



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



In the matter of:)	
)	
)	ISCR Case No. 11-04058
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace L. Garcia, Esq., Department Counsel
For Applicant: *Pro se*

04/17/2012

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the Financial Considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On September 10, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. DOHA acted under Executive Order (EO) 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 answered (Answer) the SOR on October 3, 2011, and requested a hearing before an administrative judge. The case was assigned to me on January 10, 2012. DOHA issued a notice of hearing on February 9, 2012, setting the hearing for March 7, 2012. The hearing was held as scheduled. The Government offered exhibits

(GE) 1 through 16, which were admitted into evidence without objection. Department Counsel's exhibit index is marked as Hearing Exhibit (HE) I. Applicant testified, but did not offer any exhibits into evidence. DOHA received the hearing transcript (Tr.) on March 15, 2012.

Findings of Fact

Applicant is 57 years old and has worked for a defense contractor since 2009 as a glass-etching operator. She has an associate's degree. She is single and has no children. She was honorably discharged from the Army in 1976. She currently holds a confidential security clearance.¹

The SOR alleges 13 delinquent debts in the amount of about \$88,025. The debts were listed on credit reports obtained on February 11, 2009; January 25, 2011; and June 27, 2011. Applicant admitted owing all the debts alleged in the SOR.

Applicant had no debt problems before 2008. At that time, she was working in the private sector earning about \$57,000 per year. She was employed by this company for almost ten years when she was laid off in 2008. The layoff was a result of the overall economic downturn in the local area. She was unemployed for about three months before she obtained her current employment. Her job pays about \$25,000 annually and is significantly less money than her prior job paid. Her debts came about when she lost her job and she was unable to pay her house payments. Additionally, she used credit cards to make ends meet. She was talked into buying her home by an ex-boyfriend, although he was not a co-borrower. He was also responsible for incurring much of the credit card debt.²

Specifically, the debts included ten credit cards with balances of \$528, \$4,331, \$7,348, \$1,166, \$3,258, \$2,647, \$24,571, \$6,966, \$11,500, and \$4,611 (SOR ¶¶ 1.a - 1.i, 1.l - 1.m (1.a and 1.b are duplicate debts)). The other remaining debts are a telephone service debt with a balance of \$386, and the delinquent second mortgage account in the amount of \$20,185.³

On August 16, 2011, Applicant filed for bankruptcy protection under Chapter 7. She tried to file earlier and paid an attorney to do so, but he failed to complete the work and she was delayed in filing this case. All the debts listed in the SOR were included as claims by unsecured creditors.⁴ Additionally, the second mortgage and three judgments

¹ Tr. at 6, 30-31; GE 1.

² Tr. at 15, 49, 51-52; Answer.

³ Tr. at 32-33; GE 2, 4-5.

⁴ There is some duplication of debts in Applicant's bankruptcy schedules. In a bankruptcy filing, most debtors list potential creditors, even when the debt may have been resold or transferred to a different collection agent or creditor, to ensure notice and reduce the risk of subsequent dismissal of the bankruptcy. If Applicant fails to list some debts on her bankruptcy schedules, this failure to list some debts does not affect her discharge. Absent fraud, in a no-asset bankruptcy, all unsecured, nonpriority debts are

were listed in the petition. Applicant completed the credit counseling course required by the bankruptcy court. She had never filed for bankruptcy before. She was granted a discharge from all claims on November 28, 2011.⁵

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 that 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 protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable decision.

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. 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

discharged when the bankruptcy court grants a discharge, even when they are not listed on a bankruptcy schedule. See *Judd v. Wolfe*, 78 F.3d 110, 114 (3d Cir. 1996); *Francis v. Nat'l Revenue Service, Inc.*, 426 B.R. 398 (Bankr. S.D. FL 2010), but see *First Circuit Bucks Majority on Discharge of Unlisted Debt in No-Asset Case*, American Bankruptcy Institute, 28-9 ABIJ 58 (Nov. 2009). There is no requirement to reopen the bankruptcy to discharge the debt. *Collier on Bankruptcy*, Matthey Bender & Company, Inc., 2010, Chapter 4-523, ¶ 523(a)(3)(A).

⁵ Tr. at 15, 32; GE 9-16.

classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of debts and was unable or unwilling to satisfy her obligation. The evidence is sufficient to raise the above disqualifying conditions.

Several Financial Considerations mitigating conditions under AG ¶ 20 are potentially applicable:

- (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; and

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

Applicant was put into her financial difficulty when she was laid-off from a well-paying job and could only find a job that paid significantly less money. This caused her to default on her mortgage payments. It is unlikely that she will experience this type of financial difficulty again. Additionally, her actions do not cast doubt on her current, reliability, trustworthiness, or good judgment. AG ¶ 20(a) is applicable.

Applicant's financial difficulties were caused by the loss of her income, which was necessary to make her mortgage payments and other obligations. This was a condition outside her control. Additionally, Applicant acted reasonably by quickly obtaining new employment, even if it was at a lower pay rate, contacting an attorney and making the decision to file for Chapter 7 bankruptcy. AG ¶ 20(b) is applicable.

Applicant received financial counseling through the bankruptcy process. While bankruptcy is intended to provide a person with a fresh start financially, it does not immunize an applicant's history of financial problems from being considered for its security significance.⁶ After reviewing the reasons leading to the bankruptcy, I find AG ¶ 20(c) is partially applicable and ¶ 20(d) is not applicable.

Applicant met her burden to establish sufficient mitigation evidence under AG ¶¶ 20(a) and (b) on the debts listed in the SOR.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process 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.

⁶ See e.g., DISC Case No. 87-1800 (February 14, 1989) at p.3 n. 2 ("Although bankruptcy may be a legal and legitimate way for an applicant to handle his financial problems, the administrative judge must consider the possible security implications of the history of debts and problems that led to the bankruptcy").

