



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



In the matter of:)
)
) ISCR Case No. 11-11474
)
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

03/05/2013

Decision

MASON, Paul J., Administrative Judge:

The 2005 hurricane, followed by large-scale flooding, damaged Applicant's home. Her expensive home repair caused her to fall behind in her bills. Though she told the Government in July 2011 that she would take the necessary steps to deal with her delinquent debts, she provided no documented action of satisfying any of the 17 listed creditors. Eligibility for access to classified information is denied.

Statement of the Case

Applicant signed and certified her Electronic Questionnaire for Investigations Processing (e-QIP) (Item 4) on June 16, 2011. She provided interrogatory responses (Item 5) to adjudicators from the Department of Defense (DOD) on September 21, 2012. Inside Item 5 is a summary of her interview taken by an investigator from the Office of Personnel Management (OPM) on July 21, 2011. Applicant agreed that the interview summary could be used at a hearing to determine her security suitability. (Item 5 at 71-72)

On October 12, 2012, DOD issued the Statement of Reasons (SOR) (Item 1) 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 notarized answer to the SOR on October 24, 2012. (Item 4) 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 December 6, 2012. In an attachment to the FORM, Applicant was advised she could object to the information in the FORM or submit additional information in explanation or extenuation. She received the FORM on December 14, 2012. Her response was due by January 13, 2013. No response was received by the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on February 20, 2013.

Findings of Fact

The SOR alleges 17 delinquent accounts under the financial considerations guideline.¹ The overdue accounts are credit cards, department store cards, and nine medical accounts. Applicant admitted responsibility for all accounts.

Applicant is 41 years old and has worked for a defense contractor since 1991. She was hired as an electrician and through promotions, is currently an administrative generalist. She is single. She pays no rent for a home given to her by her parents. She has no criminal record and has never used illegal drugs. She has held a security clearance since September 1993.

On July 21, 2011, Applicant furnished information about the delinquent accounts that are listed in the SOR. She stated that she had been making regular payments on the credit card accounts before the September 2005 hurricane struck the area where she was living. The hurricane caused significant damage to her home, requiring expensive repairs. She recalled receiving collection letters for some of the accounts. Then, the letters stopped. She read in other collection letters that some accounts were charged off, which she mistakenly interpreted to mean that she no longer owed the debt. She promised to obtain a credit report in three or four months and pay the delinquent debts so that she could achieve a good credit rating in the future. Applicant claimed that she was paying a medical creditor (SOR 1.n) \$10 a month until the debt was paid.

On September 21, 2012, Applicant was asked to furnish information about action taken to pay off any of the delinquent debts as she had promised in her July 2011 interview. She indicated she had not taken any action to resolve the debts. She

¹ SOR 1.r is a duplicate entry of SOR 1.o.

provided no explanation to justify her inaction. Instead, as she had stated in July 2011, she reiterated the billing records were lost in the 2005 hurricane. She indicated she was keeping better records. She mentioned for the first time that her employer had issued her a company credit card that she was paying off every month.

The SOR lists 17 delinquent accounts totaling approximately \$13,796. The debts became delinquent between May 2008 and January 2012. Applicant told the OPM investigator in July 2011 that she was paying the medical creditor in SOR 1.n \$10 a month. Making at least 10 monthly payments between July 2011 and August 2012 should reflect a reduction in the amount of the delinquent debt. Yet, the account amount in the July 2011 credit report is the same as the amount posted in the August 2012 credit report.

Character Evidence

The record reflects that Applicant has been employed by the same employer since 1991. She indicated she is receiving better pay as an administrative generalist. However, she provided no independent character evidence from supervisors or coworkers regarding her job performance or from friends in the community where she lives.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the guidelines in the AG. Each guideline lists potentially disqualifying conditions and mitigating conditions that are useful in evaluating an applicant's eligibility for access to classified information. The guidelines should be evaluated in the context of nine general factors 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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 bears the ultimate burden of persuasion in demonstrating that he warrants a favorable security clearance 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. 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.

There are two disqualifying conditions that are potentially applicable: AG ¶ 19(a) (*inability or unwillingness to satisfy debts*), and AG ¶ 19(c) (*a history of not meeting financial obligations*).

Over the course of four years, Applicant incurred 17 delinquent debts totaling approximately \$13,796. She is unable to pay the debts. In July 2011, she repeatedly stated she was going to obtain a credit report and pay the debts. In September 2012, she stated she had done nothing to address the debts. Her inaction shows an unwillingness to come to grips with her financial indebtedness. AG ¶¶ 19(a) and 19(c) apply.

Four mitigating conditions are potentially applicable: 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 reliability, trustworthiness, and good judgment*); AG ¶ 20(b) (*the conditions that resulted in the financial problem were largely beyond the person's control and the individual 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) (*a good-faith effort to repay overdue creditors or otherwise resolve debts*).

The credit bureau reports show that Applicant began having difficulty keeping her debts current in May 2008. The reports show that when the SOR was published in October 2012, she had collected 17 delinquent accounts. Her decision not to act on the debts after she unequivocally stated she would investigate and address each debt continues to raise doubt on Applicant's reliability, trustworthiness, and judgment. AG ¶ 20(a) does not apply.

The hurricane of September 2005 was an unforeseen weather event clearly beyond Applicant's control. It caused damage to her home requiring repairs. The flooding resulted in lost documentation related to her creditors. While she fixed her home, Applicant allowed over four years to pass without restoring her delinquent debts to a current status. Without a detailed explanation of the hurricane's damage to her home, or how long it took to make her home inhabitable, or how much it cost for the repairs, it is difficult for me to assess the hurricane's adverse impact on Applicant's inability to pay the delinquent debts listed in the SOR. I conclude that she has not acted responsibly in the aftermath of the hurricane to re-establish contact with her creditors and resume paying her bills. AG ¶ 20(b) does not apply.

There is no evidence that Applicant has had financial counseling related to her indebtedness. Even if she had some type of counseling, there is no evidence showing her debts under control. A good-faith track record of regularly paying debts is an effective method of re-establishing control over delinquent accounts, but has not been shown by Applicant. AG ¶¶ 20(c) and 20(d) do not apply.

Whole-Person Concept

I have examined the evidence under the disqualifying and mitigating conditions in my ultimate finding against Applicant under 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 listed in 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 final security clearance decision must be an overall commonsense judgment based upon careful consideration of the specific guidelines, each of which is to be evaluated in the context of the whole person. (AG ¶ 2(c))

Applicant is 41 years old and single. She has no criminal record and has never used drugs. Though she has not presented any character evidence from supervisors or coworkers, there is reason to believe that her job performance is satisfactory because she has worked for this employer since 1991.

On the other hand, the credit bureau report shows that since 2008 she has incurred 17 delinquent accounts totaling about \$13,796. In July 2011, she promised to resolve the delinquent accounts, but she has done nothing. The DOHA Appeal Board has stated that a key element of the whole-person analysis in financial cases is the development of a credible track record. The Board indicated:

In evaluating Guideline F cases, the Board has previously noted that the concept of “‘meaningful track record’ includes evidence of actual debt reduction through payment of debts.” However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate he has . . . established a plan to resolve his financial problems and taken significant actions to implement that plan.’ The judge can reasonably consider the entirety off an applicant’s financial situation and his actions in evaluating the extent to which that applicant’s plan for reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (‘Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.’) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

In July 2011, Applicant stated her intention to obtain a credit report and pay her debts because she wanted to regain good credit. Her credible statements, combined with the fact that she has been steadily employed since 1991, seemed to indicate she was prepared to carry out a plan to repay her past due debts. However, in the past 1½ years, she provided no documentation showing that she paid any of the accounts, not even a \$22 debt identified at SOR 1.m. Having weighed all the evidence under the disqualifying and mitigating conditions, and in the context of the nine general factors of the whole-person concept, Applicant has not mitigated the security concerns raised under the guideline for financial considerations. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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:

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| Paragraph 1 (Guideline F): | AGAINST APPLICANT |
| Subparagraphs 1.a-1.q: | Against Applicant |
| Subparagraph 1.r: | For 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