



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



In the matter of:)
)
) ISCR Case No. 15-00889
)
)
Applicant for Security Clearance)

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

06/01/2016

Decision

MASON, Paul J., Administrative Judge:

In 2011, Applicant defaulted on a mortgage and a home equity loan (HEL). In August 2013, a credit card became delinquent. She has not presented a workable plan to resolve the three debts which total more than \$221,000. Applicant’s evidence in mitigation is insufficient to allay the security concerns associated with the guideline for financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On August 5, 2015, the Department of Defense (DOD) issued the 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 DOD on September 1, 2006.

Applicant furnished her notarized answer to the SOR on August 26, 2015. Applicant chose to have her case decided on the administrative record. 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 October 8, 2015.

In an attachment to the FORM, Applicant was advised she could object to the information in the FORM or submit additional information in explanation, mitigation, or extenuation. Regarding Item 8 (July 8, 2014 interview summary), Applicant was informed that she could make corrections, deletions or additions to the summary. She could object to the summary altogether because it is unauthenticated by a Government witness. Since Applicant did not make any corrections or object to the summary, it will be admitted as substantive evidence. She received the FORM on October 14, 2015. Her November 7, 2015 response was received by the Defense Office of Hearings and Appeals (DOHA) on or about November 17, 2015. On the same day, Department Counsel advised that she had no objection to the contents of Applicant's response. The case was assigned to me on January 20, 2016.

Findings of Fact

The SOR alleges four delinquent debts. The first two debts, which Applicant admitted, pertain to a home mortgage (SOR 1.a) and a HEL (SOR 1.b). Because Item 5 shows that Applicant was an authorized user on the SOR 1.c credit card account, the allegation is resolved in her favor. She admits the SOR 1.d debt. The total amount of delinquent debt is \$221,277. Applicant reported the four listed debts in her May 2014 e-QIP and explained that she lost her home (SOR 1.a, 1.b) when she and her husband lost their jobs in 2011. On reflection, Applicant and her husband believe they were victims of the 2006-2013 economic recession. (Item 3; response to FORM)

Applicant is 47 years old. She has been married since August 1993, and has three daughters whose ages are 21, 16, and 15. She received a business degree in September 1990, an English degree in September 1992, an associate's degree in business management in June 2003, and a bachelor's degree in sociology in September 2012. She is currently employed as a front desk supervisor for a private company. She has an application filed with a defense contractor for a job as a media analyst. She has had a secret clearance since June 2008.

In November 2003, Applicant purchased a home for \$188,000. (SOR 1.a) In May 2006, She took out a HEL (SOR 1.b) on the home for \$49,865. Recently, she was advised by a collection agency for SOR 1.a that her regular mortgage payments between 2003 and 2011 reduced the current delinquency to about \$60,000. Though she supplied no supporting documentation for her claim, the credit reports show that she kept the mortgage current for more than seven years until March 2011, when she no longer could pay the mortgage and it became delinquent. Applicant's regular payments

on the HEL kept the account in a current status until she could no longer pay the account in March 2011.¹ (Items 5, 6, 7; response to FORM)

In May 2006, Applicant's husband had his first stroke and lost his job as director of a construction union. After working a couple of years as an office manager for a national hotel chain, Applicant was laid off in September 2006 due to cutbacks caused by the economy. She remained unemployed until November 2006. Her husband had his second stroke in November 2006. In an effort to generate income, Applicant joined the United States Army later in the same month, only to be discharged in February 2007 because she could not pass basic training after developing adjustment problems related to extensive homosexual activity by other female recruits.

Applicant remained unemployed until September 2007, when she and her family moved to another part of the country to take a job as an interpreter at a language center located on a military facility. She worked there until July 2011. Her husband worked for only a year while she was employed at the center. (Item 8)

About two months before her employment ended at the language center, Applicant emailed the center security officer explaining her financial difficulties. Upon her return from her interpreter assignment in January 2011, she was informed that her employment contract with the language center would end soon. Over the next two months, she repeatedly heard the entire language center operation would end by June 2011. After sending out many job applications, but obtaining no job offers, Applicant informed the security officer that in March 2011 she stopped paying the mortgage account (SOR 1.a) and the HEL (SOR 1.b). She contacted the HEL and intended to contact the mortgage lender. Applicant told the security officer that she and her husband had been trying to sell the home since 2009, but the value of the home was about half of what they owed on the mortgage. Their real estate broker refused to list the home at the lower price they requested. The home was foreclosed and resold in 2012. (Item 4)

In the same email to the security officer, Applicant also explained that she had two delinquent credit card debts identified at SOR 1.c and 1.d. If Applicant had been working, she is confident she would have continued to pay the mortgage and home equity loan, but her main concern was providing food and shelter for her three school-aged daughters. (Item 4)

From July 2011 to February 2013, Applicant was unemployed, spending most of her time looking for work. Her sole support was her husband's unemployment compensation, food stamps of \$670 a month, and \$275 a month in state unemployment compensation. Since February 2013, Applicant has been working as a front desk supervisor for a private employer. She has a job offer with a defense contractor that is

¹ The reports show no derogatory information from other mortgage lenders who preceded the current lender. See Items 5, 6, and 7.

sponsoring her. She was advised by this defense contractor to list them in her May 2014 e-QIP (Item 3).

In July 2014, Applicant informed the OPM investigator that she contacted the HEL creditor (SOR 1.b) in March 2011, offering to pay between \$50 and \$100 a month. The creditor turned down her offer. (Item 8)

Regarding the SOR 1.d. credit card account, Applicant stated to the OPM investigator that she had been paying about \$256 a month. After missing a payment, the monthly bill increased by \$156 to \$404. In March 2011, Applicant contacted the creditor to negotiate a lower monthly payment, but the creditor wanted at least the regular amount (\$256). She continued to send the creditor \$100 a month until July 2011. She sent the creditor between \$25 and \$50 a month until January 2013, when she could no longer pay any amount. The creditor indicated it would accept half of the account, and forgive the remaining balance. Applicant declined the offer because she did not have the funds. She was unsure when she could repay the listed accounts. (Item 8)

Throughout her sporadic employment since September 2006, Applicant has tried not to incur new debt. Her May and December 2014 credit reports show that she was successful. The only new delinquent debts in her September 2015 credit report are three medical debts (\$663) that she became liable for between November 2014 and February 2015. (Items 5, 6, 7)

Applicant has been current on her student education loans. In her response to the FORM, she provided a statement of regular payments to the loan creditor from June 2014 to October 2015. The student loans are now in deferment. (Items 5, 6, 7)

Applicant was current on one car account before paying off that account. Her husband has another car loan that is current. She has paid off an unlisted department store account and is current on another unlisted department store account. (Item 5 at 7, 11, 12)

On June 1, 2012, Applicant sent a letter to the credit card creditor identified at SOR 1.d. She advised the creditor that she could no longer afford the minimum payment because she and her husband had been unemployed for a while. She indicated that she was supporting her husband and three daughters on about \$275 a month in state unemployment compensation. She offered to pay \$10 a month and when she found employment, she offered to pay more. The creditor rejected her offer. (Response to FORM).

Applicant wrote a letter to the SOR 1.c creditor on July 10, 2014, explaining that the account belonged to her husband. She indicated to the creditor that her family could only afford a payment of \$50 a month. She apparently did not know that she was only an authorized user on the account. (Response to FORM)

Missing from Applicant's case is evidence that provides additional insight into her financial situation. There is no evidence about whether Applicant's husband is working. There is no evidence about Applicant's current income or her living expenses. There is no evidence of financial counseling or whether she has a budget. There is no evidence to show if Applicant has established a feasible plan to address the three listed debts.

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 administrative judge's ultimate goal is to reach a fair and impartial decision that is based on sound and prudent judgment. 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 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.I.14., the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.I.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. . . ." Because this case is decided on the administrative record, credibility assessments of Applicant are limited to his statements and interview summaries. 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 pertinent 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*). Applicant is responsible for a delinquent mortgage (SOR 1.a), a HEL (SOR 1.b), and a credit card account (SOR 1.d) totaling approximately \$221,277. Though Applicant claimed the balance on the mortgage is substantially less than posted in the SOR, she provided no evidence to support her claim. The debts became delinquent between 2011 and 2013. The listed debts have not been resolved. AG ¶¶ 19 (a) and (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 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 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*).

AG ¶ 20(a) has only limited application due to Applicant's regular payments in 2014 and 2015 on her unlisted student loans to bring the accounts into deferment. She also receives limited mitigation for paying off the unlisted installment loan and department store accounts. However, Applicant receives no mitigation under the condition for the three listed accounts because they are still delinquent.

Applicant's periodic unemployment was a major reason for her financial problems. Between September 2006 and February 2013, she was unemployed four times with periods of unemployment lasting from 2 months to 19 months. Her husband has had chronic unemployment problems since his two strokes in 2006. Overall Applicant's financial problems were caused by unforeseen events largely beyond her control. The first prong of AG ¶ 20(b) applies.

When Applicant returned to the language center in early 2011 to learn that the language center would close down in a few months, she decided in March 2011 to stop paying the mortgage (SOR 1.a), the HEL (SOR 1.b), and the credit card debt (SOR 1.d). In May 2011, she explained in an email to her security officer the likelihood of her impending job termination was the reason why she stopped paying the mortgage and HEL, and that she was trying to negotiate lower payments on the credit cards. In March 2011, she attempted to negotiate with the HEL creditor, but there is no evidence that she tried to contact the mortgage lender. Her supporting documentation in 2012 and 2014 documenting her unsuccessful negotiating attempts with the credit card creditors entitles her to some mitigation under the second prong of AG ¶ 20(b) for acting responsibly under the circumstances. The mitigation she receives under the condition

for unsuccessfully negotiating with the HEL creditor is much less due to the passage of four years since her last contact with the creditor.

AG ¶ 20(c) is unavailable for mitigation since there is no indication Applicant participated in financial counseling. There are no indications that the debts are being resolved or under control. Applicant's regular payments in 2014 and 2015 of her unlisted student loans entitles her to limited mitigation under AG ¶ 20(d).

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 of 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)*.

According to AG ¶ 2(c), 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.

Applicant is 47 years old and married with three daughters. She has achieved four scholastic degrees between 1990 and 2012. She has been unemployed four times since 2006. After two strokes in 2006, her husband has had only spotty employment. Since February 2013, she has been employed as a front desk supervisor with a private company.

In March 2011, Applicant discontinued paying the mortgage lender (SOR 1.a) and the HEL creditor (SOR 1.b), while making partial payments on the credit card (SOR 1.d) until January 2013. Providing for the immediate needs of her family was certainly more important at the time than continuing to pay for a home that she was not occupying. However, Applicant returned to the work force in February 2013 and knew that she had to confront these three delinquent debts. Neither her July 2014 OPM interview nor her response to the FORM provides insight into whether she has a feasible plan to repay the debts. Her rejected payment offers to the creditors should have been a signal to her that bankruptcy may be her only option for debt relief. Considering the record as a whole, Applicant's evidence in mitigation has failed to overcome the security concerns arising from the financial considerations guideline.

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
Subparagraphs 1.a, 1.b, 1.d:	Against Applicant
Subparagraph 1.c:	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