



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



In the matter of:)
)
) ISCR Case No. 11-02726
)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Esq., Department Counsel

For Applicant: *Pro se*

08/06/2012

Decision

MASON, Paul J., Administrative Judge:

In January 2002, Applicant filed a Chapter 7 bankruptcy petition, and in June 2002, she was discharged from \$70,000 in liability. Since then, she has collected 2 judgments and 23 delinquent accounts, but has provided no credible documentary evidence demonstrating resolution of any of those accounts. Eligibility for access to classified information is denied.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP, Item 5) on November 24, 2010. She was interviewed by an investigator from the Office of Personnel Management (OPM) on January 4, 2011. In her interrogatory answers dated August 19, 2011, Applicant agreed with the investigator's summary of her January 2011 interview, and acknowledged the interview summary could be used in a security clearance hearing to determine her security suitability. (Item 7)

On March 5, 2012, 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 furnished her answer (Item 3) to the SOR on April 6, 2012. She requested a decision be made on the record in lieu of a hearing. A copy of the Government's File of Relevant Material (FORM), the Government's evidence in support of the allegations of the SOR, was sent to Applicant on May 24, 2012. She received the FORM on May 29, 2012. In an attachment to the FORM, she was advised she could respond to the information in the FORM by submitting additional information in rebuttal, explanation, mitigation, or extenuation. Her response was due by June 29, 2012. No response was received. The case file was assigned to me on July 17, 2012.

Findings of Fact

The SOR, dated March 5, 2012, consists of 26 allegations under the financial considerations guideline. There is 1 bankruptcy allegation, 2 judgment allegations, and 23 delinquent account allegations. In her answer, Applicant admitted SOR ¶¶ 1.a, 1.b, 1.e, 1.f, 1.h, 1.m, 1.p, 1.q, 1.r, 1.s, 1.t, 1.u, 1.v, and 1.x. She denied SOR ¶¶ 1.c, 1.d, 1.g, 1.i, 1.j, 1.l, 1.n, 1.o, 1.w, 1.y, and 1.z. She explained her admissions by claiming her law firm was trying to have the delinquent accounts removed from her credit report. The documentation that she provided from her law firm does not explain how the firm is seeking to have valid accounts removed from her credit report. She explained her denials by claiming the accounts were either not her responsibility or the accounts belonged to her former husband. She contended her home was sold at a sheriff's auction, but she did not address the past-due foreclosure amount of \$19,886. She was unsure of SOR ¶ 1.k. The validity of SOR ¶ 1.k is confirmed in the credit reports. (Item 6, 8, 9), and Applicant's answers to interrogatories. (Item 7) The 25 accounts listed in the SOR, which total \$47,839, became delinquent between December 2006 and December 2010 as confirmed in the credit reports. (Items 6, 8, 9) The delinquent accounts range in amounts from \$7 (SOR ¶ 1.m, unknown account type) to \$19,886 (SOR ¶ 1.y, foreclosure past-due amount).

Applicant is 48 years old. She was married in June 1986. She had three daughters from that marriage which ended in April 2004. The daughters, who are 25, 22, and 21 years of age, live in other locations of the United States. Since November 2010, Applicant has been employed as a police dispatcher for a defense contractor. She has a second job as a para-professional tutor at an elementary school.

Applicant's employment background includes employment as a police dispatcher from 1991 to 1997. Between July 1994 and May 2010, Applicant held positions in the food service business. From July 1994 to September 2006, she was an area supervisor

of a restaurant. She lost her job when the restaurant was sold. From September 2006 to May 2010, she was a general manager of a restaurant. She left this job to assist a family member during his military deployment and to care for her terminally ill father.

In her January 2011 interview and August 2011 answers to interrogatories, Applicant attributed her financial problems to her former husband. During their marriage that ended in 2004, she was the only one employed. Her husband was either attending school or unemployed. He was responsible for paying the bills of the household. At some time in 2000 or 2001, Applicant discovered he had not paid the bills for about six months, resulting in excessive debt, and leading to Applicant filing a Chapter 7 bankruptcy petition in January 2002. In June 2002, she discharged \$70,000 in debt. Applicant indicated her divorce in 2004 saddled her with a large amount of debt that she could not service.

The credit reports show that Applicant's current past-due debt began falling delinquent in December 2006. She noted that she began experiencing serious health problems in January 2008, and recalled using credit cards to pay living expenses. She attempted to borrow money from her parents, but was unable to stanch her deteriorating financial troubles. In January 2009, she lost her home to foreclosure.

In her answers to interrogatories, Applicant submitted her November 10, 2011, biweekly earnings statement from her current employer. The statement indicates that she was earning \$1,156 every two weeks. In her personal financial statement (PFS), she indicated her monthly net income was \$2,314 a month, with \$1,415 in expenses, \$99 in monthly payments to a law firm, leaving her with an \$800 monthly remainder. According to her PFS, Applicant was not making any payments on the delinquent debts or judgments listed in the SOR.

In her answers to interrogatories, Applicant also submitted 12 pages of information from her law firm, presumably to demonstrate she was taking action to address her overdue debts. The documentation itemizes the delinquent accounts listed in the SOR and provides each debt's current status, including explanations of available creditor options to obtain payment. The documentation does not show any action taken by Applicant to pay the listed accounts.

Applicant stated in her January 2011 interview that she intends to contact all the listed creditors and repay the debts because she wants to establish a good financial record. She has never had financial counseling or utilized a debt-consolidation service. She indicated she was capable of meeting her current financial obligations. She stated that she currently lives in military housing, she has no vehicle, and receives financial support from her sister and mother as needed.

Character Evidence

On December 1, 2011, Applicant's supervisor provided a character reference extolling Applicant's dedication to the overall performance of the police dispatch team.

The supervisor noted Applicant's valuable dispatch experience was demonstrated recently by her efficient handling of an emergency call that enabled department officers to restore order to a potentially volatile situation. Applicant's one-year performance evaluation was satisfactory, with high marks for her team player attitude and dedication. A member of the team considered her an integral part of the police platoon objectives of safety and security.

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 are deemed necessary 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 significant period of a person's life with 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 of 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

Paragraph 18 of the AG sets forth the security concern related to financial considerations:

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. Compulsive gambling is a concern as it may lead to financial crimes including

espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The two relevant disqualifying conditions under AG ¶ 19 are:

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

AG ¶ 19(c) a history of failing to meet financial obligations.

The credit reports and Applicant's admissions confirm that she filed a Chapter 7 bankruptcy petition in January 2002, and in June 2002, was discharged from \$70,000 in debt. The credit reports also show that Applicant began falling behind her financial obligations in December 2006. By March 2012 (date of SOR), she had 2 judgments and 23 delinquent accounts totaling \$47,839. AG ¶¶ 19(a) and 19(c) apply to Applicant's inability to satisfy overdue financial obligations.

Four conditions under AG ¶ 20 could potentially mitigate Appellant'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 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

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

AG ¶ 20(a) is inapplicable to Applicant's financial difficulties because of her Chapter 7 discharge in June 2002 and continuing financial problems. The absence of a plan to attack the delinquent debts raises a reasonable inference that her current indebtedness is likely to continue in the future. The absence of a plan also casts doubt on her reliability, trustworthiness, and good judgment.

Security concerns can be mitigated under AG ¶ 20(b) when "the conditions that resulted in the financial problems were largely beyond the individual's control," and "the individual acted responsibly under the circumstances." To receive mitigation credit under the condition, both quoted parts of the condition must be satisfied. Applicant was

the only bread winner during her marriage, and her husband, who was responsible for paying the bills, did not pay the bills for a period of about six months in 2000 or 2001. She encountered serious medical problems that began in January 2008. Finally, she left her job in September 2010 to assist her relative on military deployment and her terminally ill father. While recognizing the foregoing events were largely beyond her control, she has provided no documentary evidence that demonstrates she “acted responsibly under the circumstances.” The documentation from the law firm does not show any action on her part to pay the delinquent debts. AG ¶ 20(b) does not apply.

Applicant has never had financial counseling. She has supplied no documentation showing she has paid any of the listed debts. While the law firm documentation may be the first step to negotiate settlements with the listed creditors, there is no proof any settlements have been negotiated or that Applicant has eliminated any of the debts. AG ¶¶ 20(c) and 20(d) do not apply.

Whole-Person Concept

I have examined the evidence under the disqualifying and mitigating conditions of the financial considerations 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be a commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

Applicant is 48 years old and divorced with three grown daughters. She was employed for 16 years in the food service business. It does not appear she received the financial support from husband during their marriage. Her first December 2011 performance evaluation as a police dispatcher shows consistently good ratings from her supervisors. She is considered to be an essential part of ensuring that the platoon meets its overall safety and security objectives.

Because the Directive requires that the entire record must be evaluated as a whole, Applicant's work record and satisfactory performance review from her current employer must be weighed against her history of financial problems. The record

indicates that in June 2002, Applicant received a Chapter 7 discharge of \$70,000 in debt. The record also reflects that since the discharge she has incurred additional debt totaling \$47,839. Applicant's financial problems related to her former husband has little probative weight because she divorced him in 2004. Her medical problems that began January 2008, have not been adequately documented. Based on Applicant's claim that she is able to meet her current financial obligations and has an \$800 monthly remainder according to her PFS, I am unable to understand why it is necessary for her to seek financial help from her sister and mother on an as needed basis. In addition, if she is so anxious to eliminate the delinquent debts, Applicant has provided no credible reason for not using a portion of her sizable monthly remainder to pay off some of the smaller debts of the SOR.

After weighing and balancing the disqualifying conditions with mitigating conditions under the financial considerations guideline, and considering all the evidence under the whole-person concept, Applicant has not mitigated her history of not meeting her financial obligations.

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

Subparagraph 1.a through 1.z : Against Applicant

Conclusion

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

Paul J. Mason
Administrative Judge