



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



In the matter of:)
)
) ISCR Case No. 12-10391
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: Ryan C. Nerney, Esq.

03/25/2016

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On May 22, 2015, 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 (EO) 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 by the DOD on September 1, 2006.

Applicant responded to the SOR on June 15, 2015, and elected to have the case decided on the written record in lieu of a hearing. She later changed her request to a hearing before an administrative judge. The case was assigned to me on November 4, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 12, 2015, scheduling the hearing for December 7, 2015. The hearing was

convened as scheduled. Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through I, which were admitted without objection. DOHA received the hearing transcript (Tr.) on December 22, 2015.

Findings of Fact

Applicant is a 37-year-old employee of a defense contractor. She has worked for her current employer since 2007. She seeks to retain a security clearance, which she has held since about 2002. She has a bachelor's degree. She is married with two infant children.¹

Applicant bought a condominium in an expensive area of the country in 2006. The purchase price was \$430,000, which was financed through a mortgage loan of \$344,000 and a second mortgage loan of \$86,000. Applicant could not afford the mortgage-loan payments on her income alone, and she relied on rent from roommates to supplement her income.²

Applicant's roommates did not pay rent on a consistent basis, and they moved out in 2008. Applicant used credit cards to help with the mortgage-loan payments. The real estate market crashed, and Applicant owed more on the mortgage loans than the property was worth. She wanted to obtain a mortgage-loan modification, but she was advised that the holder of her mortgage would not consider a modification unless she was delinquent. She intentionally missed a few payments, and she obtained a modification of her first mortgage loan. She mistakenly believed that the second mortgage loan was consolidated into the first loan.³

Applicant continued to struggle to pay her bills. She was advised that bankruptcy was her best option. She filed a Chapter 7 bankruptcy case in 2010, and about \$72,000 in unsecured nonpriority debts were discharged the same year. Applicant reaffirmed that she would retain her condominium and continue to make payments on the mortgage loans.⁴

Applicant continued to pay the primary mortgage loan, but she did not pay the second mortgage loan, which she thought was discharged in the bankruptcy. The debt was charged off. She knew there was a lien on the property and that the debt would have to be eventually paid. In March 2015, the holder of the second mortgage loan sent Applicant a letter stating that she did not owe anything on the account because of her

¹ Tr. at 15-17, 54, 61-62; GE 1, 2.

² Tr. at 19-21, 30, 54-55, 63-64; GE 2; AE G.

³ Tr. at 21-26, 31-33; GE 2; AE G.

⁴ Tr. at 23, 26-29, 59; GE 2, 3.

bankruptcy discharge,⁵ but a valid lien remained on her property. The creditor sought a settlement of the lien. Applicant borrowed \$25,000 and settled the second mortgage loan in November 2015.⁶

Applicant is prepared to address any tax consequences resulting from the settlement of her second mortgage loan. Her current finances are sound. She is able to pay her bills without accruing new delinquent debt. She admitted a certain amount of financial ignorance. She received financial counseling as a requirement of her bankruptcy, and she has taken additional financial counseling courses to improve her financial aptitude.⁷

Applicant submitted documents and letters attesting to her excellent job performance, dependability, honesty, work ethic, trustworthiness, professionalism, conscientiousness, and integrity.⁸

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."

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,

⁵ The second mortgage loan was likely not discharged in bankruptcy because Applicant certified that she would retain her condominium and continue to make payments on the mortgage loans, including the second mortgage loan.

⁶ Tr. at 33-49, 56; AE A, G-I.

⁷ Tr. at 29-30, 46-53, 62, 72; AE B, C.

⁸ AE E, F.

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

Guideline F, Financial Considerations

The security concern 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 under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant had delinquent debts that she was unable or unwilling to pay. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (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; and

(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.

Applicant's financial history is far from perfect. She admitted a certain amount of financial ignorance. Her unsecured nonpriority debts were discharged through Chapter 7 bankruptcy in 2010. The holder of her second mortgage loan believed the loan was discharged in bankruptcy. That was likely a mistaken belief. In any event, Applicant settled the account for \$25,000. Her current finances are sound. AG ¶¶ 20(a) and 20(c) are applicable.

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 relevant 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. I also considered Applicant's favorable character evidence.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations security concerns.

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

Subparagraphs 1.a-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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge