



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



In the matter of:)
)
XXXXXXXXXXXXXXXXX) ISCR Case No. 22-00289
)
Applicant for Security Clearance)

Appearances

For Government: John Lynch, Esq., Department Counsel
For Applicant: *Pro se*

03/24/2023

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant provided evidence sufficient to mitigate the national security concern arising from her problematic financial history. Applicant’s eligibility for access to classified information is granted.

Applicant submitted a security clearance application (SCA) on June 7, 2021. On April 1, 2022, the Department of Defense Consolidated Adjudications Facility (CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guideline F. The CAF acted under Executive Order (EO) 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 adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on April 4, 2022 and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 5, 2022. The case was assigned to me on November 17, 2022. On January 9, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted in person on February 2, 2023. I convened the hearing as scheduled. The Government submitted Exhibits marked (GE) 1 through 11, which were admitted in evidence without objection. Applicant testified and submitted two exhibits, which were marked Applicant's Exhibits (AE) A and B, and admitted without objection. DOHA received the transcript (Tr.) on February 13, 2023.

Findings of Fact

Applicant is 42 years old and has two sons ages 19 and 20, who live with her. She and her cohabitant have lived together since January 2008. She married her first husband in June 1998; they divorced in November 2000. She married her second husband in August 2005; they divorced in May 2009. Since February 2016, she has worked full-time for a defense contractor. (GE 3; Tr. 17.)

Under Guideline F, the SOR alleged that Applicant is past due for \$7,837 on a loan whose total balance is \$39,687. The SOR also alleged that she is past due for \$21,549 on a mortgage whose total balance is \$191,579. (SOR ¶ 1.) She admitted both allegations, with explanations during her testimony. From June 2007 until December 2020, she and her family lived in the home that is the subject of the two SOR allegations (the Townhouse). (Answer; Tr. 23; GE 1.)

Direct Testimony. Applicant testified that she bought the Townhouse in 2007. In 2008 the market crashed. Almost immediately her home mortgage was underwater. As the mortgage remained underwater for years during the financial crisis, COVID struck. She contacted the mortgage company to try a short sale. It denied that, saying she could use COVID relief. But she could not afford to sell the Townhouse without a short sale. She also asked about a deed-in-lieu of foreclosure. The mortgage company said it was not doing those because of the President's mandate against foreclosures during COVID. (Tr. 15.)

Applicant testified that the Townhouse was never refinanced, but the mortgage loan might have been sold a few times. It was an 80/20 loan. That was what mortgage companies were doing in 2007. It was an interest-only loan. She was trying to get out of the loan, because she was having problems with rodents getting into the Townhouse. She could not stop them, because her home was connected to everyone else in that row. She could only clean up and close holes in her home. She also found a copperhead snake in her basement. (Tr. 15-16.)

At this point, Applicant offered two exhibits. The first, marked AEA, was identified as a Judgment of Absolute Divorce dated May 6, 2009, captioned XYZ v. Applicant, in the Circuit Court for State A. (XYZ was her second husband. GE 1.) AEA involves the disposition of her and her second husband's home (the Marital Home). The second,

marked AEB, was a photograph of a copperhead snake she found in her basement. Applicant ended her direct testimony. (Tr. 16-17.)

Cross-Examination. Applicant works for a contracting company doing Information Technology. She has worked there for seven years. Her annual gross pay is about \$85,000. She has worked full-time for a federal contractor since 2001. She has had a Secret security clearance since 2011, and her current employer is her security clearance sponsor. (Tr. 18-20.)

Applicant's cohabitant works in construction and makes about \$45,000 per year. He is the father of both her sons. She, her sons, and her cohabitant live in State A (the Residence). She is on the deed for the Residence, but not on the loan. She is not on the loan, because she did not want to be on the loan. She helps with household bills but not with the mortgage. She is asked about a \$711 per month rental charge on GE 5. That rent is for her son's apartment when he is at college. Neither of her sons pay rent to her cohabitant, nor do they help with the mortgage. Only one of her sons is in college; the other son works. (Tr. 20-22.)

Applicant was questioned about the SOR. When she bought the Townhouse in 2007, she did not intend it to be a rental property. The purchase price was \$225,000. After the purchase, she and her family moved in. Asked about its market value now, she was unsure, "like \$200,000, maybe." She was asked whether online estimates of \$224,000 and \$253,000 seemed "about right." She answered "no;" they were "too high." She based her \$200,000 on "other ones that have sold recently in the area." (Tr. 22-24.)

Applicant was referred to GE 2, page 7, account 11. (GE 2 is a credit report of 2/24/2022.) The "opening date" is when she bought the Townhouse in June 2007. But the \$180,000 high credit is not the only loan; she bought the Townhouse for \$225,000. There were two loans "technically." The other loan was for \$45,000, for a total of \$225,000, the sale price. She did not use her own money for a down payment. She confirmed that she never refinanced her Townhouse mortgages, saying: "How can you refinance a loan that's under water?" Applicant was asked if the "bank has changed payments?" She replied that: "[They] sell loans. I didn't do it. It was – the banks." (Tr. 25-27.)

Applicant was referred to GE 4, page 5, top two entries. (GE 4 is a credit report of 8/2/2011.) She was asked how the \$180,000 loan balance was reduced by only \$22 in four years. She explained that it was an interest-only loan. She testified that was what mortgage companies were doing in 2007. That was the only way she could get a loan and "out of the of the house to get away from my ex-husband with my children." She explained that the \$45,000 loan balance was reduced by only \$222, because it too was an interest-only loan. (Tr. 27- 31.)

Applicant was asked why she stopped paying her two Townhouse mortgages in April or May 2020. She stopped paying to qualify for a short sale. The mortgage company said since she was paying on time, "they wouldn't work with me." They did not approve

her short sale. She has not paid on the Townhouse mortgages, since the spring of 2020. She moved out in December 2020. The mortgage companies are in the process of foreclosure. (Tr. 31-32.)

Applicant was asked if she hired an exterminator about the snake. She did not but said: "We went around the house. We closed up all the holes like you're supposed to. You know, you put vents on the thing. We did everything we could do." A neighbor came in and killed the snake. She never saw another snake, but she did not stay long after the photo of the snake (AEB) was taken in June 2020. Her Townhouse was a middle unit, with units on the left and right. She tried her best to close up holes or gaps between her Townhouse and her neighbors. But "stuff was still getting in." The Townhouse complex is in the country surrounded by woods. (Tr. 23-24, 33-34.)

After moving out in the summer of 2020, Applicant has never tried to rent or sell the Townhouse. She has keys to the Townhouse but believes the bank has changed the locks. She was referred to GE 11, page 7, account 13. (GE 11 is a credit report of 1/23/2023.) She "had no clue" her mortgage account had been transferred until she saw GE 11. She received nothing in the mail from the new mortgagee shown on GE 11. Every once in a while she receives statements from the lender shown in SOR ¶ 1.b. but no phone calls. She submitted paperwork for her short sale request, but that lender denied it. (Tr. 34-37.)

Applicant's short sale was denied, because the bank kept saying she could use COVID relief. She no longer felt safe in the house, and her family had outgrown the Townhouse. She tried to hold on to it as long as she could. She understood that the COVID program could be a pause on the payments or lower the mortgage payments but would not get her out of her underwater loan. (Tr. 37-38.)

Applicant has nothing in writing from a real estate broker as to what her Townhouse could sell for. She has not spoken with one since she left in December 2020, because she was trying to work with the banks. Her opinion that the Townhouse is worth about \$200,000 is based on comparable sales in the area. When she left the Townhouse, "they were going for a lot less." Her plan is to keep working with the mortgage company, but it has "sold it [the mortgage] again, so she will need "to track down the latest number [for the latest mortgage holder]." (Tr. 38-39.)

Applicant was referred to GE 10, page 2, second paragraph. (GE 10 is the Personal Subject Interview (PSI) of 9/2/2021.) She was asked if it was still her plan to let the Townhouse go into foreclosure, if she cannot work out a sale? She answered: "The loan is underwater. I mean I'm trying to work with the mortgage company. I can't afford to pay the difference of what I owe and what the house would sell for." In the PSI, she said she could not "maintain two mortgages." She clarified that it is "not really a mortgage." She is paying household bills at her current Residence. (Tr. 39-40.)

When Applicant lived in the Townhouse, she did not pay homeowner's association fees. She was responsible for outside upkeep. After she left, she and a neighbor mowed

the yard; it was very little. The Townhouse still has water, but when she left, she turned off the electricity. She is up to date with all utilities. (Tr. 40.)

Applicant was referred to GE 11, account 12. The entry shows a joint mortgage. She confirmed that the mortgage is on her parents' house. She is on that mortgage. Her father lost his job. So, she signed on to the loan, so her parents would not lose their house. It was not a refinancing. They bought the house in about 2005. She pays nothing on their house. She has never helped them pay the mortgage. She believes she is on the deed. If her parents sold the house, she would not receive any of the proceeds. (Tr. 41-42.)

Applicant was referred to GE 6. (GE 6 is a Notice of Default of 10/20/2009.) She confirmed that this is about a foreclosure on the Marital Home she owned with her second husband. She was referred to GE 4, page 4, the last entry. (GE 4 is a credit report of 8/2/2011.) She believes that transaction was a transfer, not a refinance. She was not involved in that transfer; it was all handled by her second husband. There was no deficiency. (Tr. 42-44.)

Applicant testified that she does not have any delinquent or collection accounts that have not been discussed during the hearing. Applicant was referred to GE 11, page 4, account 3. That account was opened in July 2022, with a balance of \$16,130. She was asked why the balance was so high. She explained that there were car issues, braces, wisdom teeth pulled, and college. (Tr. 44-45.)

Department Counsel asked a series of questions about Applicant's personal finances and spending habits. Her answers did not prompt any follow-up by Department Counsel. Cross-examination ended. Tr. 45-48.)

Redirect Testimony. Applicant testified that they had mice in the Townhouse. They were getting into the kitchen. It was so bad "all the food had to go into containers just to keep them out." When she was trying to qualify for a short sale, she had to be in default before the lender "would even talk to [her] about it." She reiterated that COVID relief would not help her with the loan being underwater. It would lower her payments for perhaps six months but would not help sell the house. Applicant provided a third page to complete AEA. (Tr. 50-53.)

Recross-examination. No new material information was gleaned during re-cross. (Tr. 52-53.)

Applicant's relevant credit history follows:

2011: GE 4, page 7 shows both Townhouse mortgages to be Pays As Agreed. At page 6, there is a foreclosure reported where the creditor "reclaimed the collateral to settle defaulted mortgage." This appears to be the Marital Home, the foreclosure of which under court order was handled by Applicant's former husband. All other accounts are Pays as Agreed.

2021: GE 3, pages 2 and 3 show both Townhouse mortgages past due. All other accounts are Pays As Agreed.

2022: GE 2, accounts 7 and 11 show both Townhouse mortgages past due. All other accounts have no balances past due.

2023: GE 11, accounts 13 and 18 show both Townhouse mortgages past due. All other accounts have no balances past due.

Law and Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the adjudicative guidelines. These guidelines are flexible rules of law that apply together with common sense and the general factors of the whole-person concept. An administrative judge must consider all available and 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 national security eligibility will be resolved in favor of the 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, then 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 in seeking a favorable security decision.

Analysis

Guideline F: Financial Considerations

The security concern under this guideline is set out in AG ¶ 18:

Failure 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. . . . An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise any questionable acts to generate funds. . . .

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a

person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

The guideline notes conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so.

Applicant's SOR debts are established by her admissions and the Government's credit reports. From February 2016, she has been employed full-time by her current employer. Before that, since 2001, she worked for federal contractors. AG ¶¶ 19(a) and (b) apply.

AG ¶ 20 includes the following conditions that could mitigate security concerns arising from financial difficulties:

- (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; and,
- (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.

Applicant bought the Townhouse in June 2007 for \$225,000. It was in a complex, and she had neighbors adjoining on either side. It was in a rustic area. She moved in with her two sons, then ages four and five. Shortly thereafter, her cohabitant, the father of her boys, also took up residence there. She never had any intention of renting out the Townhouse. She never refinanced the Townhouse.

The purchase price was financed by an 80/20 loan. The down payment of \$45,000 was financed by one lender, and the balance of \$180,000 was financed by another lender. Both loans were interest-only loans. That meant Applicant did not have to use any of her own money to complete the purchase. And she could remain current on her home payments by paying the interest only on both loans. It also meant, however, that her interest-only payments would not be applied to reduce the capital amounts of either loan. She was asked why by 2011 the first loan's principal only decreased by \$22 and the second loan's principal only decreased by \$222. She explained that they were interest-only loans. Very little of her monthly payments reduced the principal.

Not long after Applicant moved in, the financial crisis of 2008 struck. Almost immediately her home loans were underwater. Nevertheless, she planned to do her best keep the Townhouse. But as the housing market continued to slump, she made numerous efforts to do a short sale. The mortgage lenders, however, denied her requests. And by that time, COVID was in full bloom. So lenders rejected her short sale requests and instead recommended she use COVID relief programs. She declined, because those programs would only pause or reduce mortgage payments for a short time but would not help her underwater loans. She also inquired about doing a deed-in-lieu of foreclosure. Lenders responded that they were not using those because of the President's COVID mandate against such transactions. Asked why she did not refinance the Townhouse, she replied: "How can you refinance a loan that's underwater?"

At the hearing, Applicant was asked about the current market value of her Townhouse. Specifically, she was asked whether an online estimate of between \$224,000 and \$253,000 sounded about right. She said they were too high, that \$200,000, or perhaps less, was maybe closer. She based her estimates on other townhouses that were sold recently in the area. Her opinion of her home's current value is reliable evidence. See, e.g., *Sabal Trail Transmission, LLC v. 3921 Acres of Land*, 947 F.3d 1362, 1368-69 (11th Cir. 2020). Using \$253,000 as the current value yields a 12% appreciation in 13 years, or less than 1% per year. That is hardly a robust appreciation. Using Applicant's estimate puts the mortgages still underwater.

During Applicant's residence in the Townhouse from June 2007 until she and her family moved out in December 2020, problems developed. Principal of which was an infestation of rodents entering the premises and being in the kitchen. It was so bad that she had to store food stuffs in containers. She plugged up holes and areas of entry and used vents, as recommended, but to no avail. In June 2020, she discovered a copperhead snake in her basement. (A neighbor came in and killed it.) She no longer felt safe in the Townhouse.

In addition to the rodents, the snake, and the decline or stasis in its market value, the Townhouse no longer fit her family's needs. Her sons are now 19 and 20. Applicant again applied for a short sale. She was told that to qualify, she needed to be in default of her mortgages. That is why she stopped paying her mortgages in the spring of 2020. She testified that she had to be in default before the lender "would even talk to [her] about it." It is common for lenders to require that a borrower be in default before considering a short sale or a foreclosure. See James Chen, *What is a Short Sale on a House? Process, Alternatives, and Mistakes to Avoid*, May 22, 2022. <https://www.investopedia.com>. The record is consistent with her testimony. From her clean 2011 credit report there is no past due amount on the Townhouse until her 2021 credit report, about a year after she vacated the Townhouse and stopped paying her mortgages in the spring of 2020. She is now working with the lenders to accomplish a short sale or let the Townhouse go to foreclosure. Other than the default status of the Townhouse, her credit reports are flawless.

Applicant bought the Townhouse in June 2007. She and her family lived there for 13 years, and she faithfully paid her mortgages. She only stopped paying the mortgages in the spring of 2020, when lenders told her she needed to be in default to qualify for a short sale. In the meantime, Applicant has continued to maintain the Townhouse. She and a neighbor mow the small lawn and keep up the outside. It still has water, but she cut off the electricity. She is current on all utilities.

Applicant's defaults on the Townhouse mortgages were first reported on the 2021 credit report. Those defaults are the only blemishes on her credit history. The 2008 financial crisis complicated by three years of COVID, we hope, are unlikely to recur. They are also conditions "largely beyond" her control. She continued to pay her mortgages, until told by lenders that she needed to be in default to do a short sale. That was responsible conduct. The unusual adverse circumstances Applicant confronted and how she dealt with them do not cast doubt on her current reliability, trustworthiness, or good judgment. I conclude that her SOR debts are mitigated by AG ¶¶ 20(a) and (b). Therefore, I find for Applicant on SOR ¶ 1.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. I have incorporated my comments under Guideline F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under that guideline and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by her delinquent debts.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F	FOR APPLICANT
Subparagraphs 1.a-b.:	For Applicant

Conclusion

I conclude that it is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Clearance is granted.

Philip J. Katauskas
Administrative Judge