



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



In the matter of)
)
) ISCR Case No. 10-01903
)
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esquire, Department Counsel
For Applicant: Nathaniel Siegel, Personal Representative

May 25, 2011

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, I conclude that Applicant has not mitigated the security concerns raised under the guideline for financial considerations. Accordingly, her request for a security clearance is denied.

Statement of the Case

On October 26, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to request a security clearance required for her employment with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to grant Applicant's request.

¹ Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

On September 20, 2010, DOHA issued to Applicant a Statement of Reasons (SOR) that specified the basis for its decision: security concerns addressed in the Directive under Guideline F (Financial Considerations) of the Adjudicative Guidelines (AG).² In her Answer to the SOR, signed and notarized on November 3, 2010, Applicant admitted allegation 1.a. and denied the remaining four allegations under Guideline F. She also requested a hearing before an administrative judge.

Department Counsel was prepared to proceed on December 10, 2010, and the case was assigned to me on December 23, 2010. DOHA issued a Notice of Hearing on January 11, 2011, and I convened the hearing as scheduled on February 2, 2011. During the hearing, I admitted five Government exhibits (GE 1-5). Applicant and one witness testified. She also offered nine exhibits, which I admitted as Applicant's Exhibits (AE) A through I. I held the record open to allow Applicant to submit additional documentation. She timely submitted two documents, admitted without objection as AE J and K. DOHA received the transcript on February 9, 2011.

Findings of Fact

Applicant's admission in response to the SOR is admitted as fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the evidence presented by both parties, I make the following additional findings of fact.

Applicant, 33 years old, earned college credits after high school, but did not earn a degree. She has one son, 14 years old. She married in 2009. Applicant worked as an office manager and a waitress before entering the real estate business in 2003. She worked as a mortgage loan officer until late 2008. In February 2009, she began working for a federal contractor as the business development manager. She remains with the same company, currently as the director of business development and marketing. (GE 1; AE I; Tr. 90-93)

As a mortgage loan officer, Applicant's income increased dramatically in 2004 to \$98,500 per year. She purchased three properties in 2004: a condominium (property A) in March for \$109,000; a townhouse in April (property B, where she currently resides) for \$340,000; and a single family home in November (property C) for \$467,000. Property values were rising and she had renters available to occupy the rental properties. In 2005, Applicant sold property A for a profit of \$83,000. Her income that year was \$190,800. In 2006, Applicant earned approximately \$209,000. She purchased another unit for \$425,000 in

² Adjudication of this case is controlled by the Adjudicative Guidelines (AG) implemented by the Department of Defense on September 1, 2006.

May 2006 (property D). That year, the one-year adjustable rate mortgage (ARM) on property C changed and her monthly payment increased by \$426 to \$3,260 per month. Applicant considered her investments as a business, and considered herself a mortgage professional. She sought advice from a certified public accountant and other experts as she made her purchasing decisions. She testified that she was not “flipping” properties, because that is defined as selling a property after owning it for less than one year, and she held all her properties beyond that timeframe. (AE I; Tr. 46-49, 58-59, 89)

In about 2007, the real estate market began a decline. Applicant's earnings dropped to \$63,500. She lost one renter, and evicted another for non-payment. The value of her rental properties dropped by 70 percent. Her debt surpassed her income by more than \$2,000 per month. She sought to avoid filing for bankruptcy a second time, and used her savings to make up the difference. (AE F, I; Tr. 55-56)

In late 2007, Applicant's sister moved into her home. Applicant's sister is mentally challenged, and had also been diagnosed with cancer. She could not work consistently, and became Applicant's dependent. The situation further depleted Applicant's funds. Her sister remained in her home until January 2009. (AE I; Tr. 65-66, 79)

In 2008, Applicant's income declined to \$33,000. She used a line of credit to support the family, and also sought a new job. She was hired in late 2008 by her current employer at a salary of \$87,500, with benefits. She began the position in February 2009. In late 2009, she married. (AE I)

Applicant's current debt-to-income ratio is less than 30 percent. She and her husband have an annual gross income of approximately \$260,000. Her monthly net pay, combined with monthly income from her spouse and from a rental property, total \$16,987. Her monthly expenses are \$2,736. Her debts consist of two credit cards, one car loan, one car lease agreement, and four loans (first and second mortgages on two properties). Her monthly payments on the debts total \$4,220, leaving a monthly net remainder of approximately \$10,000.³ Her assets include two properties (her home and one rental unit), savings, stocks, and cars, amounting to more than \$2,000,000. When asked how she uses her net remainder each month, she could not state exactly how she spends it, except to note that they put it toward several of her husband's large debts, repairs on his rental property, and to build up their savings. (GE 3; AE E, G, H; Tr. 85-86, 100-101)

The debts listed in the SOR total almost \$97,482. The delinquencies appear in Applicant's credit reports of November 2009 and July 2010. Applicant testified that she obtained her credit bureau report before she began the security clearance process. (GE 4, 5; Tr. 77) The status of the SOR debts follows.

