



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 12-07740
)	
)	
Applicant for Security Clearance)	

Appearances

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

12/24/2015

Decision

HOGAN, Erin C., Administrative Judge:

On June 20, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant 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; 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 after September 1, 2006.

On July 31, 2014, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on September 22, 2014. Another administrative judge was assigned the case on September 26, 2014. On October 7, 2014, a Notice of Hearing was issued scheduling the case for October 27, 2014. The hearing was cancelled. Scheduled hearings for April 14, 2015, and June 1, 2015, were cancelled because of Applicant's health issues. The case was assigned to me on July 20, 2015. On September 11, 2015, a Notice of Hearing was issued, scheduling the hearing for October 7, 2015. The hearing was held as scheduled. During the hearing, the Government offered six exhibits which were admitted as Government Exhibits (Gov) 1 – 6. Applicant testified, called one witness, and offered

eight exhibits which were admitted as Applicant Exhibits (AE) A – H. The record was held open until October 21, 2015, to allow Applicant to submit additional exhibits. Applicant requested an extension and it was granted on October 20, 2015. Applicant timely offered 27 documents which were organized into 15 exhibits and marked and admitted as AE I – AE X. Department Counsel provided an accurate list of Applicant's Post-Hearing Exhibits in his response to the Applicant's Post-Hearing Exhibits. His response is marked as HE I. I noted the corresponding Applicant Exhibit Letter on the list of exhibits in HE I. The transcript (Tr.) was received on October 15, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In her response to the SOR, Applicant admits the two SOR allegations.

Applicant is an employee of a Department of Defense contractor seeking to maintain a security clearance. This is her first time applying for a security clearance. She has worked for her current employer since October 2011. She is a college graduate. She has been married twice. Her most recent marriage occurred in October 1983. She and her husband lived separate and apart since 1993. They divorced in October 2013. A son, age 27, was born of the marriage. (Tr. at 35-36; Gov 1; Gov 2; AE R)

Applicant's security clearance background investigation revealed a mortgage in foreclosure status (SOR ¶ 1.a: Gov 3 at 2; Gov 4 at 1; Gov 5 at 4-5; Gov 6 at 3) and a \$357 medical collection account (SOR ¶ 1.b: Gov 5 at 7). These are the sole allegations in the SOR. Applicant is current on all of her other debts. Applicant resolved the medical debt alleged in SOR ¶ 1.b. (AE F)

The mortgage foreclosure alleged in SOR ¶ 1.a involved the home Applicant has lived in since 1985. She initially lived in the house with her mother and her husband. Her husband signed a quitclaim deed to Applicant when he moved out of the house in 1993. His name was still on the mortgage paperwork. After her husband moved out, Applicant lived in the house with her mother and her son. She and her mother shared the household expenses. Applicant began to have trouble making her mortgage payments in 2011. (Tr. 18, 22, 35-37; Gov 2)

A number of different factors contributed to Applicant being unable to pay the mortgage. After her mother's passing in 2009, she became responsible for all of the household expenses. In February 2010, the company Applicant previously worked for reduced all employee pay by twenty percent. Her annual income was reduced from \$60,000 annually to \$45,000. In June 2009, her son turned 21 and his child support payments ended. On June 6, 2010, Applicant was injured when a spotlight fell on her head and knocked her unconscious at an event. She suffered a concussion and neck injuries. She planned to look for a better paying job, but the injuries suffered from the accident delayed her ability to look for a better job. (Tr. 22, 37; Gov 2; AE B; AE T)

Applicant fell two months and two days behind on her mortgage payments. When she attempted to pay Bank 1, who owned the mortgage, they refused to accept the payment and told her that she needed to apply for a mortgage modification. In September 2011, Applicant completed the mortgage modification paperwork. Bank 1 kept telling her the documentation was incorrect or incomplete. Bank 1 transferred the mortgage to Bank 2. Her mortgage modification was placed on hold while Bank 2 established a mortgage modification process. They were new to this line of business. Once Bank 2 reviewed Applicant's mortgage modification paperwork, they advised Applicant that she needed to file for divorce in order to get her husband's name off the mortgage. Applicant filed for divorce in March 2013. Before she could send Bank 2 the divorce papers, they proceeded to foreclose on the property. (Tr. 23-24; Gov 2; AE L – AE R).

During this timeframe, Applicant sought the advice of a friend who was in real estate. (AE L – AE O; AE Q). When Bank 2 foreclosed on her home, Applicant hired an attorney to represent her in the foreclosure process. The attorney first attempted to work with Bank 2 on a loan modification. Applicant's attorney opined that any other lender would have modified Applicant's mortgage and her loan would have been restructured. He said Applicant had the income to qualify for a Home Affordable Modification Program (HAMP). Bank 2 did not participate in this program. Bank 2 offered a short term forbearance requiring Applicant to pay \$6,000 a month for a total amount of \$22,000. Applicant could not afford a payment of \$6,000 a month. Applicant's attorney advised her that filing for Chapter 13 bankruptcy was her only option. Applicant did not want to file for bankruptcy, but did so in order to keep her house. (Tr. 24-25, 47; AE D) Applicant's original mortgage payment was \$1,700 a month. (Tr. 38)

Applicant's real estate attorney referred Applicant to a bankruptcy attorney. Applicant filed for Chapter 13 bankruptcy on July 7, 2015. Applicant's bankruptcy attorney confirms Applicant filed for Chapter 13 bankruptcy in order to save her home from foreclosure because "the mortgage company was unwilling or unable to provide a loan modification." He notes that the Chapter 13 Plan filed with the court will pay all of Applicant's creditors in full. (AE D) The plan initially started out with \$2,200 monthly payments, but has been adjusted to \$2,500 a month. Applicant provided proof that she timely paid the first three months of the plan. The third payment was \$3,100 in order to accommodate the adjustment to the plan. (AE E)

Under the advice of her attorney, Applicant has not made a mortgage payment since 2011. She was unable to set aside this money because her son was not working at the time. From 2013 to July 2015, Applicant's son was unemployed. He suffered a bout of depression after his step-brother was killed in an automobile accident. He would not seek help or counseling. He stayed in his room with the door closed. (Tr. 39-41; AE H) Applicant paid her son's \$900 car payment, and other bills including insurance, pet food, veterinarian bills, medical bills, dental bills and home repairs. Additional home repairs included replacing an electrical box, and a hot water heater. During the winter months, Applicant also paid \$400 a month for heating oil. (Tr. 38-46)

In April 2013, Applicant was diagnosed with breast cancer. She underwent radiation and chemotherapy treatment. Her last treatment was in April 2015. Applicant was more worried about missing work than about the fact that she was sick. She worked during her treatment. (Tr. 51, 57)

In her current job, Applicant earns \$80,000 a year. She earns approximately \$2,350 take home pay every two weeks or approximately \$4,700 a month. Her car was paid off in June 2015. Her son's car payment is \$903 a month. Her son now makes this payment. Her son also contributes \$200 a month towards the household expenses. Applicant can afford the \$2,500 monthly payment required by the Chapter 13 bankruptcy plan. (Tr. 43-45; AE W)

Applicant was awarded \$18,000 as a result of a lawsuit she filed related to the injuries she suffered as a result of the spotlight accident. She is using this money to make substantial structural repairs on her house as well as to purchase new kitchen appliances. Her kitchen appliances were original to the house and are beginning to break down. Her son works in construction and is doing most of the repairs on the house. (Tr. 37, 45, 54; AE S)

After the hearing, Applicant continued to look for ways to earn money. She decided to rent rooms in the house to a young couple for \$1,200 a month. (AE V)

Whole-person Factors

The Vice President and Facility Security Officer of the company where Applicant works recommends Applicant for a security clearance. He states that Applicant has an unblemished record. She is trustworthy and operates both professionally and personally with the upmost integrity and honesty. He is aware that Applicant has had financial problems as a result of health issues and previous employment salary reductions. He is aware that she has worked hard to resolve her financial problems. She is a valued member of the company. (AE A at 1)

Applicant's previous employer describes Applicant as "conscientious and honest in her duties." She was given a lot of responsibility including check-signing authority and she always upheld her fiduciary trust. (AE A at 2) Applicant is a black belt in karate. Her sensei wrote a letter of her behalf. He states that Applicant worked for ten and a half years to earn her black belt. He has a good relationship with Applicant and he asked her to become his part-time assistant. He trusted her with all operational, sales, and financial aspects of his business. (AE A at 3) Unfortunately, the business closed as a result of Hurricane Sandy. (Gov 2)

Applicant's cousin testified during the hearing. She sees Applicant often and they talk on the phone or text every day. She describes Applicant as impeccably honest. Applicant has good judgment. Applicant does not run up her credit card bills. She goes to work every day and tries her best. (Tr. 14 – 20)

Applicant's brother, several of Applicant's friends, and former co-workers wrote favorable letters on her behalf. (AE A at 4, 6-10; AE K) Even her ex-husband describes Applicant as "honest, hard-working, caring, and incredibly smart." (AE A at 5)

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 must be considered when determining 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.

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 applicant or proven by Department Counsel. . . ." The applicant 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 disqualifying conditions that could raise security concerns. I find AG ¶ 19(a) (an inability or unwillingness to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations) apply to Applicant’s case. In 2011, Applicant had difficulty paying her mortgage payments on time. In the summer 2011, the bank refused to accept a late mortgage payment. They were going to put the mortgage in foreclosure status and advised Applicant to apply for a loan modification. Applicant also had a minor medical collection account which she paid. The issue in this case is the mortgage.

The Government’s substantial evidence and Applicant’s own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions apply:

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) applies because Applicant has been attempting to get a mortgage loan modification since September 2011. Her actions have been in good faith. She does not want to lose the house. Although she did not want to file for bankruptcy, she filed for Chapter 13 bankruptcy on the advice her attorney because he concluded the bank was not willing to enter into a loan modification and this was the only way she could keep her house. Applicant’s mortgage issues do not cast doubt on her 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances) applies. Applicant fell behind on her mortgage payments because of several circumstances beyond her control. Her mother passed away in 2009. Her mother lived with her and shared the household expenses. Applicant became responsible for all of the household expenses. That same year, her son's child support payments ended. In February 2010, her employer reduced everyone's pay by twenty percent. Applicant's plan to look for a better paying job was delayed because of injuries she suffered in an unfortunate accident. In April 2013, she learned she had breast cancer and underwent treatment over a two-year period. Despite all of these hardships, Applicant was able to pay all of her bills with the exception of her mortgage. She made reasonable attempts to have her loan modified. She resorted to Chapter 13 bankruptcy only as a last resort. She acted responsibly under the circumstances.

AG ¶ 20(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) applies because Applicant attended financial counseling in conjunction with her bankruptcy filing. Her Chapter 13 repayment plan has started and she has consistently made payments. Aside from the mortgage, she has no other delinquent accounts. Her financial situation is under control.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Applicant paid the medical debt alleged in SOR ¶ 1.b. She attempted to resolve her mortgage issue through the loan modification process. Filing for Chapter 13 bankruptcy was a last resort. AG ¶ 20(d) applies.

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 considered the favorable recommendations of the Vice President/Facility Security Officer of Applicant's current employer as well as the statements of Applicant's relatives, friends, co-workers, and former co-workers. Applicant is known as a good mother, good friend, and excellent employee. Several factors beyond Applicant's control caused her to get behind on her mortgage payments. She attempted to resolve the issue by seeking a loan modification before filing for Chapter 13 bankruptcy as a last resort. She is able to meet the terms of her Chapter 13 repayment plan. She did all this while undergoing chemotherapy and radiation treatments for cancer over a two-year period from April 2013 to April 2015. Aside from the mortgage foreclosure, Applicant is financially stable. Security concerns under financial considerations are mitigated.

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
Subparagraph 1.b:	For Applicant

Conclusion

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

ERIN C. HOGAN
Administrative Judge