



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



In the matter of:)
)
) ISCR Case No. 11-02656
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: James S. Delsordo, Esq.

03/09/2012

Decision

MASON, Paul J., Administrative Judge:

Applicant has a long history of financial problems caused by unemployment, underemployment, and financial irresponsibility. In addition, she intentionally failed to file tax returns and pay taxes for at least 10 years. Applicant’s case in mitigation of settling or satisfying 18 delinquent debts is substantially undermined by her undocumented claim of having made regular payments to the state tax agency between August 2011 and February 2012. 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 September 6, 2010. She was interviewed by an investigator from the Office of Personnel Management (OPM) on September 29, 2010. A summary of her interview appears in Applicant’s interrogatory answers dated June 28, 2011. (GE 2)

Under Section 6 of the exhibit, Applicant checked “yes” that she agreed with and adopted the investigator’s interview summary and that it could be admitted in evidence at a hearing to determine her security clearance suitability. (*Id.*)

On September 6, 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 October 9, 2011. DOHA issued a notice of hearing on January 18, 2012, for a hearing on February 6, 2012. The hearing was held as scheduled. At the hearing, 16 exhibits (GE 1 through 16) were admitted in evidence (without objection) in support of the Government’s case. Applicant testified. Her 12 exhibits (AE A through AE L) were admitted without objection. In the time allowed to submit post-hearing exhibits, Applicant submitted two exhibits. AE M is a docket report pertaining to **SOR ¶¶ 1.k, 1.m, and 1.n**. AE N, which is barely readable in some locations and unreadable in other locations, contains six pages of Applicant’s monthly budgets from September 2011 through February 2012. DOHA received the transcript (Tr.) on February 14, 2012. The record closed on February 21, 2012.

Findings of Fact

The SOR lists 13 delinquent account allegations under the financial considerations guideline. Of those 13 delinquent accounts, four are state tax liens, two are federal tax liens, and three are judgments. **SOR ¶ 1.i**, which is inaccurately alleged as a judgment, is a delinquent account that was satisfied in October 2007, and is discussed below. Applicant essentially admitted the accounts, but provided the current status of each account based on recent action taken to address the accounts.

Applicant is 46 years old and single. She has no children. She attended summer programs at two universities. From February to May 1998, she took courses in art history at a university. From June to August 2006, she was enrolled in a summer program at a university to enhance her educational background. From August 2005 until September 2011, she was employed in several positions with a defense contractor. Included in those positions was a promotion from a materials handler to a fielding specialist, a position that periodically required travel to help distribute clothing to wounded United States soldiers. Applicant was laid off in September 2011. She testified that she is still in a layoff status pending a decision on her security clearance. (Tr. 80, 100)

Financial Considerations - Background

Applicant was not certain when her financial problems began. She initially indicated 1998, then she mentioned 1989 when her mother was murdered. It appears that throughout the 1990s, she had problems finding full-time employment, which resulted in difficulties paying the rent and other financial troubles. (Tr. 43-52)

Though she knew that she had to file state and federal tax returns and pay taxes, Applicant stopped filing state and federal returns in 1998 because she mismanaged her money. (Tr. 94) She also explained that her priorities were keeping a roof over her head, keeping sufficient food on the table, and ensuring she had a reliable vehicle. In 2000, she moved to a nearby state for increased employment opportunities. (Tr. 53) Shortly after her move, she reestablished contact with her estranged father. Their discussions inspired her to persevere through the tough financial period. (*Id.*)

The challenging times continued because Applicant still could not find good paying or full-time employment. From 1999 to June 2003, she was employed as a customer service representative for a wireless paging company. She left this job when the company filed for bankruptcy. Then she worked on a temporary basis as a customer service representative for 10 months in 2004. During this period, she was also employed as a supervisor of the mail room for a bank. From December 2004 to August 2005, Applicant worked in a temporary staff position for her employer, who ultimately hired her full-time in August 2005 as a materials handler in the logistics center. She was promoted to a fielding specialist, then laid off in September 2011 (GE 1; Tr. 43), and she began receiving unemployment benefits. (Tr. 74) In early January 2012, another defense contractor assumed the contract, but Applicant's layoff status did not change. She was informed that she would need a security clearance. (Tr. 44-46)

Applicant supported her sister and her aunt until January 2012. She provided two or three hundred dollars whenever they asked. In addition, since June 2011, Applicant was living with her sister and paying her about \$350 a month in rent until the hearing. (Tr. 68, 73; GE 2)

Applicant recalled having medical problems in 2000 while she was working part-time. (Tr. 97-99) In her full-time job between August 2005 and September 2011, she had health insurance. The only time her medical insurance would not cover a significant medical expense occurred in March 2011. (Tr. 103-104)

In addition to the three judgments and six tax liens, the SOR contains a delinquent credit card account, one utility account, an account for damages resulting from an auto accident, and an insufficient funds check. The account information is derived from credit bureau reports dated August 24, 2011 (GE 3), and September 16, 2010 (GE 4).

The following is a summary of the record regarding the SOR allegations:

SOR ¶ 1.a, public utility, \$83. The account became delinquent in April 2008. Applicant satisfied the account in May 2011. (AE A)

SOR ¶¶ 1.b through 1.e, four state tax liens totaling \$22,339, were filed against Applicant between December 2005 and July 2011. (AE B) The state tax liens were filed because Applicant failed to file returns and pay state income taxes for tax years 1998 through 2009. (SOR ¶ 1.i) In June 2008, Applicant retained a tax firm to retrieve, organize, and file the missing state tax returns. (Tr. 71) The missing state returns were filed by September 28, 2011. (AE F)

When asked to explain what she did with the funds that should have been applied to her state taxes, but instead resulted in the state tax lien above, Applicant indicated that periodically it would take two or three weeks for her to receive travel claim reimbursements after the completion of a mission. (Tr. 70-71) She testified that, "So I was always late [paying bills]. I was basically, disconnect notices, pink slips, anything that required you to pay within 15 to 30 days, I got it. I received those letters. I never received anything where I had, unless it was a past due notice, honestly." (Tr. 71) No additional information was provided.

On July 11, 2011, Applicant entered into a payment plan to resolve the state liens. Under the plan, she was required to pay \$748 beginning August 15, 2011. (AE B) She averred that she made the monthly payments between August and November 2011. (Tr. 77-78) No documentation was furnished confirming payments were made either between August and November 2011, or January 2012 under a reduced payment schedule of \$400 a month. In AE B (case number 2151418) dated July 11, 2011, the state tax lien balance due is listed as \$22,339. In AE K (case number 2151418) dated February 12, 2012, the state tax lien balance due is listed as \$22,821, an increase of \$482.

SOR ¶¶ 1.f, 1.o, two federal tax liens totaling \$71,408 were filed against Applicant in September 2000 and January 2010, respectively, for failing to file her federal income taxes for tax years 1998 through 2009. (**SOR ¶ 1.j**) Applicant did not have state and federal taxes withheld because "I was still going through a lot of credit card debt, still issues with bills. I had medical issues, as well, I found out later on." (Tr. 69, 72) The state and federal tax liens total \$93,747.

Applicant claimed that after she was notified of the 2000 federal tax lien, she hired an attorney who took no action on the federal lien because of personal issues. (Tr. 81, 92) No additional information was provided.

There is no payment agreement finalized between Applicant and the Internal Revenue Service (IRS) regarding the federal tax liens. (Tr. 57) On January 12, 2012, Applicant's tax firm advised by letter that her federal tax return information for 2000 through 2009 was to be reviewed by the Internal Revenue Service (IRS) in November 2011, but the IRS requested additional time to make the review. (AE L) Applicant explained that she refiled the 2008 and 2009 tax returns in 2011 because the supporting information for each year was incomplete in the first filing of these returns. (Tr. 82-83; AE G)

The tax information supplied by Applicant's tax firm to the IRS shows that Applicant made voluntary payments for earlier tax years. The payments for the earlier years were made in 2011. (AE G, AE L)

SOR ¶ 1.g, insufficient funds check. The check was generated and assigned for collection in June 2010. Applicant satisfied the account on May 6, 2011. (AE D)

SOR ¶ 1.h, credit card. The last activity on the account was November 2006. Applicant was notified on September 17, 2011, that the account was satisfied. (AE E) She also cited AE K to show that a debt settlement firm aided in the settlement of this account. The debt settlement firm assisted in settling 11 other delinquent accounts between March and September 2011. The firm also successfully disputed some accounts and had them eliminated from Applicant's credit report. See, Applicant's attachments to GE 2. Those delinquent accounts were discussed with Applicant during her September 2010 interview with the OPM investigator. (*Id.*)

SOR ¶¶ 1.k, 1.m, 1.n, three judgments filed against Applicant in January, May and June 2008 for unpaid rent. (The plaintiff in **SOR ¶¶ 1.m** and **1.n** is also the agent for the plaintiff identified in **SOR ¶ 1.k**.) (Tr. 62; AE H) A writ of garnishment was filed against Applicant in January 2011. (*Id.*) She supplied documentation indicating that the garnishment that had been filed against her in January 2011 was vacated when she satisfied the judgment (\$1,212) in June 2011. (*Id.*)

SOR ¶ 1.i, car accident, apparently Applicant's fault. The documentation indicates that there was no judgment. Rather, a lawsuit was filed and eventually dismissed because Applicant was never served. (AE I) She claimed she had the car accident in 2009. The records show that the accident must have occurred before October 7, 2007, the day Applicant's attorney at the time, sent a settlement check for \$1090 to plaintiff's insurance company, and advised the plaintiff was estopped from adding a supplemental claim. (AE L)

Applicant was asked whether she had fallen behind on any other accounts. She replied that she was generally current on everything, but she was still trying to pay off debts listed in other credit reports. (Tr. 80-81) She provided documentation of an agreement

dated April 29, 2011, with the school she attended in 1998, to repay \$50 a month to the school until a delinquent account was satisfied. (GE 2)

Applicant has been participating in financial counseling since June 2011. (Tr. 79) An official from the credit counseling organization indicated by letter dated October 7, 2011, that the organization had been counseling Applicant since October 2010. She has been attending counseling sessions every two weeks for the purpose of eliminating the negative entries on her credit report and rebuilding her credit. (Tr. 79-80; AE J, AE K)

Applicant indicated that she has an online monthly budget based on a data worksheet that her tax firm helped her prepare to get her tax information. (Tr. 79) In AE N, Applicant provided six pages of budgets that cover September 2011 to February 2012. The problem I have with the budgets is that I cannot translate a sufficient amount of the figures to draw any conclusions about Applicant's current income and expenses.

Character References

On June 27, 2011, the lead supply technician at a military medical center commended Applicant's contributions in accommodating the needs of wounded veterans. She took uniform measurements for 3000 wounded soldiers and trained her replacements before she was reassigned to another project. (GE 2)

On May 9, 2011, Applicant received a certificate of appreciation for her valued participation in the distribution of equipment. (*Id.*) On April 20, 2007, a military newspaper recognized Applicant for helping bring 1000 uniforms to wounded soldiers. (*Id.*)

On April 20, 2007, Applicant was recognized for her participation a program designed to bring clothing to wounded soldiers so that they do not have travel great distances to purchase clothing. (*Id.*)

On June 22, 2011, the president of a vendor that provides staff for a personnel contract indicated in a letter that in 2005, he placed Applicant in a position as a material handler with a defense contractor. Within several months, she was offered a full-time position and subsequently was promoted to a fielding specialist position. The president considers Applicant to have very good ethical standards. (*Id.*)

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 ¶ E3.1.4., 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 three disqualifying conditions under AG ¶ 19 that apply:

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

AG ¶ 19© a history of not meeting financial obligations; and

AG ¶ 19(g) failure to file annual federal, state, or local income tax returns as required or the fraudulent filing of same.

Throughout the 1990s, Applicant had serious financial problems caused by unemployment, underemployment, and financial irresponsibility. Even after she permanently moved to a nearby state in 2000, her employment problems continued. The

inability to obtain suitable employment resulted in not paying bills on time. She compounded her employment and financial problems when she deliberately stopped filing state and federal tax returns and paying taxes in 1998. Choosing to pay rent, to purchase food, and to ensure her car was maintained, does not justify failing to file and pay taxes. Applicant did not file or pay taxes until 2011. AG ¶¶ 19(a), 19© and 19(g) 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© 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;

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 of actions to resolve the issue.

AG ¶ 20(a) does not apply. In addition to her tax problems, Applicant has had financial problems for a long time. Three judgments were filed against her in 2008 for failure to pay rent. She did not file returns and pay state and federal taxes for over ten years. She finally filed the state and federal returns in 2011, but she still owes more than \$93,000 in taxes. She provided documentation of having negotiated a payment agreement with the state tax agency in July 2011 that she purportedly modified in December 2011. However, she provided no documentary proof to substantiate her testimony that she paid \$750 a month from August through November 2011. Nor did she provide proof she had paid the reduced amount in December 2011, January 2012, and February 2012. The absence of documented payments under the state repayment schedule, and the lack of a repayment agreement with the IRS, portend a continuance of financial problems in the future.

In light of Applicant's underemployment and unemployment from the 1990s until 2005, she receives limited mitigation under AG ¶ 20(b). However, even though she found full-time employment in August 2005, her financial irresponsibility continued. She continued to incur delinquent debt. She did not decide to address her tax problems until she hired the tax network in June 2008.

Applicant has been engaged in counseling since 2010. With the help of the counselors and the debt settlement firm, she has settled 11 debts not listed in the SOR, and 7 debts listed in the SOR. However, because Applicant still owes the state and federal governments over \$93,000 in taxes, it is premature to conclude her financial difficulties are being resolved or under control. Applicant receives limited mitigation under AG ¶¶ 20© and 20(d), based on her settlement with or satisfaction of 18 creditors.

AG ¶ 20(e) requires a reasonable basis to dispute the delinquent debt and documented proof to substantiate his reasons for the dispute. Applicant provided some evidence that her debt resolution firm successfully disputed several errant entries in her credit report and had them removed. Having considered the adverse evidence under AG ¶¶ 19(a), 19©, and 19(g) with the mitigating evidence under AG ¶¶ 20(b), 20©, 20(d), and 20(e), Applicant has not carried her ultimate burden of persuasion under the financial considerations guideline.

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 determination of whether the granting or continuing of eligibility for a security clearance is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the financial guideline, which is to be evaluated in the context of the whole person. AG ¶ 2(a)(3)

Applicant has received strong character references because of her performance in providing clothing for wounded soldiers. She has also received certificates of appreciation from the military. The president of a staffing company commended her for her ethical standards. She has received financial counseling since 2010 and has eliminated 18 listed and unlisted delinquent debts.

By contrast, Applicant has a long history of financial problems aggravated by failing to file and pay taxes for over 10 years. There is no documentation in the record to support her claim of hiring an attorney in 2000 to address her first federal tax lien. Even after she gained full-time employment in August 2005, she did not begin to address her debt delinquencies until 2008.

Although Applicant provided documentation of satisfying or settling 18 unlisted and listed debts in 2011, I still cannot accept her uncorroborated claim of having made regular payments to the state tax agency between August 2011 and February 2012. The only reasonable explanation is that she either made fewer payments than she claimed, or she made no payments at all. Significantly, the state lien balance increased by more than \$400 between July 2011 and February 2012. (AE B, K) Although this increase in the total balance does not unequivocally establish that she made no payments, the increase suggests fewer payments were made than she claimed. Having weighed the disqualifying evidence indicating that Applicant still owes over \$93,000 in state and federal taxes, with the mitigating evidence showing her positive character evidence and laudable success in settling 18 delinquent accounts, Applicant has not provided sufficient mitigation to resolve the financial guideline in her favor.

Formal Findings

Paragraph 1 (Guideline F): AGAINST APPLICANT

Subparagraphs 1.a, 1.g, 1.h, 1.k, 1.l, 1.m, 1.n: For Applicant

Subparagraphs 1.b - 1.f, 1.i, 1.j, and 1.o: 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 Applicant access to classified information. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge