



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



In the matter of:)
)
) ISCR Case No. 14-03595
)
Applicant for Security Clearance)

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: Gregory Greiner, Esq.

11/20/2015

Decision

CURRY, Marc E., Administrative Judge:

The non-collectability of the second mortgage on Applicant's home that was foreclosed in 2010 is not a controlling factor when assessing the financial considerations security concern under the Adjudicative Guidelines (AG). However, when considered in tandem with the circumstances surrounding Applicant's financial problems that led to the foreclosure and her efforts at rehabilitating her finances since then, I conclude that she has mitigated the security concern. Clearance is granted.

Statement of the Case

On December 5, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a statement of reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the AGs implemented by the DOD on September 1, 2006.

On December 22, 2014, Applicant answered the SOR, denying all of the allegations except subparagraph 1.c. She requested a hearing whereupon the case was assigned to me on June 8, 2015. DOHA issued a notice of hearing on August 3, 2015, scheduling the hearing for August 25, 2015.

The hearing was held as scheduled. At the hearing, I received four Government exhibits (GE 1 - GE 4), 13 Applicant exhibits (AE A - AE K), and the testimony of Applicant and a character witness. At the close of the hearing, I left the record open at Applicant's request, to allow her to submit additional evidence. Within the time allotted, Applicant submitted one additional document that I incorporated into the record as AE L. I took administrative notice of an e-mailed post-hearing memorandum that Applicant's counsel submitted with AE L, and Department Counsel's response, marking them as Hearing Exhibits (HE) I and II, respectively. The transcript was received on September 2, 2015.

Findings of Fact

Applicant is a 36-year-old woman with two children, ages 10 and 14. She was married previously for nine years from 2000 through her divorce in 2009. (Tr. 32) She and her husband were separated for two years before the court finalized the divorce. She has physical custody of her children. (GE 1 at 24-25)

In 2005, Applicant began taking online college courses. She is majoring in homeland security and emergency preparedness and needs to complete one additional class to earn her degree. (Tr. 65)

Applicant is a veteran of the U.S. Navy where she served from 1999 to 2003. She was discharged honorably. (Tr. 30) Applicant works in human resources as a program manager for a defense contractor. Her duties include in-processing new employees, ensuring that they are properly cleared, and have their information technology accounts activated before beginning work. (Tr. 26) She has worked in this position since 2005, and has held a security clearance since 2000. (GE 1 at 12; Tr. 30)

Applicant is highly respected on the job. According to her current supervisor, with whom she has worked for eight years, she is "one of the better security professionals [he has] ever worked with." (Tr. 17) According to her second-level supervisor, "she is a key focal point of [their] program," and has "consistently displayed the highest professional conduct." (GE 1 at 19-20)

In July 2004, Applicant and her then husband purchased a home for approximately \$293,000. (Tr. 74) They financed the purchase with two mortgages, as listed in SOR subparagraphs 1.a and 1.e, respectively. Also, they financed the purchase of furniture for approximately \$12,000, as alleged in subparagraph 1.b and duplicated in subparagraph 1.d. (Tr. 81)

Applicant and her husband separated in 2007. Their divorce was contentious. Much of their problems involved Applicant's husband's irresponsible handling of money. He incurred \$20,000 of debt on credit cards that were jointly in Applicant's name. (GE 1 at 36) Applicant was emotionally devastated by the separation. At one point, she had to be hospitalized for suicidal ideation.¹ (GE 4 at 11)

At or about the time of their separation, Applicant and her husband executed a separation agreement. (AE A) Under the agreement, he agreed to pay half of the mortgage, property taxes, homeowner association fees, utilities, and homeowners' insurance. Also, he agreed to pay half of their car-related expenses, together with the balance of the furniture loan, and any credit card debt incurred through the date that they separated. (AE A at 1)

Applicant's estranged husband satisfied the credit card debt (Tr. 71), but he stopped payment on the mortgage-related expenses after 11 months, and never made any payments on the homeowner association fees and the utilities. (Tr. 36; GE 4 at 9) With no help paying the debts jointly incurred with her husband, Applicant began struggling to make ends meet, paying debt with help from relatives, and by withdrawing \$20,000 from her 401(k) account. By the time their divorce was finalized in February 2009, her debts had become delinquent and she had liquidated all of her retirement savings.

As part of the divorce decree, the court ordered Applicant to be responsible for all of the jointly-incurred credit card debt and the furniture loan. (Tr. 38) Also, the court ordered that Applicant and her ex-husband short sell their home within 30 days of the divorce decree, and that her ex-husband pay her \$100 monthly to satisfy the mortgage expenses that he agreed to pay Applicant per their original separation agreement. (Tr. 37) Over the years, his payment has been sporadic. (Tr. 41)

Applicant and her ex-husband were unable to sell the home, as the real estate market was still poor as a result of the 2008 collapse. Consequently, the primary mortgage was foreclosed in April 2010. (AE L at 4) The second mortgage on the home was in default when the foreclosure occurred, but was not included in the foreclosure action. (AE D at 39)

In October 2010, the mortgagee resold Applicant's home. (AE L at 9) The primary mortgage balance, as listed in subparagraph 1.a, was satisfied through the sale. (AE L at 9) The secondary mortgage, as listed in subparagraph 1.e, was not included in the foreclosure proceeding, and it has been charged off. Applicant's counsel contends that Applicant is no longer responsible for this mortgage because the statute of limitations for filing a foreclosure claim has expired. The balance totals \$97,000.

¹Applicant recovered from her bout of depression and no security concerns related to this past psychological problem were alleged in the SOR.

The debt listed in subparagraph 1.b, totalling approximately \$16,000, is a delinquent credit card account. Applicant contacted the collection agent and negotiated a settlement. She satisfied it with a lump-sum payment in August 2015. (AE C)

The debt listed in subparagraph 1.c is a credit card. The balance totals \$5,000. (Tr. 51-52) Applicant's ex-husband did not incur any of this balance. Applicant used it on medical bills, attorney fees, counseling for her children, and "anything that popped up during the divorce that [she] couldn't afford out of pocket." (Tr. 91) In 2007, the balance was approximately \$15,000. (Tr. 51, 71) Between 2007 and 2009, Applicant made approximately \$11,000 of payments. (AE E at 4, 6-7, 10-15, 17-20, 22, 24) She stopped making payments in March 2009 after she depleted her savings. She intends to focus on satisfying this debt now that she has satisfied the debt listed in subparagraph 1.b.

Applicant keeps a budget. (AE G) She has approximately \$765 of monthly discretionary income. She has begun replenishing her retirement savings, and now has \$8,000 invested in her 401(k). (Tr. 92) She receives \$355 of monthly child support payments from her ex-husband. Initially, his payments were erratic. She then went to court and arranged for payments to be made through the state's office of child support enforcement. (Tr. 88-89)

When Applicant began having marital and financial problems, she informed her supervisor. He has attended many of her court hearings. (Tr. 19) He considers her "one of the strongest women [he has] ever met [in] trying to be a security professional, have a profession, to raise her children [and] to deal with the legal issues brought on" by her divorce. (Tr. 19)

Policies

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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."

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

Guideline F, Financial Considerations

Under this guideline, “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.” (AG ¶ 18) Applicant’s inability to keep up with her debts led to the foreclosure of her home and the incurrence of \$20,000 of unsecured debt. AG ¶ 19(a), “inability or unwillingness to satisfy debts,” applies.

The following mitigating conditions are potentially applicable:

- (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.

Marital problems contributed significantly to Applicant’s financial problems. Her ex-husband was a spendthrift who charged purchases on joint credit cards and repaid them sporadically. Since their separation, his child support payments have been similarly erratic. Applicant’s financial problems reached their nadir in 2010 when her inability to sell her marital home, as the divorce court ordered, led to its foreclosure. Throughout the period Applicant struggled financially, she attempted to stay afloat, using money from her retirement account to help pay for home maintenance expenses, therapy for her children, and expenses related to her divorce.

Applicant recently settled and paid a \$16,000 debt, as listed in 1.b, and is planning on addressing the remaining unsecured debt, listed in subparagraph 1.c. She now keeps a budget. Since obtaining a child support order, she consistently receives child support from her ex-husband. She has \$765 of monthly discretionary income, and has begun replenishing her retirement savings.

Applicant’s second mortgage on her foreclosed home, totalling \$97,000, remains outstanding, and she has made no plans to satisfy it. Her attorney argued that it is statutorily invalid, as the statute of limitations for the secondary mortgagee to file a claim has expired.

Applicant's counsel is correct. (See State Code Ann. § 7-105(c)(v)(6)) However, the non-collectability of a debt has limited probative value in security clearance evaluations. Regardless of the debt's collectability, it remains a debt Applicant incurred and did not satisfy. As such, it raises questions about Applicant's judgment and responsibility.

Conversely, Applicant did not default on this mortgage as a result of foolish real estate speculation or financial mismanagement. Instead, she defaulted only after struggling to pay her debts, depleting her retirement savings in the process, for two years after her marital separation with minimal help from her estranged husband. Moreover, the non-collectability of the debt, thought not controlling, minimizes the vulnerability to coercion. Under these circumstances, I conclude that all of the mitigating conditions, as set forth above, apply, notwithstanding the unresolved second mortgage.

Whole-Person Concept

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They are as follows:

(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.

Much of Applicant's financial problems were caused by circumstances beyond her control. Not only has she been working to overcome these problems, she has been doing so while raising her children and coping with the emotional devastation of the divorce. While addressing these challenges, she has excelled on the job. I conclude that the negative security ramifications of the second mortgage that Applicant did not satisfy is outweighed by the surrounding circumstances and the steps that she has taken to rehabilitate her finances. Considering this case in the context of the whole-person concept, I conclude Applicant has mitigated the security concern.

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:

FOR APPLICANT

Subparagraph 1.a-1.e:

For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY
Administrative Judge