



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



In the matter of:)
)
) ISCR Case No. 10-03578
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel

For Applicant: *Pro se*

07/24/2012

Decision

O'BRIEN, Rita C., Administrative Judge:

Applicant failed to mitigate the security concerns raised under the financial considerations guideline. Her request for a security clearance is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), signed on November 18, 2009, to request a security clearance required as part of her employment with a defense contractor (Item 5). On December 13, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) (Item 1), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) implemented by the DoD on September 1, 2006. The SOR listed security concerns

addressed in the Directive under Guideline F (Financial Considerations). In her Answer to the SOR, dated February 10, 2012, Applicant admitted the SOR allegation that she filed for bankruptcy in July 2011. She also requested a decision without a hearing.

Department Counsel submitted a file of relevant materials (FORM)¹ in support of the Government's preliminary decision to deny Applicant's request. The FORM was forwarded to Applicant on May 3, 2012, and she received it on May 21, 2012. She was given 30 days from that date to file a response, but did not submit one. The case was assigned to me on July 18, 2012.

Findings of Fact

Applicant's admission to the allegation listed in the SOR is incorporated as a finding of fact. After reviewing the pleadings and the FORM, I make the following additional findings of fact.

Applicant is 51 years old and has worked for her current employer since 2000. She holds the position of supply chain delivery specialist. She married in 1982 and divorced in 1994. She did not list children on her security clearance application. She and her mother live together, and her mother shares some of the household expenses. Applicant attended community college, but did not receive a degree. She earned a certificate at a technical institute in 2008. She notes that she was granted a secret security clearance in approximately 2007. (Items 5, 6)

In 1993, Applicant was diagnosed with moderate clinical depression. She had counseling before the 1993 diagnosis, and believes she was depressed from a young age. She has been on numerous medications for depression since 1997, with varying success. The medications were working well at the time of her security interview in 2007. However, between 2009 and 2011, her medication became less effective, her depression deepened, and she was less able to deal with her financial problems. In early 2011, her doctor changed her medications, with positive results. (Item 6)

During her February 2010 security interview, Applicant stated that her financial problems began in 2006, when she had back surgery and did not work for three months. Her medical disability income after the back surgery was 50 percent of her usual salary. At the same time, she had several large bills including repairs to her home and her truck. Eventually, she was unable to make the minimum payments on her credit cards, or meet her other expenses. (Items 5, 6)

As of the date of her security interview in February 2010, Applicant had seven delinquent accounts, and one that she disputed as already paid. Six of the seven were credit card accounts; the other was a second mortgage. In her Answer, Applicant stated that she attempted to resolve her past-due debts by working with a "credit solution

¹ See Directive, Enclosure 3, Section E3.1.7. The FORM included nine documents (Items 1 - 9) proffered in support of the Government's case.

company,” which advised her to stop paying on her debts. She believed this to be the wrong approach, and found that, “In the end, I was paying fees to the credit solution company and no money was going to my creditors.” She also tried to resolve her debts by borrowing money from relatives, withdrawing about \$45,000 from her 401(k) plan, and using credit cards. Two judgments were filed against Applicant related to her credit card delinquencies. The two debts were combined into one garnishment in the amount of \$25,903. The garnishment reduces her monthly income by approximately 20 to 25 percent. (Items 5, 6, 8, 9)

Applicant's debts appear in her credit reports of February 2010 and November 2011. They show that, without the account she disputes, her delinquencies totaled \$68,740. As of May 2011, Applicant had net monthly income of \$1,835. After paying her monthly expenses, she had a negative remainder of \$458. She disclosed her debts in her security clearance application. (Items 5, 6, 8, 9)

Applicant's bankruptcy petition shows gambling winnings of \$16,100 in 2009 and \$2,735 in 2010; it does not indicate if Applicant had gambling losses. When asked in her security clearance application whether she had EVER had financial problems due to gambling (emphasis in original), she answered “No.” She disclosed her delinquent debts on the same application, discussed them openly in her security interview, and provided detailed information about them. Given that Applicant has been candid about her delinquencies, that she denies financial issues related to gambling, and that the file contains no documentation showing gambling debts, I find there is insufficient evidence in the record to conclude that gambling contributed to Applicant's delinquencies. (Items 5, 7)

When Applicant completed her application in November 2009, she stated she was planning to file for bankruptcy protection. At her security interview in February 2010, she noted that she had contacted a law firm to assist her. She did not wish to use bankruptcy to resolve her debts, but was advised to do so by her attorney. She filed a Chapter 7 bankruptcy petition in July 2011. At that point, her monthly expenses surpassed her monthly income by \$920. The petition lists assets of \$174,243, and liabilities of \$248,664. Applicant successfully discharged her bankruptcy in November 2011. She completed counseling as part of the bankruptcy process. (Items 4, 5, 7)

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.² 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

² Directive, 6.3.

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).

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest³ 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 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.⁴ 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 requisite judgment, reliability, and trustworthiness of one who will protect the national interests as her 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.⁵

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to 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 over-extended is at risk of having to engage in illegal acts to generate funds.

Applicant has a history of financial problems dating from at least 2006. Her expenses exceeded her income by hundreds of dollars each month. Because of mounting delinquencies that she could not resolve, she filed a Chapter 7 bankruptcy petition in July 2011, on the advice of an attorney. Her liabilities exceeded her assets by \$74,421. Under AG ¶ 19, the following disqualifying conditions apply:

³ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁴ See *Egan*, 484 U.S. at 528, 531.

⁵ See *Egan*; AG ¶ 2(b).

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

No other disqualifying conditions are supported, because the record contains insufficient evidence to conclude that Applicant's debts were linked to gambling, or that she engaged in frivolous spending.

Under AG ¶ 20, the following conditions can potentially mitigate security concerns:

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

Although Applicant's debts started to become delinquent at least six years ago, they are recent, because they were resolved through bankruptcy only eight months ago. Applicant's bankruptcy is too recent to know if she will be able to remain solvent in the future. Her accumulation of significant delinquencies casts doubt on her reliability, and AG ¶ 20(a) cannot be applied.

Several events occurred that had a negative effect on Applicant's ability to pay her bills. In 2006, she received 50 percent of her pay while on disability leave for three months. At the same time, she had large bills related to repairs to her home and truck. For many years, she had ongoing issues with control of her depression, which likely affected her ability to deal with her mounting debts. However, Applicant has been working steadily since 2000, and her mother shares in the household expenses. It is unlikely that one financially difficult period in 2006 would, by itself, have negatively affected her finances until 2011. Moreover, full application of AG ¶ 20(b) requires that an applicant act responsibly in relation to the unforeseen circumstances. Applicant made some efforts to deal with her debts through contacting a credit solution company, but her other efforts involved borrowing from her family and her 401(k), which only put her further in debt. Only partial mitigation is available under AG ¶ 20(b). AG ¶ 20(c)

applies because Applicant received counseling as part of the bankruptcy process, and her debts were resolved when the petition was successfully discharged.

Mitigation under AG ¶ 20(d) requires a good-faith effort to repay debts. The Appeal Board has defined “good faith” as acting in a way that shows “reasonableness, prudence, honesty, and adherence to duty or obligation.” In the same decision, the Board held that, “Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [this mitigating condition].” Although it is a legitimate option to resolve overwhelming debt, it does not qualify under the Appeal Board’s jurisprudence as a good-faith effort. AG ¶ 20(d) 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 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.

Over the past six years, Applicant’s expenses significantly exceeded her income every month, and she accrued more than \$68,000 in delinquent debt. It appears that her recurring depression played some part, as it worsened in 2009, and likely contributed to her failure to file for bankruptcy before 2011.

Bankruptcy is a legitimate method to resolve overwhelming debt; however, it is not a good-faith effort, under the Appeal Board’s jurisprudence. Moreover, Applicant’s petition was discharged only six months ago. Insufficient time has passed to be able to evaluate whether Applicant can demonstrate the financial responsibility required of those who hold security clearances.

A fair 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 she 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	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 allow Applicant access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge