



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



In the matter of:)	
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Applicant for Security Clearance)	ISCR Case No. 14-00251

Appearances

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

07/30/2014

Decision

LYNCH, Noreen, A., Administrative Judge:

On March 14, 2014, 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 May 12, 2014. A notice of hearing was issued on May 19, 2014, scheduling the hearing for June 27, 2014. Government Exhibits (GX) 1-4 were admitted into evidence without objection. Applicant testified, and presented the testimony of one witness. She submitted Applicant Exhibit (AX) A (binder with 11 attachments), which was admitted into the record without objection. I kept the record open until July 17, 2014, for additional submissions. Applicant timely submitted additional documents AX B through F. The transcript (Tr.)

was received on July 8, 2014. 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 denied one allegation under Guideline F (Financial Considerations), with explanation. She admitted SOR allegation 1.b.

Applicant is a 44-year-old design consultant for a defense contractor. She obtained her bachelor's degree in March 1994. Applicant is married and has one child. Applicant has been with her employer since November 2010. (GX 1) However, she has worked as an interior designer for about 20 years. (Tr. 72)

The SOR alleges indebtedness for a past-due mortgage account in the amount of \$128,354.00; and a medical account for \$167. She disclosed the debts on her security clearance application.¹ The medical debt has been paid. (AX A, attachment 10)

Applicant's current financial difficulties began when she lost her job in 2009. In 2008, her husband became unemployed. Applicant remained unemployed until about April 2010 and her husband remained unemployed until 2012. They could not maintain the full monthly mortgage amount, but instead sent a reduced payment. Applicant believes the reduced payments stopped in late 2008. (Tr. 34) At the time, Applicant earned approximately \$85,000 annually. (Tr. 74) She acknowledged that she stopped the mortgage payment a year before she became unemployed.

The home that Applicant purchased in 1998 for approximately \$179,000 had a monthly mortgage payment of \$1,500. In 2009, when both Applicant and her husband were unemployed, they sought help from the mortgagor. They submitted an application package for a modification. However, a foreclosure occurred in March of 2009.² The bank stated that it did not receive the packet of documents for the modification. Applicant and her husband filed a Chapter 13 bankruptcy petition to forestall the foreclosure. However, they voluntarily withdrew the petition and had the case dismissed in October 2010. (GX 1) They have remained in the home, and have cared for the property. They pay the household expenses. Applicant pays the taxes and the insurance. (Tr. 53) She acknowledged that they also are in repayment status for an outstanding tax obligation for \$3,000. The tax installment agreement requires \$75 a month, and Applicant believes the current amount owed is about \$1,200.

Applicant explained that they continued negotiations with the mortgagor because the loan was transferred to another loan servicing company. Again, Applicant submitted a packet of documents to seek a loan modification. This process continued through 2011. Applicant was adamant that she was never denied a loan modification, but

¹Applicant also noted that a 1999 federal tax lien had been satisfied which caused a denial of a security clearance from another agency. (GX 1)

²The foreclosure was stopped in October 2013.

instead the loan service providers asked for new documentation. (Tr. 47) Applicant also sought financial counseling with a nonprofit association. Applicant submitted required information but received nothing in return. (Tr.)

Applicant presented documentation regarding a 2011 deed reformation suit that the mortgage servicing company filed due to a discovery of flaws in Applicant's original home deed and deed of trust. (Tr. 20) Applicant submitted various motions and postponement of the trial which resulted in a Consent Order to reform the deed of trust. The January 2013 Consent Order, according to Applicant, ties a loan modification to the signing of the Consent Order. However, no documentation or court records confirm this action as an approved loan modification. (AX B-F)

Applicant maintains that she has been in constant contact with the bank. However, the bank sold the loan several times and the mortgage company changed. In April 2013, Applicant again submitted a total loan modification package to the current mortgage provider.

In July 2013, Applicant received notice that there was a new servicer of the mortgage loan. The current balance was listed as \$196,064.13. The maturity date is May 2037. Interest and fees were listed. The next payment due was \$1,974.67. It appears at some point that Applicant submitted a new loan modification packet, but shortly after in August 2013, requested that the debt be disputed and requested validation. (AX A, attachment 4)

In 2014, Applicant consulted a credit resolution company to research their request for a loan modification that was "approved" in the consent order. However, there is no documentation that expressly provides that an approved loan modification exists. Applicant presented much documentation, but there is no clarity as to the current status of the process. Applicant believed they would have an answer by July 2014. (Tr. 61) Applicant was emphatic that since 2010, she and her husband have set aside money to approximate the monthly mortgage payment, but presented no documentation of an escrow account. In addition, they want a clean credit report before they start the payments. (Tr. 33) It has been six years without a resolution and Applicant stated that perhaps she may sue the mortgage servicing companies for fraudulent handling of claims. (Tr. 48)

Applicant earns approximately \$115,000 annually. She claims that she has about \$40,000-\$50,000 set aside to pay for the past-due mortgage amount. (Tr.34) She is current with her credit accounts. (Tr.52)

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. . . ." ³ The burden of proof is something less than a preponderance of evidence. ⁴ The ultimate burden of persuasion is on the applicant. ⁵

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." ⁶ "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." ⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be

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

⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

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

⁶ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

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

resolved in favor of protecting such information.⁸ 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 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;

⁸ *Id.*

(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 incurred a delinquent debt on a past-due mortgage payment. The amount of the debt is approximately \$128,354. The total amount of the loan is \$196,064. She admits that she had a collection account. Her admissions and her credit report confirm her debts. 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; and

(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.

Applicant lost her employment in 2009 and her husband was unemployed from 2008 until 2012. Applicant resumed full-time work in November 2010. Applicant stopped making mortgage payments on their home in 2008. They have lived in the house since

that time. Applicant attempted various loan modifications, but to date nothing has come to fruition. She did file for bankruptcy to avoid losing the home, but it went to foreclosure in 2010. As a result of a collateral law suit, the foreclosure was lifted in October 2013. Applicant insists that they have worked in good faith all these years and that the various service providers have not handled the loan modification packages in a timely manner. However, despite the documentation that has been presented, there is no pending loan modification. Applicant has been in her home since 2008. She has not made any payments despite that fact that she has steady income since 2010. The last loan modification packet was submitted in April 2013. Applicant has also contested the validity of the debt. Applicant had circumstances beyond her control that caused the non-payment of the mortgage, but given the submitted information, I do not find that she acted responsibly. None of the mitigating conditions fully apply.

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 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. 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 44 years old. She is married and has a child. She has worked as a professional for many years.

Applicant's loss of employment and her husband's loss of employment created financial problems in 2008-2009. They stopped making mortgage payments on their home when Applicant's husband lost his job in 2008, a year before Applicant lost her job. However, despite the claims of many loan modification attempts, it has been six years and Applicant has not resolved the issue. She claims that she has money set aside for the payment of the mortgage but did not submit documentation of such. There is no resolution plan in place at this time. Applicant has not met her burden of proof to

show that there are clear indications that this problem will be resolved. I have doubts about her judgment, reliability, and commitment to resolving her financial issues.

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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For 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 grant Applicant's security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge