



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



In the matter of:)
)
) ISCR Case No. 10-09331
)
Applicant for Security Clearance)

Appearances

For Government: Phillip J. Katauskas, Esquire, Department Counsel
For Applicant: *Pro se*

03/26/2012

Decision

MASON, Paul J., Administrative Judge:

Applicant had adequate notice since March 2010 that the Government was concerned about her delinquent accounts. The record demonstrates she is credibly trying to obtain a loan modification agreement. The record also shows she paid the department store debt because her claim is supported by documents from the creditor verifying that she settled the account. That kind of documented evidence does not exist for the other nine accounts because: (1) she did not have the documents to support her claims; (2) she supplied documents that did not prove the debt was paid; or (3) she furnished different accounts of having documentary proof. Eligibility for access to classified information is denied.

Statement of the Case

Applicant completed and certified her Electronic Questionnaire for Investigations Processing (e-QIP)(GE 1) on January 8, 2010. On March 17, 2010, she was interviewed about her delinquent debts by an investigator from the Office of Personnel Management (OPM). That interview appears in Applicant's interrogatory answers dated March 19, 2011. (GE 2) Applicant indicated that the interview summary was not correct and provided corrections. Those corrections shall be addressed in the Findings of Fact.

On September 15, 2011, DOHA issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F). 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 September 1, 2006.

Applicant submitted her answer to the SOR on November 10, 2011. DOHA issued a notice of hearing on January 7, 2012, for a hearing on February 7, 2012. The hearing was held as scheduled. At the hearing, six exhibits (GE 1 through 6) were admitted in evidence without objection in support of the Government's case. Applicant and two witnesses testified. In the time allowed for Applicant to submit post-hearing exhibits, she submitted eight exhibits (AE A through AE H). The Government had no objection to the exhibits and they were admitted into evidence. DOHA received the transcript (Tr.) on February 14, 2012. The record closed on February 28, 2012.

Findings of Fact

The SOR alleges security concerns emanating from the financial considerations guideline. There are 11 delinquent debt allegations totaling \$57,397. The largest delinquent accounts are a delinquent mortgage of \$39,940 (SOR ¶ 1.c) and an auto installment loan balance of \$13,119 (SOR ¶ 1.d). After subtracting the past due mortgage account from Applicant's total debt, the remaining delinquent debt is \$17,457. According to the credit bureau reports, the accounts became delinquent between May 2006 (SOR ¶ 1.e) and November 2009. (GE 4, 5, 6) Applicant admitted all the allegations except for SOR ¶ 1.i.

Applicant is 53 years old and widowed. She married her husband in November 2002. Her husband died in April 2007 while trying to extinguish a fire in his parked truck. The truck was hit by a speeding automobile, causing her husband's death. (Tr. 64) Applicant has two sons from a previous relationship. Her daughter from a previous relationship was murdered in April 2009. Applicant has been employed as an administrative assistant by a defense contractor since August 2008. Before her current job, she was employed as a security

guard and an emergency management technician. In December 2008, Applicant received a certificate of completion of a state fire and rescue training course.

Before her husband's death in April 2007, he was earning approximately \$60,000 a year, and Applicant was earning about \$30,000. After his death, she encountered financial problems because she could not pay all the bills on her \$30,000 a year earnings. (Tr. 58) She became very depressed for a significant period of time. She developed problems completing tasks. (Tr. 68) She did not open her mail for a significant period. (GE 1 at 46) Her depression was aggravated by her daughter's death in April 2009 and subsequent murder trial in March 2010. (GE 2, interview summary)

Applicant was advised early in the hearing that documentation was essential to establishing that she satisfied the delinquent accounts listed in the SOR. (Tr. 16) Throughout the security investigation, she provided inconsistent positions about having the necessary documentation to verify her payment of most of the listed and unlisted accounts. Considering her demeanor and conduct during the hearing, and though she did not mention grief counseling until her post hearing statement (AE H), it is clear she is suffering from some level of depression that may be negatively affecting her memory. However, without any independent evidence from a mental health professional or some other source, I am unable to find that her depression is the sole cause of her contradictory documentary claims of proof. Those different positions undermine the believability of Applicant's debt payment claims. The debts listed in the SOR will be examined in chronological order.