³ These numbers reflect updated figures Applicant provided at her hearing.

- **Chapter 7 bankruptcy (allegation 1.a)** – Applicant's mother moved to another state when Applicant was 15. From that point to age 22, Applicant lived with her father. She helped care for him because he had medical problems. She helped support her father and her son, and paid the rent for two years. At 20 years old, she was making \$13,000 per year, and had accumulated approximately \$14,000 in delinquencies. She was advised by an attorney to file for bankruptcy. She filed a chapter 7 petition, which was successfully discharged in June 1998. (Tr. 31-33, 75-76)
- **Hospital bill: \$610, PAID (Allegation 1.b.)** – In April 2008, Applicant was covered by health insurance, and visited an emergency room. She paid \$100, and believed the remainder would be covered by her insurance. When the security clearance process began in 2009, she obtained a credit bureau report and learned of this debt. She testified that the hospital had sent the bill to the address where she lived with her father 10 years previously. She considered paying the bill and seeking reimbursement from her insurance company, but she decided not to because she believed she did not owe the bill. However, on the day after the hearing, She contacted the hospital and insurance company. The insurance company agreed to a settlement of \$488.51. Applicant provided a letter from the creditor confirming the settlement amount, but not showing that the amount was paid. Applicant stated that she paid the amount and provided a confirmation number. (GE 2, 3; AE K: Tr. 33-36, 76-79)
- **Medical debt: \$517, DISPUTED (allegation 1.c)** – In her Interrogatory response, Applicant stated she did not recognize this creditor, and that the debt is not hers. At the hearing, she submitted a letter addressed to one of the credit reporting agencies, dated April 2010, asking for information on the creditor or removal from her report. The letter is unsigned and includes no evidence that it was mailed. She also noted in her interrogatory response that it does not appear on her current credit bureau report. She did not provide a credit report to support this claim. She also provided no response from the creditor, and no evidence showing that any credit agency is investigating the dispute. (GE 3; AE B; Tr. 36-38)
- **Second mortgage (property C), \$95,157, UNPAID (allegation 1.d.)** In 2004, one of the three properties Applicant bought was a single family house, which she intended to rent. She paid \$467,000. She carried first and second mortgages on the home. She rented the house successfully. In 2006, The ARM adjusted and her monthly payment rose by \$500, but she had sufficient funds to cover the increase. In 2007, the value of the house decreased significantly. The real estate market dropped, which reduced her income from her position as a loan officer. She did not qualify to refinance the loan. She contacted the lender for property C, requesting

a loan modification or a short sale. However, the lender foreclosed on the property in early 2008. (GE 3; Tr. 53, 57-58, 60-61, 70-73)

During her security interview, Applicant told the investigator that the second mortgage on property C had been paid through the foreclosure. The Trustee's Deed for the foreclosure lists only the first mortgage holder's name; the second mortgage holder, which is alleged in the SOR, is not mentioned. Applicant retained an attorney in January 2011 to determine the status of the second mortgage. He has advised her that he is not aware of suits to enforce deficiency judgments after foreclosures. However, if the lender for the second mortgage did not agree to release the loan after the foreclosure, she may be liable for the second mortgage. Applicant believes she has sufficient funds to make monthly payments to resolve the second mortgage debt. As of the date the record closed, no plan was in place to resolve the second mortgage. (GE 2, 3; AE A, L; Tr. 53, 57-58, 60-61, 70-73, 86)

- **Credit card: \$1,198, PAID (Allegation 1.e.)** - Applicant thought this credit card had been stolen, but later discovered her sister had used it without authorization while living with Applicant in 2008. When she contacted the lender, she was told she would have to prosecute her sister or pay the balance. Applicant decided not to prosecute. The account became delinquent in 2009. During her December 2009 security interview, she said she stopped making payments in 2008, and was making a settlement agreement with the creditor. She did not mention her claim that her sister had used the card without authorization. Applicant testified that she paid the debt in November 2010. She provided a letter from the law firm representing the creditor. It is dated the day of the hearing, and indicates that the account has been satisfied. (GE 2; AE J; Tr. 38-39, 66)

Applicant's friend testified that she has known Applicant for more than 20 years. She notes that Applicant was her father's primary caregiver for many years. They now see each other about once monthly. She became aware of the hearing about two days beforehand, and had not read the SOR. (Tr. 22-30)

Applicant's neighbor, a retired military member, submitted a letter stating that she has known her for six years. She has been to Applicant's home, and notes that Applicant is trustworthy, and has good character, as well as sound judgment. A friend who has known Applicant for six years noted in her reference that Applicant "had a rough year when the mortgage industry collapsed" but she still paid her debts and did not file for bankruptcy. She notes that Applicant lives a modest lifestyle. (AE C)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.⁴ Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the “whole-person” concept.

The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guideline F (Financial Considerations) at AG ¶ 18.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁵ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the Applicant to refute, extenuate, or mitigate the Government’s case.

Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁶ A person who has access to classified information enters 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 judgment, reliability, and trustworthiness to protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.⁷

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern about financial considerations:

⁴ Directive 6.3

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁶ *Id.* at 528, 531.

⁷ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The evidence supports application of disqualifying conditions AG ¶19 (a) (*inability or unwillingness to satisfy debts*) and AG ¶19 (c) (*a history of not meeting financial obligations*). The SOR alleges more than \$97,000 in delinquent debt, of which \$95,000 remains unpaid. Applicant has lived a modest lifestyle, and there is no indication of frivolous spending. However, her history demonstrates a failure to meet several financial obligations.

Under AG ¶ 20, the following potentially mitigating factors are relevant:

(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;

(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;

(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.

Applicant's bankruptcy is 13 years old. However, the four debts listed in the SOR are recent, as approximately \$95,000 remains unpaid. Her failure to make consistent attempts to resolve these debts, until recently, raises questions about her reliability and judgment. AG ¶ 20(a) does not apply.

Applicant began her career in the real estate business when the market was booming. She purchased properties for investment and was successful. However, her business was affected when the real estate market crashed, starting in 2007. She was required to support her disabled sister at the same time her income had dropped precipitously. She had no way to foresee or control these events which played havoc with her finances. Applicant acted reasonably in response: she used her savings to make the payments on her properties, and avoided filing a second bankruptcy petition; she tried to obtain a loan modification on one property, and then procured a short sale; she sought and obtained employment in another field, where she is now successful and making a substantial salary. AG ¶ 20(b) applies.

AG ¶ 20(d) requires a good-faith effort to resolve debts. Applicant has paid two small debts, and disputed another. However, she resolved the two debts primarily in response to the security clearance process. She stopped making any payments on the credit card debt in 2008; but then paid it in November 2010, after the security interview about her debts. As to the hospital bill, she learned of it in 2009, after reviewing her credit bureau report, and considered paying it and seeking reimbursement from the insurance company. However, she decided not to pay it. Only after the hearing did she take concrete steps, obtain a settlement, and pay the debt. Most significantly, she did not show good faith in relation to her large second mortgage debt. It is not credible that a mortgage professional would have been unaware that a second substantial mortgage debt had not been satisfied. Yet she did not investigate its status or seek to resolve it. Although she was on notice that it existed, at least since the beginning of the security clearance process, she did not engage an attorney to investigate it until a month before the hearing. As of the hearing date, she had no plan in place to resolve the \$95,000 debt. Applicant's actions do not constitute good faith efforts to resolve her debts. AG 20(d) does not apply.

Applicant disputes a medical debt of \$517, stating that she does not recognize it. However, to receive mitigation under AG ¶ 20(e), an applicant must provide documentation supporting the reason for her dispute or her efforts to resolve it. Here, although Applicant testified that the debt does not appear on her most recent credit bureau report, she did not provide the report, or any other evidence that the debt had been investigated or resolved in her favor. AG ¶ 20(e) does not apply.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the relevant circumstances. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited guideline. I have also reviewed the record before me in the context of the whole-person factors listed in 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept. Under the appropriate guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant is a mature adult, who has demonstrated character in her personal life by caring for her father, supporting and raising her son on her own, and caring for her sister for a year when Applicant's finances were limited. Her delinquencies amount to more than \$95,000, which is security-significant, even in light of her substantial income. Many of her steps to resolve her debts were taken shortly before the hearing, indicating that she was responding more to the security process than to her obligation to satisfy her legitimate obligations. The largest debt is the second mortgage on property C, which has been outstanding since 2008. Applicant failed to act responsibly when she did not pursue the status of her second mortgage. It is not credible that a mortgage professional was unaware of an outstanding mortgage debt of almost \$100,000. Applicant knew or should have known that she had not satisfied this large debt.

A fair and commonsense assessment of the available information shows that Applicant has not satisfied the doubts raised about her suitability for a security clearance. For these reasons, I conclude Applicant has not mitigated the security concerns arising from the cited adjudicative guideline.

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1, Guideline F:	AGAINST Applicant
Subparagraph 1.a	For Applicant
Subparagraphs 1.b – 1.e	Against Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge