



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



In the matter of:)	
)	
)	ISCR Case No. 10-05070
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

December 21, 2011

Decision

CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns generated by her delinquent debt. Clearance is denied.

Statement of the Case

On June 21, 2011, 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 July 6, 2011, admitting all of the allegations and requesting a hearing. The case was assigned to me on October 3, 2011. A notice of hearing was issued on October 19, 2011, scheduling the case for November 8, 2011. I

held the hearing as scheduled, receiving seven Government exhibits, marked as Government Exhibits (GE) 1-7, three Applicant exhibits (Applicant Exhibit (AE) 1-3), and considering Applicant's testimony. I also received a chart from Department Counsel linking Applicant's debts with the corresponding record evidence. I marked this as Hearing Exhibit I. DOHA received the transcript (Tr.) on November 17, 2011.

Findings of Fact

Applicant is a 37-year-old woman who has been married for 12 years. She has no children.

Applicant has a high school education. She and her husband own and operate a commercial truck. (Tr. 16)

The SOR lists four delinquent debts totalling approximately \$12,000. Applicant accrued these debts approximately ten years ago. She attributes these debts to a combination of overspending, bad business decisions, and her husband's hospitalization. (Tr. 36) In approximately 2002, Applicant retained a debt management company to help her satisfy the debts. (Tr. 35) With the help of this company, Applicant developed a payment plan. She testified that she adhered to this plan for approximately three to five years, and satisfied several debts that are not listed in the SOR. She does not remember how much money she paid into the plan or exactly how long she adhered to the plan. (Tr. 36) After a while, Applicant "got a bit lazy," and did not finish the payment plan. (Tr. 37)

Applicant owes the IRS approximately \$12,000 in income taxes for tax years 2005 through 2007. (Tr. 29) These delinquencies are not alleged on the SOR. She accrued these debts because she did not set aside enough of her business income into an escrow account for income tax payments. (Tr. 30) She has been paying the IRS approximately \$175 monthly for the past two years, and has satisfied the debt owed for tax year 2005. (Tr. 30)

Since 2007, Applicant has not accrued any additional delinquent debt. In 2011, she consulted an attorney about her delinquencies. (Tr. 39) She was advised that she should not pay them because, as debts more than six years old, she was no longer legally responsible for them. (Tr. 39)

Applicant has approximately \$435 in monthly after-expense income, and \$2,000 in savings. (Tr. 36) She intends to pay the SOR delinquencies after she gets her tax delinquencies "straightened out." (Tr. 45)

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 financial struggles trigger the application of AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” and 19(c), “a history of not meeting financial obligations.”

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.

Upon considering these mitigating conditions, I conclude none apply. Although Applicant's husband's hospitalization and some business struggles contributed to Applicant's financial problems, she failed to finish a payment plan. She acknowledged this failure occurred as a result, not of circumstances beyond her control, but because of laziness.

Applicant's SOR debts remain outstanding, and she has no plan to begin satisfying them until she satisfies \$12,000 in delinquent federal income taxes that were not alleged in the SOR. There is no requirement that an applicant with both listed and unlisted delinquencies must pay the listed delinquencies first. Financial consideration security concerns can be mitigated so long as there is a concrete payment plan in addition to evidence that the applicant has been executing the plan for a long enough period of time to infer that the problem is being resolved or is under control.

Applicant, however, provided no payment plan or proof that she is satisfying any of her debts. Her reassurances that she will satisfy her delinquencies, absent concrete evidence of when she will begin satisfying them, are merely speculative.

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.

Applicant's SOR delinquencies remain outstanding, and she is currently not making any payments toward their satisfaction. These debts have been delinquent for nearly ten years. Considering this case in the context of the whole-person concept, I conclude Applicant has not 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: AGAINST APPLICANT

Subparagraphs 1.a - 1.d: 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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

MARC E. CURRY
Administrative Judge