



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



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| In the matter of: |) | |
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| Applicant for Security Clearance |) | ISCR Case No. 12-08028 |

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

09/06/2013

Decision

LYNCH, Noreen, A., Administrative Judge:

On May 28, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) alleging security concerns arising under Guideline F (Financial Considerations). The action was taken 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* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on July 25, 2013. A notice of hearing was issued on July 30, 2013, scheduling the hearing for August 20, 2013. Government Exhibits (GX) 1-9 were admitted into evidence, without objection. Applicant testified, presented the testimony of one witness, but did not submit any exhibits for the record. The transcript (Tr.) was received on August 28, 2013. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In her answer to the SOR, Applicant admitted the factual allegation under Guideline F (Financial Considerations), with explanation.

Applicant is a 57-year-old lead administrative assistant employed by a defense contractor. She graduated from high school and attended college for approximately three years. She is married and has one son. Applicant has held a security clearance for almost 24 years. (Tr. 13) She has been with her current employer since October 1989. (GX 1)

The SOR alleges Applicant is indebted for a December 2011 judgment in the amount of \$82,781. The amount is not paid. Applicant has not presented a plan to resolve the debt.

Applicant's husband is a real estate agent. His income has fluctuated over the years from \$50,000 to \$25,000. He handles the financial affairs in the family. He has worked as an agent for almost 20 years. His current estimated income is about \$25,000.

Applicant and her husband purchased a lot for investment purposes about seven years ago for \$50,000. The loan to the bank was \$40,000. The owner financed \$10,000. Applicant paid the \$10,000, but refinanced with another bank. (Tr. 31) In about 2009 or 2010, the property was refinanced. The \$40,000 was used to pay outstanding tax debt of \$25,000. (Tr. 34) They listed the property for sale, but it did not sell. In 2011, it went to foreclosure. The \$82,781 judgment represents the deficiency balance on the mortgage loan.

Applicant explained that the family finances have been on a roller coaster for a number of years. Due to the decline in the real estate market, they have encountered financial difficulty. She believes that this issue does not put her at risk for any security violations. She needs to keep her job, but will lose the job without a clearance. (Tr.17)

Applicant and her husband attempted to obtain an equity loan on their primary residence but the bank did not approve a loan. (Tr. 14) Applicant and her husband have had their current home on the market for sale for almost two years. They have lowered the price but it still has not sold. The sale price is \$600,000. They have refinanced the house several times. (Tr. 41)

Applicant owns another lot in another community that is free and clear, but they cannot sell it due to restrictions on the land. The property is worth approximately \$100,000.

Applicant's husband has some outstanding Internal Revenue Service debt which he pays through a debt repayment plan in the amount of \$700 a month. The plan started in 2012. He believes the total amount is \$30,000. (Tr. 37) They do not have any extra income to pay the \$82,000 judgment. Applicant's husband was candid in that he

has been deficient in paying their property taxes as well. (Tr. 35) He was also forthright when he stated that he cannot remember when he did not have delinquent taxes. (Tr. 38) Applicant's husband states the reason for that is his sporadic income and market turndown. Applicant and her husband file tax returns separately.

Applicant's net monthly income is approximately \$3,000. Her net monthly remainder is less than \$500. She has two retirement loan repayments deducted from her paycheck for real estate taxes on her current residence. Her husband acknowledged that they do not have any disposable income. Applicant's husband filed Chapter 13 bankruptcy in 1999 and 2002. (GX 8 and GX 9)

Applicant was candid and forthright. She explained that she has a long job history with no negative incidents. Applicant fully disclosed the situation on her SF-86 and during her investigative interview. She attempted to do everything that she could to keep the property that eventually went to foreclosure. She is trying to sell her residence. She admitted that she is not able to pay anything on the judgment at this time. Her intention is to sell her home to satisfy the debt.

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by

Department Counsel. . . .”¹ The burden of proof is something less than a preponderance of evidence.² The ultimate burden of persuasion is on the applicant.³

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 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 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.”⁴ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ *Id.*

including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying:

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;
- (f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern;
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;
- (h) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income; and
- (i) compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

Applicant admits the 2011 unpaid judgment against her and her husband in the amount of \$82,000. Consequently, the evidence is sufficient to raise disqualifying conditions in ¶ 19(a) and 19(c).

AG ¶ 20 provides conditions that could mitigate security concerns. The following are potentially relevant:

(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

Applicant's delinquent debt is the result of a property foreclosure in 2011. The delinquent debt is tied in large part to her husband's financial issues. While Applicant has worked steadily for 24 years with no previous issues, the judgment is listed in her name and her husband's. She is responsible for the debt. She has tried to rectify the problem by selling her primary residence, but has not been successful. Applicant does not appear to have any tax issues, but her husband's tax problems and lower commissions in the current real estate market do not allow them to pay the debt. The tax issue has been ongoing for Applicant's husband and it does not appear that the debt will be paid in the foreseeable future. AG ¶ 20(b) applies in part. Applicant has not met her burden in this case to mitigate the financial considerations security concern.

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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case as well as the whole-person factors. Applicant is a 57-year-old employee of defense contractor who has held a security clearance for almost 24 years. She has worked without incident for many years. She admitted that her financial situation has fluctuated greatly due to her husband's job as a real estate agent based on commission. Although Applicant and her husband file their taxes separately, her husband's tax plan takes \$700 a month from their income. The investment property purchased seven years and the refinancing has caused the current financial security clearance issue.

Applicant was candid and forthright at the hearing. She does not believe that this one judgment should impact on her security clearance. She fully disclosed the situation on her SF-86 and during her investigative interview. Applicant believes that it is beyond her control and that she has acted in good faith. However, this is not the first time that her husband's tax issues have affected Applicant. At the current time there is no imminent sale of her home to pay the judgment. Applicant does not have the funds to pay the amount. It is not clear that she can resolve the issue in the near future. Any doubts that arise must be resolved in favor of the government. Applicant has not met her burden of proof in this case. Clearance is denied.

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:

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| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraph 1.a: | Against Applicant |

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to continue Applicant's security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge