



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



In the matter of:)
)
) ISCR Case No. 10-05571
)
Applicant for Security Clearance)

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

August 23, 2011

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate the Financial Considerations concerns. She has a history of spending beyond her means and failing to pay her debts. She recently had her debts discharged through bankruptcy, but failed to establish a consistent track record of responsibly handling her financial obligations. Clearance is denied.

Statement of the Case

On November 18, 2010, the Defense Office of Hearings and Appeals (DOHA) made a preliminary determination to deny Applicant access to classified information.¹ The basis for this decision is set forth in a Statement of Reasons (SOR), which alleges security concerns under Guideline F (Financial Considerations).

¹ This action was taken pursuant to 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 responded to the SOR on December 1, 2010 (Answer), and requested a hearing to contest the adverse determination. I was assigned the case on June 3, 2011, and scheduled the hearing for June 29, 2011. At hearing, the Government offered six exhibits, which were admitted, without objection, as Government Exhibits (GE) 1 – 6. Applicant testified at the hearing, but did not offer any exhibits beyond those attached to her Answer. I kept the record open until July 7, 2011, to give her an opportunity to submit additional documents for my consideration. She submitted three exhibits, which were admitted, without objection, as Applicant's Exhibits (AE) A – C. The transcript was received on July 17, 2011.²

Findings of Fact

Applicant is 39 years old. She has three children, who are 9, 10, and 17 years old. Two of her children have medical issues and their medical issues, as well as her own, have contributed to her recent financial problems. However, none of the debts alleged in the SOR are associated with her or her children's medical bills. Applicant recently graduated from college and plans on going back to school in the near future, which will allow her to defer her student loans. This is her first application for a security clearance.³

Applicant worked as a realtor at her family's real estate company for nearly 10 years from 2001 to 2009. She was able to make a comfortable living for the majority of those 10 years, making as much as \$28,000 in a single month. In 2001, she purchased her first home. Her family helped her pay off her debt at the time, so she could qualify for the loan. In 2006, Applicant purchased a new home directly from the builder. She put no money down and, in addition to acquiring a primary mortgage, secured a \$95,000 line-of-credit. She used some of this money to purchase and fix up an investment property, which she hoped to sell in a few years for a profit to finance her daughter's college education.⁴

In 2008, with the collapse of the housing market, Applicant's real estate work dried up and her income decreased sharply. By November 2009, she was not making any money and had to surrender her real estate license. Applicant was unable to find full time employment until May 2010, but was then again out of work from August to October 2010. Her family supported her during this difficult financial period.⁵

² On June 9, 2011, the parties agreed to hold the hearing on June 29, 2011. A formal Notice of Hearing was issued on June 10, 2011, but Applicant did not acknowledge receipt of the notice until June 17, 2011, or 12 days before the hearing. At hearing, Applicant indicated that she had sufficient time to prepare and wanted to proceed with the hearing. (Tr. at 7-9). In addition, as noted above, I kept the record open to provide Applicant additional time to submit matters for my consideration.

³ GE 1; Tr. at 34, 42, 48-54, 86, 91-92, 115-117.

⁴ Tr. at 36-40, 125-128, 137-138.

⁵ Tr. at 36-40, 54, 93-95, 125-128, 137-143. *But see*, GE 1 (no periods of unemployment listed).

Applicant found herself unable to pay the mortgage on her home and, at one point, was over \$13,000 past due. The home went into foreclosure, but she was able to secure a loan modification. Per the terms of the modification agreement, Applicant's mortgage payments went from about \$2,900 to \$864 per month. Yet, even after this significant savings, Applicant was unable to meet her financial obligations of over \$5,500 a month.⁶ Accordingly, on October 20, 2010, she filed for Chapter 7 bankruptcy. In the bankruptcy petition, she listed the \$33,200 in debts alleged in the SOR, which includes a significant amount of consumer debt.⁷ Applicant also listed over \$100,000 in other delinquent debts that were not alleged in the SOR, to include a state income tax debt from 2006.⁸ On February 2, 2011, Applicant's debts were discharged in bankruptcy.⁹

Applicant started her own company around the time she filed for bankruptcy. This company cleans up and maintains foreclosed homes. The company brings in about \$2,000 a month. Applicant also went to court to seek child support for her three children. She is currently receiving about \$2,548 per month in child support. Applicant claims that her current monthly income is about \$5,948 and her monthly expenses are roughly \$1,720. She is currently receiving public assistance and continues to rely on the support of her family to pay her bills. She does not have a written budget and has not taken a financial counseling course.¹⁰

Applicant took her three children with her on a vacation to Hawaii and paid off her vehicle, a BMW X-5, in 2010. Applicant still owns her investment property that she purchased in 2006. Her cousin now lives in the property and pays all the bills associated with the property. Applicant recently paid the money necessary to reinstate her real estate license and has a few active clients. She is heavily involved in her community and submitted a letter from a friend attesting to her character.¹¹

⁶ GE 5, *Summary of Schedules and Schedule J*.

⁷ Tr. at 96-114 (discusses each of the SOR allegations). The Government conceded that the debts alleged in ¶¶ 1.b, 1.e, and 1.j had been satisfied prior to the bankruptcy filing and that a favorable determination could be entered on behalf of the Applicant as to these allegations. Tr. at 32, 96-98, 163-164. See also, Answer, Attachment 2, *Order Vacating Judgment*.

⁸ Answer; GE 5, *Schedule E*; Tr. at 128-134 (paying \$25 per month to satisfy tax debt). These debts were not alleged in the SOR and the Government did not move to amend the SOR to include them. However, as Applicant was on notice that her finances were at issue, I will consider this adverse information in assessing the evidence in mitigation and extenuation, as well as under the "whole person" concept. ISCR Case No. 09-08108 at 5-6 (App. Bd. Feb. 15, 2011); ISCR Case No. 09-06770 (App. Bd. Nov. 8, 2002); ISCR Case No. 01-07656 (App. Bd. Aug. 29, 2002).

⁹ Answer; GE 4-7; Tr. at 43-47, 128-143.

¹⁰ Tr. at 55-90, 120-125. *But see*, GE 5, *Summary of Schedules* (monthly income: \$1,776.50; monthly expenses: \$5,543.92) and *Schedule J* (net monthly income is a negative \$3,867.42). Applicant did not submit documentation to support her claim that her income and expenses had reversed course so dramatically in such a short period of time. ISCR Case 07-10310 at 2 (App. Bd. July 30, 2008).

¹¹ Tr. at 77, 82-83, 134-137, 141-142, 160-162; GE 5, *Schedule C*; AE C.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

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 overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several disqualifying conditions under AG ¶ 19. As evidenced by her bankruptcy petition (GE 5), Answer, and testimony, Applicant has a history of living beyond her means and failing to pay her financial obligations. AG ¶¶ 19(a),¹² (c),¹³ and (e)¹⁴ apply.

An applicant may mitigate the concerns raised by their history of financial irresponsibility by establishing one or more of the mitigating conditions listed under AG ¶ 20. I have considered all the mitigating conditions, and find that the following warrant discussion:

(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.

¹² Inability . . . to satisfy debts.

¹³ A history of not meeting financial obligations.

¹⁴ Consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow . . .

Applicant's financial problems are of recent vintage and her debts were discharged just five months ago. Her state tax debt from 2006 is still outstanding. Based upon the evidence and Applicant's testimony, I am not convinced that her financial problems will not recur. Under the circumstances, Applicant has failed to establish "a meaningful track record of debt payments."¹⁵ AG ¶ 20(a) does not apply.

Applicant's financial problems were, in part, due to matters beyond her control, notably: job loss, lack of consistent child support, and medical issues. However, as evidenced by her bankruptcy petition, Applicant did not scale back her expenses to account for her decreased income. Instead, by the time she filed for bankruptcy in October 2010, Applicant's expenditures were over \$5,500 per month, her income was less than \$1,800 per month, and her liabilities were nearly \$200,000 more than her assets. See GE 5, *Summary of Schedules*. AG ¶ 20(b) does not apply, because Applicant failed to act responsibly under the circumstances.

Applicant has now resolved her financial indebtedness through bankruptcy. However, "[a] security clearance adjudication is not a proceeding aimed at collecting an applicant's debts. Rather, it is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness. Accordingly, even if a debt is legally unenforceable, the government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring the debt and failing to satisfy it in a timely manner."¹⁶ Applicant accumulated a significant amount of frivolous consumer debt prior to filing for bankruptcy, and has still not satisfied a delinquent state tax debt from 2006 – a debt she should be able to satisfy in light of her claim that her income is now almost \$6,000 per month. She has not taken a financial counseling course and still relies on her family to pay her bills. In the midst of her financial trouble and in the same year she filed for bankruptcy, Applicant took a vacation to Hawaii and paid off her luxury vehicle versus paying her overdue creditors.¹⁷ Although Applicant recently resolved the debts listed in the SOR, I am not convinced that the behavior that led to the financial problem in the first place has been resolved. Accordingly, AG ¶ 20(c) does not apply and AG ¶ 20(d) does apply, but is insufficient to mitigate the Financial Considerations concern. Applicant failed to mitigate the Guideline F concern.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's

¹⁵ ISCR Case No. 09-08108 at 5 (App. Bd. Feb. 15, 2011).

¹⁶ ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). See *also*, ISCR Case No. 09-07916 at 3 (App. Bd. May 9, 2011).

¹⁷ ISCR Case No. 07-13766 at 4 (App. Bd. Nov. 12, 2008) (Applicant's decision to take a family vacation during a period of time she and her husband were unemployed "raises serious questions about Applicant's judgment in regard to her debts, in that she appears to have used funds on the vacation that could better have been expended on debt reduction.").

conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).¹⁸ I have considered and given due weight to all the favorable and extenuating factors in this case. Applicant is a single mother raising three children and she is a community organizer. However, this favorable evidence, as well as the other mitigating record evidence, does not outweigh the security concern at issue.

Formal Findings

I make the following formal findings regarding the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

 Subparagraphs 1.a, 1.c, 1.d, 1.f - 1.i, 1.k - 1.m: **Against Applicant**

 Subparagraphs 1.b, 1.e, and 1.j: **For Applicant**

Conclusion

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

Francisco Mendez
Administrative Judge

¹⁸ (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.