



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



In the matter of:)
)
) ISCR Case No. 11-00226
)
Applicant for Security Clearance)

Appearances

For Government: Raashid S. Williams, Esq., Department Counsel
For Applicant: Richard M. McGill, Esq.

January 4, 2012

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate the Financial Considerations concern. Her financial problems are attributable to the failure of her private ministry, which left her with a substantial amount of debt. She failed to establish that her financial situation is under control. Clearance is denied.

Procedural History

On August 9, 2011, 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) that alleges the security concern under Guideline F (Financial Considerations). Applicant filed her response to the SOR on August 30, 2011 (Answer). She admitted the SOR allegations and requested a hearing.

¹ This 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.

Department Counsel filed its ready-to-proceed on September 30, 2011. After coordinating with the parties, I scheduled the hearing for November 29, 2011.² Applicant's counsel appeared on the originally scheduled hearing date and requested a delay because his client was unable to appear. I granted the delay and rescheduled the hearing for December 8, 2011. Applicant appeared with counsel. Government Exhibits (GE) 1 through 4 and Applicant's Exhibit (AE) A and B were offered and admitted into evidence without objection. The Government did not call any witnesses. Applicant testified on her own behalf and called her husband as a witness. The transcript (Tr.) was received on December 16, 2011.

Findings of Fact

Applicant is 57 years old. She has been married for 38 years and has two adult children. She received her associate's degree in 1974 and graduated from seminary school in 2003. She was ordained a minister in 2005. She worked for the federal government for 34 years, the last 27 years for the Treasury Department. She retired from federal government service in July 2010 and the following month started working as a government contractor for her current employer. She has never held a security clearance.³

Applicant and her husband, who is also an ordained minister, secured a construction loan in 2003 to build a church complex, consisting of a church, daycare facility, and low income housing units. The church complex was Applicant and her husband's shared dream and was intended to serve the less fortunate in their community. Unfortunately, the church complex never generated sufficient income to cover the mortgage and other expenses. Applicant started using her credit cards and secured a second mortgage on her home to pay the church's expenses. By 2008, Applicant had reached the limit on her credit cards and stopped paying on them. She had also stopped paying the mortgage on the church complex. The bank foreclosed on the church property in 2009. The property sold for \$150,000, leaving a deficiency owed of approximately \$700,000.⁴

Applicant and her husband filed for Chapter 11 bankruptcy protection in November 2010, in order to stay a state court action filed by the bank seeking the \$700,000 deficiency owed. The bankruptcy is referenced in SOR ¶ 1.a. Applicant's *Summary of Schedules* notes that she and her husband have over 1.5 million in assets, but more than 1.9 million in liabilities. The vast majority of the liabilities are classified as unsecured credit, including the \$700,000 deficiency and four credit card accounts totaling about \$119,000.⁵ These are the same credit cards Applicant used to maintain

² On October 26, 2011, Applicant received the original Notice of Hearing. See Hearing Exhibit I.

³ Tr. at 25-30; GE 1.

⁴ Tr. at 30-40, 46-47, 56-63, 82-85, 89-90, 95-97, 102-109; AE A, *Schedule F* and *Statement of Financial Affairs*. See also GE 2.

⁵ AE A, Schedule F.

the church and stopped paying on in 2008. The four credit card debts are referenced in SOR ¶¶ 1.b, 1.c, 1.d, and 1.f.

Applicant's *Schedule I* notes that she and her husband's combined monthly income is approximately \$19,400 and their monthly expenses are roughly \$17,200, which leaves them about \$2,200 a month in disposable income.⁶ The couple's biggest monthly expense is their new home that they had built and moved into in 2005. It is worth approximately \$729,500, but has two mortgages on it totaling over one million dollars. The combined monthly mortgage payment on the home is about \$8,800.⁷ Applicant and her husband recently filed a reorganization plan with the bankruptcy court that calls for them to pay \$4,500 per month for 63 months. This plan is pending a confirmation hearing. Applicant and her husband are confident the bankruptcy court will confirm the plan in January 2012, and they will then start making the \$4,500 per month payment at that point.⁸ When asked at hearing how she planned to make this proposed payment, in light of what appeared to be a lack of disposable income to afford the payment plan, Applicant – after a significant pause – testified that they were going to have “to reduce expenses . . . [w]e looked at the Chapter 11 document, and felt . . . that (the proposed payment) was a lot, too, but we were going to try to make it work.”⁹ Applicant did not elaborate further as to what expenses the couple planned to cut, nor submitted a plan showing which expenses they plan to reduce. When asked by her counsel whether her expenses had changed since submitting her *Schedule I* in November 2010, Applicant said “no.”¹⁰

Applicant disclosed the foreclosure on the church property and her delinquent credit cards on her security clearance application.¹¹ She then discussed her credit card debts and the circumstances leading to her financial trouble with a government investigator on September 30, 2010. During that interview, Applicant was told by the investigator that her credit report also reflected a \$106 telephone bill that was in collection status. Applicant promised to contact the creditor “within the next couple of days” and, “[o]n the outside chance that (the creditor) can prove that this is her debt she

⁶ Compare Statement of Monthly Income with Schedule I (Applicant's husband made voluntary decision to retire from government job the same month the couple filed for bankruptcy, which reduced their income by about \$10,000 a month).

⁷ See generally AE A, Schedule D, Schedule I, and Statement of Financial Affairs. See also Tr. at 63-66, AE B at 8.

⁸ Tr. at 41-45, 78-80, 90. AE A, Case Summary (“pending status: . . . awaiting confirmation hearing”). See also AE B, *Debtor's Fourth Amended Plan of Reorganization*, at 12 (“In complete satisfaction, discharge, and release, the Debtors shall make payments, pro rata, in the amount of \$4,500 per month for a period of sixty-three (63) months. The first payment to unsecured creditors shall commence on the 1st day of the fourth (4th) month following the Effective Date.”).

⁹ Tr. at 69.

¹⁰ Tr. at 71-72.

¹¹ GE 1.

will immediately pay it off in one lump sum.”¹² This debt is referenced in SOR ¶ 1.e and is listed in the bankruptcy documents as one of Applicant’s unsecured creditors.¹³ Applicant did not submit documentary proof that she disputed this debt or had attempted to resolve the debt prior to filing for bankruptcy. She admits this debt “remains unpaid” in her Answer.

Applicant’s husband testified that despite their “nice home” they live a modest lifestyle, rarely eating out.¹⁴ He hopes to secure a job in 2012 to assist in paying their debts.¹⁵ Applicant received financial counseling as part of her bankruptcy filing.¹⁶ She did not submit documentary proof that she attempted to resolve her long-standing debts prior to filing for bankruptcy. Applicant’s husband testified that they had made payments to the bankruptcy court to pay their debts, but proof of such was not submitted.¹⁷

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 Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, an applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts

¹² GE 2.

¹³ AE A, Schedule F at 2.

¹⁴ Tr. at 86-87. *But see* AE A, Schedule B (own four cars, including a 2010 Ford Explorer).

¹⁵ Tr. at 92-93 (“[I]f everything goes right,” Applicant’s husband anticipates receiving a job offer, with a starting salary of about \$100,000 per year). *See also* Tr. at 80-82, 110.

¹⁶ Tr. at 48-49.

¹⁷ Tr. at 78-80.

admitted by the applicant or proven by Department Counsel.” Directive ¶ E3.1.15.¹⁸ An applicant has the ultimate burden of persuasion to obtain a favorable security decision. In resolving this ultimate question, an administrative judge must resolve “[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security.” AG ¶ 2(b).

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. “A clearance adjudication is an applicant’s opportunity to demonstrate that, prior to being awarded a clearance, he (or she) actually possesses the judgment, reliability, and trustworthiness essential to a fiduciary relationship with this country.”¹⁹

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.

Analysis

Guideline F, Financial Considerations

The security concern relating to financial problems is articulated at AG ¶ 18, as follows:

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.

Applicant’s accumulation of a substantial amount of debt – over \$100,000 in credit card debt alone – was not a result of frivolous consumer spending, but instead in pursuit of a dream to build a church and related facilities to serve others. Her aspirations are clearly noble, but the amount of debt she voluntarily took on in pursuit of her dream and the manner in which she has handled the substantial debt she accumulated directly

¹⁸ ISCR Case No. 11-00391 (App. Bd. Dec. 1, 2011) (“Once an applicant’s SOR admissions and/or the Government’s evidence raise a security concern, the burden of persuasion shifts to the applicant to mitigate the concern.”).

¹⁹ ISCR Case No. 10-09986 at 3 (App. Bd. Dec. 15, 2011).

implicates the financial considerations concern. The credit card debt alone has been outstanding since 2008. The following disqualifying conditions under AG ¶ 19 were also established:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analyst.

An applicant's past or current indebtedness is not the end of the analysis, because "[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."²⁰ Accordingly, Applicant may mitigate the financial considerations concern by establishing one or more of the mitigating conditions listed under AG ¶ 20. I have considered all the mitigating conditions under AG ¶ 20 and only the following warrant discussion:

- (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 problem is directly tied to the failure of her ministry. She has taken the initial steps to resolve the substantial debt that resulted from this "business" failure. She has also received financial counseling and secured a well-paying job to pay her debts. However, the evidence does not support the application of the above mitigating conditions, nor mitigate the financial considerations concern.²¹

Applicant did not submit any documentary evidence that she attempted to resolve her long-standing debts prior to filing for bankruptcy or that she had made

²⁰ 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).

²¹ See generally ISCR Case No. 07-09304 at 4 (App. Bd. Oct. 6, 2008) [Appeal Board sets out parameters for application of AG ¶¶ 20 (b) – (d), including requirement that an applicant act responsibly under the circumstances in order to establish AG ¶ 20(b)].

payments towards any of her debts.²² Applicant's reorganization plan was still pending a confirmation hearing as of the close of the record.²³ The Appeal Board has held that "[p]romises to take actions in the future, however sincere, are not a substitute for a documented track record of remedial actions."²⁴ In the present case, Applicant promised, during the course of the current security clearance investigation, to pay the minor telephone debt alleged in SOR ¶ 1.e, but failed to do so. Such inaction over a relatively minor debt speaks far more to the applicability of the mitigating conditions under consideration than her proposed reorganization plan and other favorable evidence. Further, her proposed reorganization plan is contingent upon cutting significant expenses and/or her husband securing a job to meet the required \$4,500 per month payment. Applicant had not seriously contemplated how she was going to meet this legal commitment prior to being asked at hearing. In short, although some favorable evidence exists, Applicant failed to establish any of the mitigating conditions. Her financial problems remain a security 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 conduct and all the relevant circumstances. An administrative judge should consider the nine 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.

I have considered all the favorable and extenuating factors in this case. Applicant worked for the federal government for 34 years. She found herself in financial trouble trying to serve her community. These are significant mitigating factors. However, she has a substantial amount of unresolved debt and failed to dispel the significant security concerns raised by her financial situation. The favorable whole-person factors present in

²² ISCR Case 07-10310 at 2 (App. Bd. July 30, 2008) (an applicant is expected to present documentation to substantiate his or her claim about the debts at issue).

²³ See *generally* ISCR Case 10-08308 (App. Bd. Nov. 3, 2011) (applicant's recent bankruptcy filing, which was still pending at close of the record, was insufficient to overcome history of not paying his financial obligations).

²⁴ ISCR Case No. 99-0012 (App. Bd. Dec. 1, 1999).

this case do not outweigh the security concern at issue.²⁵ Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance.

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.f: **Against Applicant**

Conclusion

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

Francisco Mendez
Administrative Judge

²⁵ See *generally* ISCR Case 10-04405 at 3 (App. Bd. Dec. 28, 2011) (an administrative judge's finding that an applicant is "a person of good character" under the whole-person concept does not necessarily equate with a finding that an applicant has mitigated the security concern at issue).