



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



In the matter of:)
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-----) ISCR Case No. 10-04667
)
Applicant for Security Clearance)

Appearances

For Government: J. Theodore Hammer, Esquire, Department Counsel
For Applicant: *Pro se*

April 21, 2011

Decision

CURRY, Marc E., Administrative Judge:

Applicant has struggled with her finances for nearly 20 years, incurring approximately \$16,000 of delinquent debt. These problems were caused primarily by business misfortune and chronic health problems. By the hearing date, Applicant had satisfied nearly all of her debts and had implemented a plan to satisfy the remainder. Applicant has mitigated the financial considerations security concern. Clearance is granted.

Statement of the Case

On November 17, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline 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 December 1, 2006.

Applicant answered the SOR on December 7, 2010, admitting all of the allegations except SOR subparagraphs 1.c, 1.d, 1.n, and 1.o. She requested a hearing, and the case was assigned to me on January 12, 2011. On February 2, 2011, a notice of hearing was issued scheduling the case for February 25, 2011. The hearing was conducted as scheduled. I received nine government exhibits, marked Government Exhibits (GE) 1 through 9, and fourteen Applicant exhibits, marked Applicant's Exhibits (AE) A through N. Also, I considered Applicant's testimony. At the close of the hearing, I left the record open at Applicant's request to allow her to submit additional documents. Within the time allotted, she submitted seven more exhibits received as AE O through V. DOHA received the transcript (Tr.) on March 7, 2011.

Findings of Fact

Applicant is a 52-year-old woman with two adult children. She and her husband separated in 2005, and legally divorced in 2010. They had been married for 32 years. (Tr. 26)

Applicant has a high school education. (Tr. 38) She has worked as an administrative assistant for various companies for most of her career. For the past three years, she has worked in this capacity for a defense contractor. (Tr. 39)

Applicant's financial problems began in the mid-1990s when her husband's business, a cleaning company, began struggling, and he stopped paying the payroll taxes. (Tr. 40, 50) Applicant was jointly responsible for paying these taxes because she and her husband jointly filed their tax returns. (Tr. 50) In July 1996, the United States Internal Revenue Service (IRS) filed a tax lien against Applicant's property in the approximate amount of \$5,914 for tax year 1994.

As Applicant's husband's business continued to struggle through the late 1990s, they became solely dependent on Applicant's salary. (Tr. 42) In approximately 2000, the business failed. Although he obtained another job, it was low paying and menial. (Tr. 42) In November 2001, Applicant and her husband filed for Chapter 13 bankruptcy protection. (GE 5) Under the plan, they were to pay \$720 per month for five years to their creditors through the bankruptcy trustee. (*Id.* at 2) On July 31, 2002, the court dismissed the bankruptcy plan after failure to confirm the plan. (*Id.*)

Shortly after the court dismissed the Chapter 13 bankruptcy plan, Applicant's home was foreclosed. She and her husband then moved to a rental property. The rent on the home where they moved was nearly \$200 higher than their mortgage. According to Applicant, this was "all [they] could find." (Tr. 43)

In approximately 2003, Applicant's financial situation improved slightly after her husband obtained a higher-paying job and inherited a modest amount of money after his mother's death. Applicant and her husband then arranged a payment plan with the IRS to satisfy the tax lien. By then, the delinquency had increased to \$16,900 and included tax years 1995 through 1998 and 2002. (GE 7 at 17) Under the plan, they paid

\$400 per month. (Tr. 55) After they separated permanently in 2005, they continued to make the payments, splitting them in half. (Tr. 55)

It is unclear from the record whether Applicant and her husband paid the IRS consistently under the plan. The fact the IRS obtained another tax lien in 2006 suggests that they did not make consistent payments. Nevertheless, they had satisfied the tax delinquency entirely by December 2009. (AE B)

At or about 2002, Applicant, a lifelong diabetic, began experiencing severe heart problems. Over the next seven years, she had three heart attacks, and received two stents. (Tr. 45-46) Her medical costs mounted, further straining her finances.

On or about June 2004, Applicant filed for Chapter 7 bankruptcy protection. (Answer) The court granted the motion and discharged approximately \$14,000 of debt. (GE 7 at 5)

Applicant continued to struggle with managing her finances after the Chapter 7 bankruptcy. Her ability to make ends meet was disrupted by the separation from her husband in 2005 and her continuing serious medical problems.

By November 2010, Applicant had accrued approximately \$22,500 of additional debt, including \$20,000 of debt unlisted on the SOR, \$1,000 owed to a credit card company (SOR subparagraph 1.l), \$800 in medical bills (SOR subparagraphs 1.e-1.k, 1.n-1.o), a delinquent phone account for \$224 (1.m), and two miscellaneous accounts totalling approximately \$500 (SOR subparagraphs 1.p and 1.q) The \$20,000 of unlisted debt consists primarily of the balance on her father's credit card that he allowed her to use to purchase a car. (Tr. 118) No evidence exists that it is, or ever was delinquent.

In November 2010, Applicant satisfied SOR subparagraphs 1.n and 1.o, totalling \$60. (AE K) In December 2010, Applicant's ex-husband died leaving her a \$25,000 life insurance policy. Applicant used \$10,000 of the money to pay for her husband's funeral expenses. She then applied the remainder to her debts. By March 2011, Applicant had satisfied the debts alleged in SOR subparagraphs 1.l through 1.m, 1.p, and 1.q in their entirety. (AE G, M; Tr. 70-72)

In February 2011, Applicant contacted her father's credit card company to arrange a settlement of her outstanding debt. Under the terms of the settlement agreement, she paid \$6,000 on February 7, 2011. (AE G at 2) Currently, she owes approximately \$11,900. (Tr. 87)

In February 2011, Applicant contacted the collection agent for the hospital which treated her over the years to settle her delinquent accounts. The collection agent then provided her with a statement of outstanding accounts that revealed she was delinquent on several accounts in addition to those alleged in the SOR, and that the revised balance was approximately \$2,200. That month, she made a \$382 payment. (AE G at 2) This did not cover any of the medical bills listed in the SOR. With the help of a credit

counseling company, Applicant developed a payment plan to satisfy the medical bills. (AE E) She is also satisfying the debt she accrued on her father's credit card through the payment plan. (*Id.*)

Applicant maintains a budget. She has approximately \$350 of monthly after-expense income, and \$2,400 in a savings account. (Tr. 117)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to introductory explanations for each guideline, 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, these guidelines are applied in conjunction 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 has been struggling with her finances for nearly 20 years. During this time, she had, among other things, accrued approximately \$16,900 of delinquent federal income taxes, and filed for bankruptcy protection twice. AG ¶¶ 19(a), "inability or

unwillingness to satisfy debts,” and 19(c), “a history of not meeting financial obligations,” apply.

The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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.

Applicant’s financial problems were not caused by irresponsible spending. Instead, they were caused by a failing business and then compounded by medical expenses related to three successive heart attacks.

By December 2009, Applicant had satisfied her outstanding federal income tax delinquency, her most significant SOR debt. In December 2010, her ex-husband died, leaving her \$25,000 through a life insurance policy. Since then, Applicant has satisfied approximately \$9,000 of her debt. Currently, the only SOR debts that remain outstanding are several medical bills totalling approximately \$800. With the help of a creditor counselor, she is satisfying these bills, along with some unlisted delinquencies through a debt repayment plan. All of the mitigating conditions set forth above 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 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.

The income tax-related nature of much of Applicant's delinquencies compounded the seriousness of her financial problems. Moreover, she accrued additional debt after a bankruptcy discharge. Applicant's income tax delinquencies were caused by hardship resulting from her then-husband's failing business, and the recurrence of her financial problems stemmed from severe medical problems. These mitigating circumstances combined with the steps taken to satisfy her debts outweigh the nature and seriousness of her delinquent debt accrual, and render the likelihood of recurrence minimal. Upon evaluating this case in the context of the whole-person, I conclude Applicant has mitigated the financial considerations 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:	FOR APPLICANT
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Subparagraphs 1.a - 1.q:	For Applicant
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Conclusion

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

MARC E. CURRY
Administrative Judge