



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



In the matter of:)
)
-----) ISCR Case No. 18-02413
)
Applicant for Security Clearance)

Appearances

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

03/31/2020

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On October 19, 2018, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued Applicant a Statement of Reasons (SOR) 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on or after June 8, 2017. In an undated response, Applicant addressed the sole allegation at issue and requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. I was assigned the case on March 7, 2019.

On April 1, 2019, a notice setting the hearing for May 9, 2019, was issued. The hearing was convened as scheduled. The Government offered three exhibits (Exs.), noted as Exs. 1-3, and Applicant presented four documents, marked as Exs. A-D. All were accepted into the record without objection.

Applicant was granted through May 17, 2019, to submit any additional materials. Applicant timely emailed the Government with a letter containing information she

wanted considered. It was forwarded to me on May 21, 2019, and accepted into the record as Ex. E without objection. The transcript of the proceeding (Tr.) was received on May 29, 2019, and the record was closed. Based on the testimony, materials, and record as a whole, I find Applicant failed to mitigate security concerns.

Findings of Fact

Applicant is a 40-year-old senior systems engineer who has performed the same type of work for over 20 years. She currently earns about \$128,000 a year. Since 2005, Applicant has twice had periods of unemployment, from February 2017 to May 2017 and from April 2015 to July 2015. She also has her own business as a part-time venture which generates about \$200 every few months. (Tr. 26-27) Applicant has earned a bachelor's degree and has completed about a year of post-graduate studies.

Presently single, Applicant is the mother of three children, one adult, one teen, and one child under 10. She lives with her two youngest children in a house she rents for \$2,645 a month. She receives no child support for the minor children living with her.

Documentary evidence in this matter is scant. The majority of the information below comes from Applicant's testimony: In 2005, Applicant began living in a property she ultimately purchased the following year for \$120,000 at 10.99% interest with 5% down: "[it was] a bad loan. I was 20 something years old. I just wanted to get a house, but it was something that I couldn't do." (Tr. 34) The adjustable rate mortgage (ARM) only seemed to go up when it adjusted. She unsuccessfully tried to get a loan modification in 2009, when she was earning about \$75,000 a year and the mortgage payment was about \$1,620 a month. Her request was rejected because her income was too high. (Tr. 37) She then went into a repayment status paying \$2,250 a month, followed by a second unsuccessful attempt at a modification in 2010. (Tr. 38-39)

Later in 2010, Applicant tried to sell the house, but "the property value was so bad, it wasn't even worth it." (Tr. 40) In 2011, she again requested a loan modification after incurring a \$6,000 water bill due to a ruptured pipe. Meanwhile, without water, she and the children went to stay elsewhere. She then filed a hardship letter with her bank requesting a loan modification. She was next rejected for relief in 2015, during a layoff. Applicant provided emails reflecting communication with her lender in 2016 and 2017. (Ex. B, Ex. D, which provide the only dated documentation of communication between Applicant and her lender regarding her situation)

In late 2016 or early 2017, the house was subject to a break-in. Now feeling unsafe, and again subject to a layoff, Applicant made one more attempt to get a loan modification. (Tr. 49) Meanwhile, she submitted payments, but they were returned because she had become delinquent. (Tr. 51) Frustrated, she and her family abandoned the home in September 2017. A short sale was discussed, but it was never attempted because she missed a deadline to accept a related offer. (Tr. 60) In sum, between 2010 and 2015, Applicant paid only delinquent mortgage payments or paid less than the full amount owed. (Tr. 56)

In January 2018, Applicant was informed that the house would be in foreclosure or up for auction. (Tr. 63) It ultimately was sold by auction for \$115,000, leaving a deficiency balance owed of \$87,354.67. (Tr. 64-65) She was informed she owed this amount in February 2018. With this information, she “didn’t do anything because I didn’t know [what to do].” (Tr. 66) She thought her treatment had been unfair and the process “a really bad practice.” (Tr. 66) Learning there was a class action suit against her lender, Applicant signed on as a claimant that month. She did so not by signing legal paperwork, but by signing and returning a postcard after answering some questions. (Tr. 69) From then on, she waited, not knowing what else to do. (Tr. 68) Since that time she has taken no action and not contacted anyone about the deficiency. She has not confirmed that she was made a party to the class action. She has no idea what the status of the class action is. Rather, she is waiting for someone to contact her. (Tr. 69) However, she currently has no plans to make payments on this delinquency because she believes she is part of the class action. (Tr. 73)

Overall, Applicant provides for her household. She has received financial counseling. (Tr. 81) Her eldest child is away in a graduate program and is now financially independent, except for her car loan payments and car insurance. (Tr. 75) Applicant has about \$180,000 in retirement savings. Her expenses exceed her income slightly, but she generally is able to have “a little bit left” at the end of each month. (Tr. 84-86) Overall, she is “living within her means, but just barely. . . .” (Tr. 86) She presently has a \$2,000 state tax deficiency owed that she plans to pay off. (Tr. 89) Her credit cards are in good standing. Going forward, Applicant intends to seek advice from a credit counseling service and she hopes to work with a credit repair service to negotiate better terms with her lender. She wrote that she intends to look for a second, part-time job. (Ex. E) “If all else fails,” she will file Chapter 13 bankruptcy “so any income leftover will go to [her] creditors for 3 to 5 years. Managed by a trustee, [Her] credit will be reestablished over a few years. This is only after all other options have been exhausted.” (Ex. E)

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, which are used in evaluating an applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied 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 variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that any 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, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security decision.”

A person seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. This relationship transcends normal duty hours. The Government reposes a high degree of trust and confidence in those granted access to classified information. Decisions necessarily include consideration of the possible risk an applicant may deliberately or inadvertently fail to safeguard such information. Decisions shall be in terms of the national interest and do not question the loyalty of an applicant.

Analysis

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 or sensitive information.

Here, the Government offered documentary evidence reflecting that Applicant is past due on a mortgage account that went into foreclosure status. This is sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a) inability to satisfy debts;

AG ¶ 19(b) unwillingness to satisfy debts regardless of the inability to do so;
and

AG ¶ 19(c) a history of not meeting financial obligations.

Four conditions could mitigate the finance related security concerns posed here:

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 current reliability, trustworthiness, or good judgment;

AG ¶ 20(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, a death, divorce or separation,

clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit counseling service, and there are clear indications that the problem is being resolved or is under control; and

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

The debt incurred by Applicant related to her mortgage account was still existent at the time of the hearing, although the amount at issue is now apparently in the \$80,000+ range rather than the \$100,000+ range because the home was auctioned. Applicant provided considerable narrative regarding her efforts to handle what became unwieldy monthly payments on that mortgage as her interest rate – as well as her income – rose. With the exception of the 2016-2017 period, for which she provided multiple examples of communications, the detail she provided on her efforts over the past dozen years seem credible, despite scant substantiating documentary evidence.

Applicant's efforts appear to have ended in 2018. At that point, she apparently took a passive stance, deciding to be reactive should some entity contact her, rather than proactively continuing to work toward resolving her situation. It is also when she decided to rely on a postcard soliciting potential members of a class action suit as evidence she had been so included, a status she has yet to clarify.

To her credit, Applicant espoused a plan for tackling her debt following the hearing: to seek advice from a credit counseling service, to work with a credit repair service to negotiate better terms with her lender, and to take a part-time job. As a last resort, she related that she would file Chapter 13 bankruptcy, which she believes will satisfy her obligation in three to five years and reestablish her credit. The plan is not without merit, but there is no documentary evidence indicating she has implemented even the most initial steps in executing it. Like her reliance on the class action card, this approach is far too reliant on hopeful thinking and promises than it is on verified action.

While Applicant received financial counseling at some point, any progress on her debt has been at a standstill for over a year, obviating applicability of AG ¶ 20(c). Finally, I note the inapplicability of AG ¶ 20(b). Taking Applicant at her word with regard to her efforts to modify her mortgage or otherwise ameliorate her situation, she chose to purchase the house at issue knowing its area and its financial terms. She acknowledges that the terms were less than favorable and, apparently, she entered into the arrangement without any financial guidance. Therefore, the upward machinations of the ARM with which she was voluntarily encumbered cannot be said to have been beyond her control. None of the other mitigating conditions apply.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of her conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d). Here, I have considered those factors. I am also mindful that, under AG ¶ 2(a), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept.

Applicant is a 40-year-old senior systems engineer earning about \$128,000 a year. She has a college degree and received financial counseling. In 2005, she was so desirous of being a 20-something homeowner, she purchased a property in 2006 with a 10.99% interest ARM. In her naiveté, she became overwhelmed as the rate seemed to only move higher, becoming unwieldy. To her credit, she apparently made efforts to modify the mortgage or otherwise ameliorate her situation, but without success due, in part, to her growing income. In 2018, after abandoning the house and around the time the property went into foreclosure, she received a postcard soliciting potentially affected individuals to join a class action suit against her lender. Assuming her return of the card made her inclusion a *fait accompli*, she ceased working to resolve either her situation or her debt. Instead, she chose to take the passive role and await either the problem or the solution to come to her.

A year of inactivity passed before Applicant's hearing. After the hearing, she submitted a letter setting forth her plan to seek financial assistance and credit repair aid, as well as a second job, before considering Chapter 13 bankruptcy protection as a solution. These ideas form the basis of a viable plan. However, she provided no documentary evidence indicating she has taken even the most preliminary steps in implementing it. This process does not expect an applicant to satisfy all of ones delinquent debt at the same time, but it does require that a workable plan be described and implemented. Here, that bar has not yet been met. Financial considerations security concerns remain unmitigated.

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
Subparagraph 1.a:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge