



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



In the matter of:)
)
) ISCR Case No. 12-05922
)
Applicant for Security Clearance)

Appearances

For Government: Phillip J. Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

07/01/2014

Decision

RIVERA, Juan J., Administrative Judge:

Applicant stopped paying her mortgage after the bank told her that she would not qualify for a deed-back or short sale of the property if the mortgage was current. Up to that point, she was current on her mortgage, and had a history of financial responsibility. She continues to work with the bank to divest herself of the property. There is no evidence that she currently has a financial problem. Considering the circumstances of this particular case, Applicant’s delinquent mortgage does not show she lacks judgment, reliability, or trustworthiness. Clearance granted.

Statement of the Case

Applicant submitted her most recent security clearance application (SCA) on January 19, 2012. The Department of Defense (DOD) issued her a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations) on March 20, 2014.¹ Applicant answered the SOR (Answer) on April 9, 2014, and

¹ The DOD acted 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* (Directive) (January 2, 1992), as amended; and the Adjudicative Guidelines

requested a hearing before an administrative judge. The case was assigned to me on May 9, 2014. The Defense Office of Hearings and Appeals (DOHA) issued the notice of hearing on May 21, 2014, scheduling a hearing for June 10, 2014.

At the hearing, the Government offered six exhibits (GE 1 through 6). Applicant testified, and presented no exhibits. However, she submitted a six-page document attached to her Answer that was made part of the record. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on June 18, 2014.

Findings of Fact

In her Answer, Applicant admitted the SOR factual allegation. Applicant's admission is hereby incorporated into the findings of fact. After a thorough review of all the evidence, including her testimony and demeanor while testifying, I make the following additional findings of fact:

Applicant is a 70-year-old information technology specialist employed by a defense contractor. Applicant married in 1987, and she has three grown-up daughters. She completed her bachelor's degree in economics in 1964. Applicant worked for her current employer, a defense contractor, since February 2006. As a defense contractor employee, she worked for five other government agencies, and possessed a top secret security clearance with access to sensitive compartmented information (SCI) from 2008 to 2010. She currently holds a public trust position. Except for the SOR allegations, there is no evidence of any past or present security concerns.

In 2004, Applicant and her spouse purchased a real state property with the intent to use it as a vacation home and rental property. They vacationed in the property three times between 2004 and 2007, and then rented the property. After the lease ended, the property was empty for some time and it was broken into, items were stolen, and vandalized.

While the house was empty, the neighbors were stealing the water and electricity. Applicant refurbished the property and rented it again, but the problems continued. The neighborhood went into decay with criminal activity, drugs, and gang violence. The property manager refused to visit the neighborhood after he was threatened, and complaints filed with the local authorities went unanswered. Applicant placed the house on the market for rent and for sale in 2008-2009, but the renters have been run-off by the criminals, and she received no purchased offers. She considers that the property is not marketable because of the criminal activity in the area. She has received no offers since the house was placed on the market in 2008.

Applicant consulted with an attorney and has been attempting to divest herself of the property by working with the mortgage holder (bank) to perform a short sale of the

for Determining Eligibility for Access to Classified Information (AG), implemented by the DOD on September 1, 2006.

property or to give the deed back to the bank. She has been having difficulty communicating with the bank because of the language barrier. Around June 2013, the bank informed Applicant that they could not consider a short sale or deed-back unless the mortgage was in arrears. Applicant stopped making payments on the mortgage. Applicant's mortgage is currently over \$18,600 past due, with a total loan balance of \$238,000. As of her hearing date, she was still in negotiations with the bank seeking a short sale or a deed-back.

A review of Applicant's three credit reports from 2012 and 2014 showed no other delinquencies or financial problems. She testified that the only other time they were delinquent on the vacation property mortgage was when the bank stopped taking electronic payments without notifying them of the change in 2011-2012. They were in arrears for a period, but brought the mortgage back to current with one lump sum payment.

Applicant and her husband have held positions of responsibility and steady employment for over 40 years. They raised five children who are also responsible, college educated, and gainfully employed. Their credit positions have always been excellent, and both volunteer and generously support charities. They currently have little debt, and they appear to be in a solid financial situation. There is no evidence of financial problems or irresponsibility, except for the sole SOR allegation.

Policies

Eligibility for access to classified information may be granted "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The

applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

Under Guideline F, the security concern 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 information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. (AG ¶ 18)

In June 2013, Applicant stopped making payments on her mortgage to qualify for a short sale or return the deed back to the bank. Financial considerations disqualifying conditions AG ¶ 19(a): “inability or unwillingness to satisfy debts” and AG ¶ 19(c): “a history of not meeting financial obligations,” apply.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

- (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;

(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; and

(f) the affluence resulted from a legal source of income.

Financial considerations mitigating conditions AG ¶¶ 20(a) through (d) apply. Applicant purchased the property in good faith in 2004, and she and her husband had the financial means to do so. Except for the period when the bank stopped accepting electronic payments, the mortgage was current from 2004 to June 2013, until she was told by the bank that she would not qualify for a short sale or deed-back while the mortgage was current.

Applicant acted responsibly on her efforts to refurbish the property after it was vandalized in 2008, and in her efforts to either rent or sell the property since then. The change of circumstances surrounding the property - the neighborhood going into decay with criminal activity, drugs, and gang violence - were circumstances beyond Applicant's control and unpredictable. Applicant's property manager was threatened and now refuses to enter the neighborhood. Her complaints to the local authorities have been unanswered. She has continued to work with the mortgage holder to divest herself of the property, and she is in current negotiations with the bank. Applicant's only financial problem occurred under circumstances that are unlikely to recur and do not cast doubt on her current reliability, trustworthiness, or judgment. She acted responsibly under the circumstances. AG ¶¶ 20(e) and (f) are not raised by the facts in this case and do not apply.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c).

Applicant has worked for a defense contractor since 2006. She held a top secret clearance with access to SCI during two years while working for a government agency. She currently holds a position of trust. Except for the SOR allegation, there is no other evidence of financial problems or any other security concerns.

Applicant stopped paying her mortgage at the bank's suggestion to qualify for a deed-back or short sale of the property. Up to that point, she had established a history of financial responsibility. She continues to work with the bank to divest her property. There is no evidence that she currently has a financial problem. Under the particular

circumstance of this case, Applicant's delinquent mortgage does not show she lacks judgment, reliability, or trustworthiness.

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:	For Applicant

Conclusion

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

JUAN J. RIVERA
Administrative Judge