SOR ¶ 1.a. In an attached statement to her March 2011 interrogatory answers modifying her March 2010 interview summary, Applicant indicated she was not familiar with the account and had "sent a dispute." (GE 2) In her answer to the SOR dated November 10, 2011, she admitted the debt and claimed she paid it and had verification coming in the mail. At the hearing on February 7, 2012, she testified that she had the documentation to prove she paid the debt. (Tr. 46) However, in the position statement she provided after the hearing (AE D), she stated she could not verify payment of the debt with documentation. GE 6, a credit report dated June 2, 2011, shows she still owes the account.

SOR ¶ 1.b. Applicant provided documentation from the collection agency proving she paid this debt in March 2011. (AE A)

SOR ¶ 1.c. In an attached statement to her March 2011 interrogatory answers modifying her March 2010 interview summary, Applicant indicated she had been trying to receive a loan modification agreement concerning her mortgage since 2007. (GE 2) At the hearing, she maintained she had the documentation to support her assertion that she had made frequent attempts to obtain the loan modification. (Tr. 49) She submitted a package of documents showing that she submitted one request on February 2, 2012. (AE B, D) The account still appears delinquent in her June 2011 credit report. (GE 6)

SOR ¶ 1.d. In an attached statement to her March 2011 interrogatory answers modifying her March 2010 interview summary, Applicant stated she intended to start making payments on the vehicle installment loan when she received her tax return. (GE 2) In her March 2010 interview summary, Applicant explained that her son assumed the truck payments for a period until he lost his job, and her mother-in-law intended to purchase the vehicle, but passed away in 2010. (GE 2, interview summary) At the hearing, Applicant testified her husband purchased the truck in 2003 and she was a cosigner on the installment loan contract. (Tr. 50) She tried unsuccessfully to reach the collection company who was handling the delinquent account. She stated she was just holding the vehicle because she did not want a repossession on her record. (Tr. 52) In her post-hearing position statement, she stated she could not reach the collection company. (AE D) The account appears in her June 2011 credit report. (GE 6)

SOR ¶ 1.e. In an attached statement to her March 2011 interrogatory answers modifying her March 2010 interview summary, Applicant believed that the account represented attorneys fees for services provided when her mother died in 2000. In her answer to the SOR, Applicant averred that she paid the account in July 2011. She testified she had proof to verify she paid the account. (Tr. 52-53) When asked by the Government whether the SOR ¶ 1.e account was related to the SOR ¶ 1.d truck installment loan account, Applicant testified “yes.” (Tr. 58) In her post-hearing position statement, she reiterated she had paid the account and claimed she provided a letter as proof of payment. (AE D) After examining her post-hearing documents, I found no letter attached.

SOR ¶¶ 1.f, 1.j, and 1.k. In her attached statement to her March 2011 interview answers modifying her 2010 interview summary, Applicant claimed she paid the parking tickets. In her answer to the SOR, she reiterated her claim that she paid the tickets and provided proof. (AE C) The first page of the exhibit shows a motion to vacate the judgment for two traffic violations. The second page of the exhibit provides details of the violations. In the right-hand corner of the second page, there is a column with the words “Total Due” at the top of the column. The exhibit does not indicate the tickets were paid. (*Id.*)

SOR ¶ 1.g. Applicant did not address this debt in her attachment to her March 2011 interrogatory answers. In her answer to the SOR, Applicant indicated she paid the account in full. Applicant testified she paid the debt and had documentation. (Tr. 54) In her post-hearing position statement, she indicated she paid the account, but could not provide verifying documentation. (AE D) The delinquent account is listed in the credit bureau report dated September 28, 2010. (GE 4)

SOR ¶ 1.h. In an attached statement to Applicant’s March 2011 interrogatory answers modifying her March 2010 interview summary, she contended she paid the telephone bill. (GE 2) In her answer to the SOR, she reiterated her claim of paying the bill and having a letter attached to her answer. No letter is attached to her answer. She

testified she had documentation to show she had paid the bill. (Tr. 54) In her post-hearing position statement, she averred that the letter from the creditor was to be mailed to her on February 15, 2012. No letter could be found in Applicant's post-hearing documentation. The account appears in GE 3 and GE 4 as charged off.

