



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



In the matter of:)
)
) ISCR Case No. 12-00383
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

12/12/2013

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, I conclude that Applicant has not mitigated the security concerns raised under the guideline for financial considerations. Her request for a security clearance is denied.

Statement of the Case

On July 17, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant that detailed security concerns under Guideline F (financial considerations). This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992) as amended; and the Adjudicative Guidelines (AG) implemented by the Department of Defense on September 1, 2006.

In her Answer to the SOR, Applicant admitted five of the allegations under Guideline F, and denied the remaining allegations (1.d and 1.e). The case was assigned to me on August 27, 2013. The Defense Office of Hearings and Appeals (DOHA) issued

a Notice of Hearing on September 9, 2013, setting the hearing date for September 25, 2013. At the hearing, I admitted nine Government exhibits into evidence (GE 1-9). Applicant testified and presented six exhibits, admitted into evidence as AE A-F. I held the record open to allow Applicant to submit additional documentation. She timely submitted three documents, admitted as AE G-I. DOHA received the transcript of the hearing (Tr.) on October 2, 2013.

Findings of Fact

Applicant's admissions are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the evidence, I make the following additional findings of fact.

Applicant is 32 years old. She married in 2006 and has one seven-year-old child. She and her husband separated in 2011. Applicant attended college from 2010 to 2011 but did not receive a degree. She has worked for federal contractors since graduating from high school in 2000, and has held a security clearance since that time. She had periods of unemployment from September 2009 to February 2010, and from August to October 2010. She has been employed full-time for the past three years. She joined her current employer in April 2013 and works as the service desk lead at a federal agency. (GE 1; Tr. 22-29)

Applicant testified that she and her husband were earning good salaries when they married and they were financially stable. In 2010, she was laid off. When her husband left the marital home in 2011, she lost the benefit of having two incomes, and he ". . . left the debt we both had, for me to pay." Some of the delinquencies listed in the SOR are joint debts. Applicant stated in her interrogatory response that she ". . . made a conscious effort to keep up with the delinquencies to the best of [my] abilities. . ." (GE 2, 3; Tr. 49-50)

In about 2006, Applicant and her husband were considering purchasing a home. They contacted a debt-consolidation agency to assist them in improving their financial situation. Applicant and her husband did not use the service because it required monthly payments before it would negotiate settlements with creditors. In 2007, they purchased a home for \$200,000. It was fully financed, with no down payment, and an adjustable rate mortgage (ARM). As payments increased over time, they could no longer afford them. Their four requests for loan modifications were denied. Applicant provided documentation of her November 2009 request and the lender's refusal. In January 2010, they were notified that foreclosure proceedings had been initiated, and they moved from the home. (GE 2, 3; Tr. 50-55, 66)

Applicant's gross annual income is approximately \$60,000. The net monthly income on her May 2013 personal financial statement (PFS) is \$3,508. In May 2013, she reported monthly expenses of \$2,060. She listed debt payments of \$275 per month, which included payments on the debts at allegations 1.a, 1.c, and 1.d. After deducting

her monthly expenses and debt payments, Applicant had a monthly net remainder of \$1,173. At the hearing, Applicant stated she now shares her rent with a cohabitant, and her monthly expenses have dropped approximately \$500 to \$1,500. (GE 2; Tr. 44-49)

Applicant filed a Chapter 7 bankruptcy petition on October 7, 2013, about two weeks after the hearing. It lists \$4,819 in assets and \$52,258 in liabilities. She is no longer making the debt payments she listed in her PFS because all of her delinquent debts are included in the bankruptcy. The petition includes the debts alleged in the SOR at ¶¶ 1.a through 1.c, and 1.e. The car that secures the smaller delinquent auto loan (SOR ¶ 1.g) is listed as exempt in her petition. The bankruptcy petition also lists student loans totaling \$12,879, which are described as “non-dischargeable” in the petition. The student loans are not listed in the SOR. Applicant also owes her bankruptcy attorney \$1,636. (GE 2; AE F, H; Tr. 31-33, 44-49)

Applicant's delinquencies appear in credit reports dated March, May, and June 2013. The SOR alleges debts totaling \$229,995, including the following: two auto loans totaling \$18,590; one mortgage loan with a balance of \$204,566; unpaid rent of \$2,264; a utility bill of \$589; and two credit card debts totaling \$3,986. The SOR also alleges that the lender foreclosed on the delinquent mortgage loan. The status of Applicant's SOR debts follows. (GE 2, 4, 5)

Rent/judgment – allegation 1.a, \$2,264. Payment Plan. The debt represents one month's rent on the townhome where Applicant and her husband lived before they separated in 2011. When her husband left, Applicant could not afford the rent on her own. The creditor sued, and the court awarded the creditor a judgment in the amount of \$2,264 in June 2012. Applicant stated in her Answer that the full balance as of August 2013 had been \$3,165, but she was making \$100 monthly payments, and had reduced the balance to \$2,965. She provided documentation showing payments in June and July 2013. She testified that she made a third payment, but did not provide documentation. (GE 6; AE A; Tr. 30-34)

Utility debt/judgment – allegation 1.b, \$589. Payment Plan. The creditor sued Applicant in February 2011 for a delinquent electricity bill that was in Applicant and her spouse's names. The court awarded a default judgment to the utility company in May 2011 for \$589 plus \$96 court costs. In her September 2011 security interview, Applicant stated she had made arrangements to pay \$100 per month starting in November 2011. However, as of 2013, the debt was still delinquent. In March 2013, Applicant arranged a payment plan of \$50 per month, to begin April 2013. She testified that she made payments in April and May 2013, a half-payment in June 2013, and no payments in July or August. (GE 2, 3, 7; AE B, E; Tr. 34-36, 63)

Automobile Loan/judgment - allegation 1.c, \$14,846. Payment Plan. In Applicant's interrogatory response, she stated that this loan was a joint debt for a car purchased in 2006. Applicant and her husband were unable to afford the payments. Since 2008, when they voluntarily surrendered the car, Applicant had been giving her husband her

portion of the car payment and it was his responsibility to make the payment. The lender sued Applicant and her husband and was awarded a default judgment in December 2008 for \$14,846. The lender garnished Applicant's bank account in the amount of approximately \$600 in March 2013. A July 2013 letter from the creditor shows that Applicant and her husband were offered a payoff amount of \$5,392. Applicant and her husband are paying \$175 per month, with Applicant's share being \$75 per month. The \$75 payments started June 15, 2013. (GE 2, 3, 8; AE C; Tr. 36-38, 58-62)

Credit cards/judgment - allegation 1.d, \$1,282. Disputes; Unresolved. Applicant's credit reports show that she had two low-limit credit cards in her name from this lender, opened in early 2012, totaling \$1,282. (GE 4, 5) Applicant testified that she was never contacted by the creditor about this debt. The creditor filed suit, and a hearing was held in June 2013, where the creditor was awarded a default judgment. She contacted the creditor in July 2013 by telephone to state that she disputes owing the debt, but she has not received any further information. She did not contact the credit agencies to dispute the debt. (GE 9; Tr. 38-40, 64-65)

Credit card – allegation 1.e, \$2,704. Disputes; Unresolved. Applicant's credit report shows this is an individual account. She disputes owing the balance because she believes the account is closed, based on her May 2013 credit report. She called the creditor in July 2013 to dispute the debt. She did not contact the credit agencies to dispute the debt. Her credit report shows the account is closed because the creditor has charged it off as an uncollectible bad debt. The debt is not resolved. (GE 2; Tr. 39-40, 64-65)

Mortgage - allegation 1.f, \$204,566. Disputes; Foreclosed. Applicant's marital home was foreclosed in 2010. She stated in her August 2013 Answer that she had contacted the lender but had not received information on any remaining liability for the debt. She received a December 2010 Internal Revenue Service Form 1099-A, which listed the loan balance of \$204,566, and a fair market value of \$103,000. It also notes that the borrower was "personally liable for repayment of the debt." She provided a website printout showing that the home was listed as sold in August 2010 for \$122,750. As of the August hearing, Applicant did not know if she was liable for a deficiency. (GE 3; AE D, I; Tr. 40-43)

Automobile loan – allegation 1.g, \$3,744. Payment Plan. Applicant and her husband bought a car. After an accident, the car was a total loss. The alleged amount is their remaining liability after the insurance payout. Applicant testified that the creditor contacted her husband in August 2013 and that he is making arrangements to pay the debt. (Tr. 43-44)

Policies

Each security clearance decision must be a fair and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.¹ Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the “whole-person” concept. The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guideline F (financial considerations).

A security clearance decision is intended only to resolve the question of whether it is clearly consistent with the national interest² for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the Applicant to refute, extenuate or mitigate the Government’s case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.³ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as her or his 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.⁴

Analysis

Guideline F (Financial Considerations)

AG ¶18 expresses the security concern pertaining 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

¹ Directive. 6.3.

² See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

³ See *Egan*, 484 U.S. at 528, 531.

⁴ See *Egan*; AG ¶ 2(b).

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 over-extended is at risk of having to engage in illegal acts to generate funds. . .

Applicant has had difficulty meeting her financial obligations for the past several years. The SOR debts, not including her mortgage balance of \$204,566, is \$25,429. Her debts started in about 2008, before she and her husband separated in 2011, and continue to the present. The following disqualifying conditions under AG ¶19 apply:

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

The financial considerations guideline also contains factors that can mitigate security concerns. I have considered the mitigating factors under AG ¶ 20, especially the following:

- (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's debts are recent, because they are currently delinquent. Applicant has not demonstrated a consistent willingness to resolve them over the past several years, despite apparently having a monthly remainder sufficient to support payments. I cannot conclude that delinquencies will not recur. Her conduct does not support a finding of current reliability or good judgment. AG ¶ 20(a) does not apply.

Applicant may have had little control over several events that affected her finances. Most significant was her separation, which caused a reduction in her income. She was also unemployed for several months in the 2009 to 2010 period. In addition,

the record does not indicate that Applicant receives child support from her husband. It also appears that her husband is contributing to payment of only two of the five joint debts in the SOR. Applicant could not predict these events, and they had a negative effect on her ability to pay her debts. However, some of her debts became delinquent before her husband left in 2011, including the automobile loan in 2008 and her mortgage in 2010. In addition, some financial problems appear to have stemmed from factors within her control. Applicant bought a home with 100 percent financing. She also agreed to finance the mortgage with an ARM, which predictably increased her payments over time. Applicant made some efforts to resolve her delinquent mortgage by seeking loan modifications from the lenders. AG ¶ 20(b) applies in part.

In about 2006, Applicant contacted a debt-consolidation company, but did not use their services. Since then, her efforts to pay her delinquent debts have been inconsistent. Between 2008 and 2011, four creditors were awarded judgments. During her security interview in 2011, she promised to begin a payment plan on the debt at allegation 1.b, but the debt was still delinquent two years later when SOR was issued. After receiving the DOHA interrogatories in May 2013, she again said she would resolve her debts through payment plans, which she initiated within the three months before the hearing. She recently retained an attorney, who filed a Chapter 7 bankruptcy petition two weeks after the hearing. Applicant's inconsistent efforts do not demonstrate a good-faith effort over the past several years. The bankruptcy petition has not been discharged, and her debts are not yet resolved. Applicant receives some mitigation under AG ¶ 20(c) for this attempt to resolve her debts, but no mitigation under AG ¶ 20(d).

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate the applicant's security eligibility by considering the totality of an applicant's conduct and all the circumstances. An 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.

AG ¶ 2(c) requires that the determination of whether to grant a security clearance must be an commonsense judgment based upon consideration of the guidelines and the whole-person concept. Under the cited guideline, I considered the disqualifying and mitigating conditions in light of the facts and circumstances surrounding this case.

Applicant has been working full-time since 2010. Since at least 2011, when she completed her security clearance application, she has been on notice that her financial status is a security concern. Her debts owed to several creditors were delinquent to the point that the creditors were forced to pursue court action, resulting in four judgments against her. Another creditor garnished her bank account. During her 2011 security interview, Applicant promised to resolve a debt through a payment plan, but did not follow through. Two years later, her delinquencies remained. Applicant may continue to be financially indebted, because despite filing for Chapter 7 bank protection, she will owe \$1,636 to her attorney and \$12,879 in non-dischargeable student loans.

Under the Appeal Board's jurisprudence, an applicant must show that she has a viable plan in place and has taken steps to implement that plan. Applicant's Chapter 7 bankruptcy is a legitimate avenue to resolve debts. However, this appears to be an eleventh-hour effort in response to the security clearance process. Applicant's sporadic efforts over the past several years, despite apparently having a sufficient monthly remainder, do not show a commitment to meeting her financial obligations, and fail to demonstrate reliability and good judgment.

The doubts raised about Applicant's suitability for a security clearance remain. For all these reasons, I conclude Applicant has not mitigated the security concerns raised by the cited adjudicative guideline.

Formal Findings

Paragraph 1, Guideline F	AGAINST APPLICANT
Subparagraphs 1.a – 1.g	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge