



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



In the matter of:)
)
) ISCR Case No. 04-12963
)
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: Pro se

June 22, 2010

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for a security clearance is denied.

On February 12, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines 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) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on March 6, 2009, and requested a hearing before an administrative judge. The case was assigned to me on April 27, 2010. DOHA issued a Notice of Hearing on May 5, 2010. I convened the hearing as scheduled on May 24, 2010. The Government offered Exhibits (GE) 1 through 9. Applicant did not

object and they were admitted. Applicant testified and offered Exhibits (AE) A through I, which were admitted without objection. The record was held open until June 15, 2010, to allow Applicant to submit additional documents in support of her case. Department Counsel contacted Applicant on the date the record closed to confirm she did not have additional documents to submit. She confirmed she did not submit any documents and the record closed.¹ Department DOHA received the hearing transcript (Tr.) on June 2, 2010.

Findings of Fact

Applicant denied all of the allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 68 years old. She has worked for a defense contractor for almost 26 years. She is a senior administrative assistant and has held a secret security clearance since 1983. She married in 1964 and divorced in 1998. She has two adult sons, ages 42 and 39.²

The SOR lists 67 delinquent debts in the form of foreclosed properties (four), judgments (25, aggregate balance \$624,388), tax debts (13, aggregate balance \$52,130), repossessed properties (24, aggregate value \$1,135,000) and a charged-off credit card (\$7,675). Applicant did not know which alleged debt applied to a specific property and she was unable to detail what tax debt was applied to a specific property.

While married to her husband, Applicant jointly invested in real estate. She stated she signed the real estate documents and the closing contracts to purchase the properties. They jointly purchased approximately 40 properties for investment. They began making the purchases in 1985. She stated she did not participate or have knowledge about the properties and he did not keep her informed. She also participated in obtaining 35 jointly held credit cards. However, she was fully aware of what she was signing. She also jointly signed, with her husband, 15 lines of credit. She confirmed she signed the contracts over a 25-year period. She said that he purchased the properties against her wishes. When asked if she was coerced, she stated “no,” but she was “persuaded.” She admitted she was aware of all of the accounts. She confirmed she was the owner of the properties. She stated:

I signed my name to all the credit cards and lines of credit that my husband opened while we were married. In hindsight, I would not do that, but he handled the finances and I took his advice. Also, until he went off his medication permanently when we divorced, he had handled our finances responsibly.³

¹ Hearing Exhibit I is an email confirmation from Department Counsel.

² Tr. 52-56.

³ Tr. 27-28, 37-38, 49.

Applicant's husband requested a divorce and she filed for one in 1998. She was represented by a lawyer. The divorce decree made the husband responsible for the credit cards and lines of credit. However, the credit card companies would not remove her name from the cards. She closed the credit card accounts and her husband would reopen some of them, telling the companies that the cards were lost or stolen. He reopened credit card accounts and he used her name without her permission. She contacted the credit card companies and advised them of the circumstances and they closed the accounts. Applicant did not provide specific details as to which SOR allegations were accounts that her husband opened and she is not responsible for.⁴

Also part of Applicant's divorce settlement was that she would receive 20 of the properties she and her husband had jointly purchased. He would receive the other 20. Her name remained on the mortgages for the properties her husband received. She considered the 20 properties she received in the divorce settlement as investments that would help provide financial security for her when she retired. She stated she kept the properties for a few years, attempted to pay the mortgages, and would occasionally pay the taxes for a few years until she could no longer keep up with them. She knew she was behind in paying the taxes. She would pay the real estate taxes "piecemeal,"⁵ that is, when she could. She was receiving rental income at the time. At one point, she contacted the state tax department to work out a payment plan. The tax department wanted a lump-sum payment. She could not pay it, so she stopped paying completely. She admitted that she could have paid the taxes if she had used her personal funds. Applicant learned that the properties could not be sold because of the tax liens that were on them.⁶

In approximately 2001, Applicant stopped paying the mortgages on most of her properties. She stated the mortgage companies and banks would not take the properties because she had tax liens on them. Applicant stated that she contacted one of the banks, but it considered some of the properties as a package. She held a portion of the properties in the package and her ex-husband held the other portion. The ex-husband stopped paying the mortgages and Applicant stated the bank advised her that she should stop paying also. She decided to let the properties go to foreclosure. She stated all of her properties were foreclosed during the past eleven years. The last two were foreclosed in approximately November 2008. She continued to make mortgage payments on these properties until approximately 2003. She continued to rent the properties and had tenants in them as late as 2007, even though she stopped paying the mortgage in 2003. It is noted that for the last two properties, she cancelled the insurance on one in March 2009 and the other July 2009. She notes the deeds changed in 2009. She believes these properties were sold for an amount in excess of their mortgage and she may receive a profit from the sale, although she acknowledged it

⁴ Tr. 27-51, 56.

⁵ Tr. 58-60.

⁶ Tr. 27-51, 56-60.

would not be for a couple of years.⁷ No documents were provided to substantiate her position.

Applicant explained the reason she held onto the properties even though she fell behind in the mortgage payments and taxes, and did not attempt to sell them was because: "I was trying to hang onto my properties because I felt that they would be my nest egg. I did try. I eventually gave up." Applicant also agreed that had the properties been profitable she would have been happy to accept the windfall and she would have paid her debts. She concurred that it was a bad financial proposition that she was involved in, but blames her ex-husband for creating a situation which caused her hardship and her inability to maintain the property.⁸

Applicant stated that all of the properties were sold by the sheriff's office and none of them had deficiency balances owed and all of the tax liens were satisfied. GE 7 reflects a current list of judgments and liens from the state. She did not do anything to dispute the judgments. The record was held open to allow Applicant the opportunity to contact the appropriate tax offices and provide documentation to show the tax liens were paid and the properties did not have a deficiency owed. She did not provide any documentary evidence to support her position.⁹

Applicant stated that her ex-husband failed to maintain the properties that he obtained in the divorce settlement. He did not pay the taxes on the properties. She did not provide information as to which properties listed on the SOR were given to him and were his responsibility.¹⁰

There were also five properties that were owned by Applicant, her ex-husband, and a partner. When the partner sued them, she ceded her interest in the properties to the partner. Applicant's position was that her ex-husband did not maintain the properties. He abandoned them or left them in disrepair. He did not maintain the houses he owned and failed to pay the taxes. However, she did not provide any information to show which properties that were listed on the SOR belonged to her husband. She did provide a chart she made that lists properties, the dates they were foreclosed, when the insurance was cancelled and a column labeled "deed changed." No official supporting documents were provided.¹¹

Applicant stated that her ex-husband was mentally ill. She provided a document from his doctor verifying his condition. She attempted to have the court order a guardian

⁷ Tr. 27-51, 102-104, 107-113, 119-120; AE I.

⁸ Tr. 62, 72-75.

⁹ Tr. 41-51, 69.

¹⁰ Tr. 61.

¹¹ Tr. 37, 44-48, 77-78; AE I.

for him. Her request was originally denied. He stopped paying on the mortgages of the properties in December 1998, after they divorced. Later a guardian was appointed for him and bankruptcy was filed on his behalf. However, because Applicant's name remained on the mortgage documents, the creditors looked to her for payment.¹²

Applicant hired lawyers to help her with her real estate problems. After her divorce she had property managers for the properties. She paid the mortgages from the rental income she received. She stated she filed the appropriate annual tax returns for the properties.¹³

Applicant did not use any money she received from her salary or savings to pay any of the bills associated with the properties. She did not organize her properties to limit her personal liability. She used whatever income she received from the properties to pay the mortgages, expenses, and taxes. If the properties did not earn enough income, she did not pay the associated bills. She decided when she could no longer make the payments she would let the properties be foreclosed. She stated "I realized I would lose all my property." Her position was that she was not going to commingle her business income and expenses with her personal finances. If her business was failing and she could not pay bills, she would not use her personal finances to pay them.¹⁴

Applicant's position is that everyone has been paid and all the liens satisfied. She did not submit any documented proof. Applicant provided a copy of a credit report. It included pages 1 through 8; pages 9 through 14 were not included. It did not list the tax liens or judgments alleged. The Government produced earlier credit reports reflecting judgments and liens. The Government also provided documents of the state's judgment and lien filings.¹⁵

Applicant provided proof that she pays her monthly personal expenses on time. She has four credit cards that are paid every month. She stated she has a good credit rating and lives within her means. She owns a condominium and earns a good income. She also collects Social Security payments. She has a car loan that will be completely paid in October 2010. She stated: "Although I lost all my properties which formed the basis of my future nest egg, I completely built myself up from scratch with no help through hard work and saving." She further stated: "I will be receiving funds from the city from the sale of my last two properties." Applicant expects to receive a profit from the sale of the remaining property she owned.¹⁶

¹² Tr. 41-43.

¹³ Tr. 41-43.

¹⁴ Tr. 102-104.

¹⁵ Tr. 82-85, 102-104; AE D, GE 3, 4, 5, 6, 7.

¹⁶ Tr. 43-44; AE C, D.

I considered all of the documents Applicant provided, to include performance assessments, awards, a budget, and character letters. Letters from her brother and sons confirm that her ex-husband had mental problems. They believed she had severed ties with the rental properties when she divorced. They believe her financial situation is stable and she demonstrated honorable behavior.¹⁷

Character letters were also provided by friends and co-workers. She is described as follows:

- She is a financially responsible person and her performance is exemplary.
- She achieves a high standard for efficiency, accuracy, and thoroughness.
- She is a person of superb character, performance and professionalism.
- She is a trustworthy person with strong moral character.
- She is strong and independent.¹⁸

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, 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 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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

¹⁷ Tr. 27; AE A, B, C, D, E, F, G, H.

¹⁸ AE A.

mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion as to obtaining a favorable security decision.”

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. 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 potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out 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.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19 and especially considered:

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

Appellant has a history of being unwilling or unable to meet her financial obligations. She has judgments, tax liens, and other debts that are not resolved. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under 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;
- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's behavior is recent because she has not provided documented proof that she has resolved any of the alleged judgments, tax liens, or debts. I find AG ¶ 20(a) does not apply.

Applicant attributes the judgments, liens, and debts raised in the SOR to actions by her ex-husband in acquiring property and then defaulting on it. She provided evidence that he was mentally unstable. However, Applicant confirmed she was aware of the legal documents she was signing. She was not coerced into being a part of his business ventures. When Applicant and her husband divorced, as part of the property settlement, she received 20 properties. She viewed the properties as investments for her retirement. She kept the properties, hired property managers, and accepted rental income. All these actions were taken in her capacity as owner. Her last property was foreclosed in 2008, ten years after her divorce. Regardless of what transpired before the divorce, Applicant accepted properties as part of the marital settlement. She was given an opportunity to provide information to show which of the 67 alleged debts were for properties that were awarded to her husband in the divorce settlement and which were awarded to her. She did not provide that information. Applicant kept the properties she was awarded in the divorce settlement. When the properties were not profitable, she wanted to absolve herself of responsibility. She stated all the properties were sold, deficiencies were paid, taxes were satisfied, and she is not responsible for them any

longer. Perhaps that is the case, but she did not provide any documents to substantiate her statements, despite being afforded additional time to do so. To a small extent, her ex-husband's condition was beyond her control. However, she signed legal and binding documents. She accepted property as part of a divorce settlement. Based on her actions she was the owner. Her ex-husband's condition marginally raises the application of AG ¶ 20(b). In order for that mitigating condition to be fully applicable, Applicant must have acted responsibly under the circumstances. In this case, as addressed above, Applicant has not done so. AG ¶ 20(b) has limited application.

Applicant's failure to detail which debts were for properties owned by her ex-husband and which were hers, and her failure to provide proof that the tax liens were satisfied and other deficiencies were paid, indicate the problem is not resolved or under control. She has not made a good-faith effort to repay creditors or resolve the debts. I find AG ¶¶ 20(c) and 20(d) do not apply.

Applicant disputes all of the debts alleged, but failed to provide any documents to support her position. She categorically stated the judgments were satisfied, the tax liens are paid, and there are no deficiencies on the foreclosed and repossessed properties. Despite being given an opportunity to provide proof, she failed to do so. I find AG ¶ 20(e) does not apply.

Whole-Person Concept

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

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant has an excellent work record. She received many awards and accolades for her performance. She was married to a man that had a mental condition. Applicant contractually obligated herself by signing real estate contracts, lines of credits, and holding joint credit cards. She admitted she was not coerced into participating in her husband's financial endeavors. Later, when they divorced, the property was divided. She accepted the properties as part of their divorce settlement. Applicant hoped the property would be a good investment for her retirement. When they proved not to be, she defaulted on the mortgages and failed to pay the taxes. Although not unsympathetic to the difficult familial situation Applicant was confronted with, the fact remains that when she divorced she accepted ownership of the property. She cannot, more than twelve years later, continue to absolve herself of financial responsibility for the properties she accepted and managed for the past years. She was given an opportunity to show which properties on the SOR belonged to her and which may have been awarded to her ex-husband, but she did not provide the information. She was given an opportunity to provide supporting documents to show the tax liens, judgments, and other debts were paid or resolved. She did not provide any documents. Therefore, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the guideline for Financial Considerations.

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.bo:	Against 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 a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge