apply.

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 applicant's conduct and all the relevant circumstances. 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's salary has increased by \$60,000 in the past two years. This fact, together with the significant amount of money deposited in her savings and checking accounts, and the debts she has satisfied are indicative of financial stability. Applicant failed, however, to document the payment of the majority of her SOR debts, despite being granted an additional two weeks after the hearing to do so. Under these circumstances, she has failed to meet her burden of proof, and I am unable to conclude that her troubled finances no longer pose a 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:	AGAINST APPLICANT
Subparagraphs 1.a - 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f - 1.h:	Against Applicant
Subparagraphs 1.i - 1.j:	For Applicant
Subparagraphs 1.k - 1.o:	Against Applicant
Subparagraph 1.p:	For Applicant
Subparagraphs 1.q - 1.r:	Against Applicant
Subparagraph 1.s:	For 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.

MARC E. CURRY
Administrative Judge