



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



In the matter of:)	
)	
)	ISCR Case No. 12-04970
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

05/22/2014

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her eligibility for a security clearance to work in the defense industry. Applicant has mitigated the financial considerations concern raised by the foreclosure of three properties she owned jointly with her ex-husband. Clearance is granted.

Statement of the Case

On November 26, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline.¹ DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant’s security clearance.

¹ This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

Applicant timely answered the SOR and requested a hearing.² At the hearing convened on March 25, 2014, I admitted Government's Exhibits (GE) 1 through 7, as well as Applicant's Exhibits (AE) A through I, without objection. After the hearing, Applicant submitted AE J, also admitted without objection.³ I received the transcript (Tr.) on April 9, 2014.

Findings of Fact

Applicant, 40, works as a project manager. She has worked for a federal contractor since separating from the Air Force in 1999 after eight years of active duty service. She has held a security clearance since 1992, without incident. The SOR alleges financial problems that occurred during the course of Applicant's marriage, which lasted from October 2004 to January 2011.⁴

Applicant and her husband purchased their home, Homestead, in November 2004. Because she had the stronger credit history, Applicant financed the home, using 80/20 financing. The primary mortgage on Homestead secured 80% of the \$331,000 purchase price and a secondary mortgage secured the remaining 20%. At the time of purchase, Applicant and her husband earned a household income of \$150,000. Under their arrangement, Applicant paid the mortgage from her salary, which consumed her entire net pay, and her husband assumed responsibility for the household expenses. The couple withdrew \$80,000 in equity from Homestead to fund upgrades to the property. In November 2005, Applicant and her husband purchased two investment properties, Blackacre and Whiteacre. Applicant also financed Blackacre and Whiteacre using 80/20 financing. Although Applicant obtained the financing on the properties alone, the properties were deeded to her and her husband jointly.⁵

The couple intended to sell Blackacre and Whiteacre within 6 months of purchase. The sale of Blackacre was thwarted by the downturn in the real estate market in 2006. Although the couple had a buyer for Whiteacre, the buyer was unable to secure financing. Unable to sell the homes as planned, Applicant's husband, acting as property manager for both properties, rented them from the summer of 2006 until September 2009.⁶

Soon after purchasing the investment properties, Applicant's husband quit his job to start his own business. Applicant's marriage began to strain under the financial

² To assist in her preparation for the hearing, Applicant received correspondence from Department Counsel and the Chief Administrative Judge. These letters are appended to the record as Appellate Exhibits (AP) I and II.

³ The Government's position regarding Applicant's post-hearing submission is appended to the record as AP III.

⁴ Tr. 15-17; GE 1.

⁵ Tr. 19-24, 27-28, 35-36, 45-47, 65-66.

⁶ Tr. 37-40, 47-49.

pressures caused by their reduced household income and increasing financial obligations. Applicant borrowed money from her 401K account to cover the mortgages for Blackacre and Whiteacre to keep the mortgages on the properties current when their renters became unreliable. The couple separated in September 2009, which was also the last month they made the mortgage payments on Blackacre and Whiteacre. After a brief reconciliation in 2010, Applicant's husband abandoned the marriage, absconding with half of the couple's savings. Unable to maintain Homestead on her own, Applicant stopped paying the mortgages on the property in July 2010. Applicant attempted to negotiate new mortgage terms with her lender. She offered to surrender the deed to Homestead in lieu of foreclosure, and attempted to short sale the property, but the creditor rejected each offer. Applicant self-reported the status of the properties to her facility security officer (FSO). Applicant's divorce was finalized in January 2011. The divorce settlement did not address the resolution of any deficiency balances on the three properties.⁷

In 2011, Applicant underwent a periodic reinvestigation. She reported the foreclosures as well as the delinquency on Homestead on her security clearance application. She also discussed the properties during her subject interview. When Applicant began her current position in September 2012, she reported the status of the properties to her new FSO.⁸

In July 2012, the mortgager for Homestead foreclosed on the property. In November 2013, DOD issued the SOR alleging that Applicant has delinquent account balances for the secondary mortgage on Homestead (§ 1.b), both mortgages on Blackacre (§§ 1.a and 1.c), and the secondary mortgage on Whiteacre (§ 1.d). In response to collection attempts by the creditors holding the secondary mortgages on Homestead and Whiteacre, Applicant negotiated settlements with the creditors. The Blackacre mortgages remain unresolved. The mortgagers have not made attempts to collect the debt. She has contacted the last known creditor, but it is unable to locate Applicant's account.⁹

Before her marriage, Applicant maintained a favorable financial history. During her marriage, Applicant ceded financial control to her husband to stabilize the union. In doing so, Applicant admitted to making decisions that went against her better judgment to keep the peace. Applicant accepts full responsibility for the financial choices she made during her marriage, and she has worked diligently to rehabilitate her finances. She sought financial counseling and lives well below her means. Since 2012, Applicant has paid off all of her consumer debt in addition to \$26,000 in personal loans to her parents. Applicant is rebuilding her cash and retirement savings.¹⁰

⁷ Tr. 25-26, 28, 31-32, 48, 66-67, 72-74.

⁸ Tr. 75-76; GE 1-2.

⁹ Tr. 28, 32-35, 40-44, 49, 51-56; GE 6-7; AE E-F, J.

¹⁰ Tr. 18, 56-64; AE A, G.

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 to be used 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, administrative judges apply the guidelines 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.

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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

Financial Considerations

Unresolved delinquent debt is a serious security concern because failure to “satisfy debts [or] 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.”¹¹ Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. Specifically, Applicant admits that between 2009 and 2010, she defaulted on the mortgages for the primary residence and two investment properties she owned with her ex-husband. Applicant’s failure to pay these mortgages demonstrates an inability to pay her debts and a history, albeit a brief one, of not doing so.¹²

However, the record contains sufficient evidence to mitigate the financial concern. Although Applicant’s financial problems were not entirely beyond her control, she did handle the obligations attendant to having a security clearance responsibly.¹³ Applicant timely self-reported her issues to her FSO at her former and current employer. She properly reported adverse information on her 2011 security clearance application and discussed the issues candidly throughout her re-investigation and the adjudication of these issues. In doing so, she eliminated her financial issues as a source of potential exploitation.

Even though her ex-husband walked away from the financial fall-out from their marriage and failed real estate ventures, Applicant has made a good-faith effort to resolve all of her outstanding debt and to rehabilitate her finances.¹⁴ In addition to resolving her consumer debts and personal loans, Applicant has negotiated settlements to resolve the deficiency balances on the mortgages for Homestead (1.b) and Whiteacre (1.d). Applicant has received financial counseling and presented evidence that her finances are under control.¹⁵ She lives well below her means and has not incurred any new delinquent debt. Applicant’s financial problems were limited to her seven-year marriage, and it is unlikely that the circumstances leading to Applicant’s financial problems will recur.¹⁶

¹¹ AG ¶ 18.

¹² AG ¶¶ 19(a) and (c).

¹³ AG ¶ 20(b).

¹⁴ AG ¶ 20(d).

¹⁵ AG ¶ 20(c).

¹⁶ AG ¶ 20(a).

Whole-Person Concept

I have no doubts or reservations about Applicant's current reliability, trustworthiness, and ability to protect classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(a). The financial concerns in this case are mitigated even though the mortgages related to Blackacre remain unresolved. Applicant acknowledged that she made mistakes that had great financial consequences in an effort to maintain her marriage. However, it is not the purpose of a security clearance adjudication to assign guilt or blame and then punish or sanction a person for their past actions. Likewise a security clearance case is not aimed at collecting debts. Rather the purpose is to make "an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk."¹⁷ Applicant has handled her obligations as a clearance holder appropriately. In doing so, she has proven that she takes the duties attendant to her fiduciary relationship seriously and that she continues to be worthy of the Government's trust and confidence.

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, Financial Considerations:	For Applicant
Subparagraphs 1.a – 1.d:	For Applicant

Conclusion

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

Nichole L. Noel
Administrative Judge

¹⁷ AG ¶ 2(a).