



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



In the matter of:)
)
) ISCR Case No. 11-01298
)
Applicant for Security Clearance)

Appearances

For Government: Marc G. Laverdiere, Esq., Department Counsel
For Applicant: *Pro se*

04/5/2012

Decision

RIVERA, Juan J., Administrative Judge:

Applicant’s financial problems are due, in part, to circumstances beyond her control, and she made some efforts to resolve her financial problems. However, the scant record evidence fails to establish Applicant’s financial responsibility in the acquisition and resolution of her delinquent debts. The evidence is insufficient to establish a credible and realistic plan to resolve her extensive debt. Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on December 1, 2009. On November 4, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) listing security concerns under Guideline F (Financial Considerations).¹ Applicant answered the SOR on December 2, 2011, and elected to have her case decided on the written record in lieu of a hearing.

¹ DOHA acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the

A copy of the file of relevant material (FORM), dated December 15, 2011, was provided to her by transmittal letter dated January 3, 2012. Applicant received the FORM on January 6, 2012. She was allowed 30 days to submit any objections to the FORM and to provide material in extenuation and mitigation. She did not respond to the FORM, and she provided no additional information. The case was assigned to me on March 30, 2012.

Findings of Fact

Applicant admitted the factual allegations under SOR ¶¶ 1.a through 1.f and 1.h. She denied the allegations under SOR ¶¶ 1.g and 1.d. Her admissions are incorporated as findings of fact. After a thorough review of the evidence of record, including her answers to the SOR and two DOHA interrogatories, I make the following additional findings of fact.

Applicant is a 41-year-old employee of a defense contractor. She has never been married and she has no children. She was awarded a bachelor's degree in industrial engineering in May 1995. Since 2004, she has been taking college courses towards her master's degree in applied and computational mathematics. She has been financing her college education through student loans.

Applicant was employed from February 1999 until June 2002. She was laid off ten years ago, when her company was bought out and downsized. She was unemployed from June 2002 until April 2003. She has been consistently and fully employed from April 2003 to present. She started working for her current employer, a government contractor, in July 2008. Apparently, she has been assigned to public trust positions since December 2006.

Applicant disclosed in her December 2009 SCA that she filed for Chapter 7 bankruptcy protection in February 2004, and was released of her dischargeable debts in June 2004. She was forced to file for bankruptcy protection because she was laid off and unemployed for close to one year. She also disclosed that she had debts that were delinquent or under collection. Her background investigation addressed her financial problems and revealed the debts alleged in the SOR, which are established by the evidence.

In January 2010, Applicant was interviewed by a Government investigator about her delinquent debts and her overall financial situation. During the interview, Applicant explained that she owed the Internal Revenue Service (IRS) approximately \$15,535 for tax years 2001, 2002, 2008, and 2009, because she had been claiming too many exemptions in her income tax returns during the preceding seven years. She also owed

her state approximately \$3,567. In August 2004, she started a \$248 monthly payment plan with the IRS. She is also making \$145 monthly payments to her state, but it is not clear from her evidence when she started her payments.

The debt alleged in SOR ¶ 1.f resulted from Applicant's failure to pay her previous apartment lease. She claimed she contacted the creditor to set up a payment plan, but the creditor refused to establish a monthly payment plan. During her January 2010 interview, Applicant stated she would contact the creditor again and set up a payment plan by February 2010. She failed to present documentary evidence of any contact with the creditor, or of any payment plan established.

Applicant's documentary evidence shows that she made one \$100 payment to the creditor alleged in SOR ¶ 1.g in April 2011. She settled the account for less than the total owed and paid it off in October 2011. Applicant admitted the debt alleged in SOR ¶ 1.h, but she has not addressed it. She stated that she was trying to pay other delinquent debts first before addressing this debt. According to her credit reports, Applicant had two delinquent accounts with the creditor alleged in SOR ¶ 1.i. She paid one of the accounts, but failed to present evidence of any payments made on the second account. There is no evidence to establish whether the accounts were consolidated. Based on her credit reports, this debt is unresolved.

Applicant attributed her financial problems to her period of unemployment, and her poor financial choices. She averred that she started to address her delinquent accounts as soon as she found employment in April 2003. The record evidence shows that Applicant paid off several delinquent accounts that were not alleged in the SOR. She has received financial counseling through her church. Her family is not fully aware of her financial problems.

Applicant's May 7, 2011 personal financial statement indicates that she has a net monthly income of \$7,255; monthly expenses of \$5,846; and a monthly payment of \$1,344 towards six debts (including the IRS and her state tax debt). The aggregate total of these four debts is approximately \$40,767. She has a monthly net remainder of \$65. Among her monthly expenses, Applicant disclosed a monthly payment of \$3,725 toward "Miscellaneous: Tithes and offerings." Considering Applicant's lengthy financial problems, the number of delinquent debts, and the aggregate total of her debts, this unexplained payment of \$3,725 raises security concerns.

In addition to the above six creditors, Applicant disclosed four other creditors that she is not paying. These creditors include two that were alleged under SOR ¶¶ 1.f and 1.h, student loans owed to the U.S. Department of Education, and Nelnet Loans. The total debt owed for these four loans is approximately \$175,717. However, the student loan debt (\$166,031) is apparently in forbearance. Applicant provided no information about when the student loans will come out of forbearance and she will have to start making the payments.

Policies

Eligibility for access to classified information may be granted “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

Under Guideline F, the security concern is that 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. AG ¶ 18.

Applicant filed for Chapter 7 bankruptcy protection and was released of her dischargeable debts in 2004. After her discharge, she acquired financial obligations to the IRS and her state for unpaid taxes. She also has four additional delinquent debts that have been delinquent for a number of years. The aggregate total of the debts alleged in the SOR is over \$31,000. AG ¶ 19(a): “inability or unwillingness to satisfy debts” and AG ¶ 19(c): “a history of not meeting financial obligations” apply.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

(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;

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

(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 of actions to resolve the issue; and

(f) the affluence resulted from a legal source of income.

Applicant’s sparse favorable evidence fails to fully establish the applicability of any mitigating condition. Her financial problems are ongoing, she has an extensive debt, and the evidence fails to show that they occurred under such circumstances that they are unlikely to recur. AG ¶ 20(a) does not apply.

Applicant’s period of unemployment established a circumstance beyond her control contributing to her inability to pay her debts. However, considering the record as a whole, Applicant’s favorable evidence is not sufficient to show that she acted responsibly in the acquisition of her debts, or that she has been responsible in addressing her financial obligations. AG ¶ 20(b) does not apply.

Applicant has been consistently and fully employed since April 2003. She was released of her dischargeable debts in 2004, and she is currently taking home approximately \$7,000 a month. The limited available evidence fails to explain Applicant's failure to address her delinquent obligations in a timely and responsible manner. I considered that Applicant made some efforts to resolve her debts by establishing payment plans with the IRS, her state, and other creditors. However, questions remain about her current financial situation and her ability and willingness to continue making her ongoing payments in addition to payments that will be due on her student loans when they come out of forbearance. On balance, the evidence available is not sufficient to establish that Applicant has a track record of financial responsibility.

AG ¶ 20(c) does not fully apply. Applicant received counseling from her church and she contacted some of her creditors and established payment plans. However, there are no clear indications that her financial problems are under control. Applicant has significant delinquent debt, and she is making minimum payments on some of her debts. Considering the number of debts and the aggregate total of the debts, I cannot find that there are clear indications that her financial problems are being resolved or under control. Additionally, considering Applicant's financial situation, I have questions about the reasonableness of her paying of \$3,725 toward "Miscellaneous: Tithes and offerings." The remaining mitigating conditions (AG ¶¶ 20(e) and (f)) are not reasonably raised by the facts in this case.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c).

Apparently, Applicant has done well working for her employer. Her financial problems are due, in part, to circumstances beyond her control, and she has been making some efforts to resolve her financial problems. However, the scant record evidence fails to establish Applicant's financial responsibility in the acquisition and resolution of her delinquent debts. At this time, the record evidence fails to convince me of Applicant's eligibility and suitability for a security clearance.

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.e, 1.g:	For Applicant
Subparagraphs 1.f, 1.h, 1.i:	Against 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 eligibility for a security clearance to Applicant. Clearance is denied.

JUAN J. RIVERA
Administrative Judge