SOR ¶ 1.i. In an attached statement to Applicant's March 2011 interrogatory answers modifying her March 2010 interview summary, she did not address this debt. She denied she owed the debt at the hearing (Tr. 55-56), and could not find the identity of the creditor in her post-hearing position statement. (AE D)

Although not listed in the SOR, Applicant indicated in her post-hearing exhibits that she had two other delinquent accounts with the state collection department. The amount of the first account is \$561 and the second is \$1,170. In her post hearing documentation, she indicated that both accounts were paid and a letter was included to show proof of payment. (AE D) Her credit report dated February 23, 2012, confirms the delinquent debts. (*Id.*) However, there are no letters of payment in her post-hearing documentation proving that she paid the two unlisted delinquent accounts. (AE A through AE H)

Since October 2011, Applicant has been attending a financial counseling class. When that class ended, she enrolled in another financial counseling course sponsored by a church. The church-sponsored course teaches how to manage bills and pay debts on time. (Tr. 60) The course also teaches Applicant to complete financial projects that she starts. (Tr. 68) During a recent class in January 2012, she learned that before she purchases anything, she should ask herself whether she is purchasing the item because of necessity or desire. (Tr. 70-71) In the future, the financial counseling classes will help her establish a budget and pay bills on time. (Tr. 72)

In AE H, Applicant explained the adverse impact of the deaths of her mother and father in 2000 and other family members between 2007 and 2010. She reiterated the challenges she has had in trying to regain control over her financial responsibilities and other issues in her life. The grief counseling is helping her overcome her depression and the financial counseling is helping her manage her bills and establish a budget. (*Id.*) Applicant's monthly list of expenses totals \$3580. (*Id.* at 2)

Character Evidence

Witness A testified that she has known Applicant since their childhood, about 40 years. They currently live in the same neighborhood. (Tr. 31) Witness A believes Applicant is very trustworthy and dependable. (Tr. 32-33) Applicant told Witness A about trying to obtain a loan modification agreement for her house. (Tr. 34) She indicated she wanted to pay her bills. (Tr. 36) Witness A is aware that Applicant enrolled in a financial counseling class. (Tr. 37)

Witness B has known Applicant for 30 years and currently lives in the same neighborhood. In Witness B's opinion, Applicant's reliability, trustworthiness, and honesty are based on the fact she is always willing to assist Witness B in getting whatever she wants. (Tr. 40-42)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. Each guideline lists potentially disqualifying conditions and mitigating conditions, which are required to be used to the extent they apply in evaluating an applicant's eligibility for access to classified information.

The administrative judge's ultimate goal is to reach a fair and impartial decision that is based on common sense. The decision should also include a careful, thorough evaluation of a number of variables known as the whole-person concept that brings together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. 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 about the potential, rather than actual, risk of compromise of classified information.

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

Financial Considerations

The security concern for financial considerations is set forth 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.

There are two disqualifying conditions under AG ¶ 19 that may apply:

AG ¶ 19(a) inability or unwillingness to satisfy debts; and

AG ¶ 19(c) a history of not meeting financial obligations.

The SOR lists 11 debts totaling \$57,397. The debts became delinquent between May 2006 and November 2009. AG ¶¶ 19(a) and 19(c) apply.

Five conditions under AG ¶ 20 could potentially mitigate Applicant's delinquent indebtedness:

AG ¶ 20(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;

AG ¶ 20(b) the conditions that resulted in the financial problem were largely beyond the person's control, and the person acted responsibly under the circumstances;

AG ¶ 20(c) the persona has received counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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 to resolve the issue.

AG ¶ 20(a) does not apply. The delinquent accounts were not incurred a long time ago, but between May 2006 and November 2009. Though the debts emerged during a traumatic period in Applicant's life, the lack of documentary evidence to support her claims of paying most of the listed accounts continues to have a negative impact on her reliability, trustworthiness and judgment.

AG ¶ 20(b) is partially applicable. The death of Applicant's husband in April 2007 caused her to descend into serious depression, and she found herself not opening her mail for a period of time. Her daughter's murder in April 2009 and the subsequent murder trial in March 2010, prolonged her depression. However, to receive full application under the

AG ¶ 20(b), an applicant should also demonstrate she acted responsibly under the circumstances. Except for her loan modification documentation (SOR ¶ 1.c) and her documentation verifying settlement with the department store (SOR ¶ 1.b), Applicant has not provided the necessary documentation proving she paid the other listed debts and two unlisted debts.

The record shows that Applicant has had some financial counseling. She has learned to ask questions before purchasing anything. However, without documentary support of her claims addressing 9 of the 11 listed accounts, and two accounts not listed in SOR, it is premature to conclude that her delinquent debts are being resolved or under control.

Based on her documented settlement of the SOR ¶ 1.b department store account, AG ¶ 20(d) applies in part. I reach the same conclusion regarding the loan modification agreement. (SOR ¶ 1.c) As far the other delinquent debts are concerned, Applicant has provided either no documents to support her payoff claims, or she has provided documents that do not show the debt was paid.

Though Applicant initially disputed SOR ¶ 1.a and denied she owed SOR ¶ 1.I, she has provided sufficient evidence to receive credit under the mitigating condition. The condition requires a reasonable basis to dispute the debt and documented evidence to substantiate the dispute. Applicant's favorable job performance evidence, and her evidence in mitigation under AG ¶¶ 20(b) and 20(d) do not overcome the adverse evidence under AG ¶¶ 19(a) and 19(c).

Whole-Person Concept

In evaluating Applicant's security clearance worthiness, I have examined the evidence under the disqualifying and mitigating conditions of the financial guideline. I have also weighed the circumstances within the context of nine variables known as the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

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 the participation was 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 ultimate decision of whether the granting or continuing eligibility for a security clearance is clearly consistent with the interests of national security must be a judgment based on common sense after a careful review of the guidelines, which are to be evaluated in the context of the whole-person concept. (AG ¶ 2(c))

Applicant is 53 years old and has been employed by a defense contractor since August 2008. Witnesses A and B have known her for 30 to 40 years, and praise her honesty and dependability. In December 2008, Applicant received a certificate for successfully completing the state fire and rescue course.

The evidence against granting Applicant's security clearance application is based on a lack of documentary evidence to support her satisfaction of the accounts listed in SOR ¶¶ 1.a, 1.d, 1.e, 1.f, 1.g, 1.h, 1.i, 1.j, and 1.k. In January 2010, she provided information about her delinquent debts in her e-QiP. In March 2010, she discussed her delinquent debts with an OPM investigator. In her answer to the SOR and at the hearing, Applicant made claims that were different from her earlier claims during the security investigation. Following the hearing, Applicant expressed different claims about the listed accounts. In addition, she claimed that she had included documentary proof about listed and unlisted accounts in her post-hearing documentation that did not exist. These inconsistent claims have been identified in the Findings of Fact. In sum, the incompatible positions taken by Applicant undercut her credibility and compel a formal finding against her under the financial considerations guideline.

Formal Findings

Paragraph 1 (Guideline F):	AGAINST APPLICANT
Subparagraphs 1.a, 1.d through 1.k:	Against Applicant
Subparagraphs 1.b, 1.c:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant access to classified information. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge