



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



In the matter of:)	
)	
)	ISCR Case No. 14-00473
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: David Hayes, Esq., Department Counsel
For Applicant: *Pro se*

02/23/2015

Decision

LYNCH, Noreen A., Administrative Judge:

On April 17, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing 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; Department of Defense (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 December 11, 2014. A notice of hearing was issued on December 19, 2014, scheduling the hearing for February 5, 2015. Government Exhibits (GX) 1-3 were admitted into evidence without objection. Applicant testified and submitted Applicant Exhibits (AX) A-F, which were admitted without objection. The transcript was received on February 12, 2015. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Findings of Fact

In her answer to the SOR, Applicant admitted the SOR allegations under Guideline F.

Applicant is 40 years old. She is single and has no children. She works as a service desk analyst, and has been with her current employer since April 2013. Applicant had held positions of trust, but this is her first request for a security clearance. (GX 1)

In August 2009, Applicant and her long-term significant other purchased a large home for approximately \$77,000. Applicant's boyfriend was divorced and had two children. Since his credit after the divorce was not good, Applicant signed the loan documents and the home mortgage was solely in her name. (Tr. 26) In December 2010, Applicant's friend lost his job. In February 2011, Applicant lost one of her jobs. She had been working two low-paying jobs. Applicant's friend did not seek employment after he lost his job. He began to drink and gamble excessively. (Tr. 30) Applicant maintained the mortgage payments on the home for as long as she could. Her friend did not contribute anything to the home mortgage or the expenses. Moreover, he stole money from Applicant's account. (Tr. 31) Applicant maintained the mortgage payment until June 2010. (Tr. 29)

The SOR alleges four delinquent debts, including three collection accounts, and a past-due mortgage loan in the amount of \$13,032. Applicant admits that she owes the debt and intends to pay it. Two of the debts are paid in full. (Tr. 19; AX B; AX C) SOR 1.a (\$598) and 1.d (\$319). As to the debt in SOR 1.b (\$765), Applicant has contacted the company. (Tr. 47) Initially, she disputed the debt as she had no idea that she owed anything. She now knows the account is for a satellite dish and the receivers were returned in 2011. She is in the process of making payment arrangements. She believes the debt will be resolved by the end of 2015.

Applicant and her boyfriend remained in the home until 2012. She had been working with the bank to obtain a loan modification. She contacted the mortgage company and was told that she would need to pay \$900 a month instead of the normal monthly \$555 a month mortgage payment. She did not have the income to pay that amount. (Tr. 35) When she attempted to write a check from her account, she learned that there was no money in the account. She was denied a loan modification in 2013. (Tr. 35).

Applicant remained in contact with the mortgage company. (AX D) However, she does not want the home as it is too large for her current needs. She has left many voice mails and sent notes but the bank does not return her calls. In a letter, dated May 13, 2014, Applicant explained to the mortgage company that she saw no other option "but to convey the property back". She hoped to dispose of the property through a Deed in Lieu of Foreclosure. Applicant had explained the details to the mortgage company from the beginning of the financial problem in 2010. Applicant was willing to sell or rent the

home, but the mortgage loan company would not give Applicant that option. (Tr. 43) Applicant believed the house went to foreclosure in June 2012. However, she recently learned that the loan is “still active.” The last communication that Applicant received from the mortgage company was dated August 2014. The Order stipulated that Applicant would receive notice of a mortgage foreclosure action. (AX E). Applicant is willing to pay an amount of money each month and work with the mortgage company, if they proceed with foreclosure.(Tr. 38)

Applicant submitted a letter of recommendation from her direct supervisor. (AX F) She is described as a person who performs multiple crucial and critical job duties with the utmost professionalism and responsibility. Applicant’s supervisor stated that Applicant is a trustworthy employee who handles vital tasks without supervision. Applicant’s initiative and attention to detail on each assignment makes her a great addition to any project.

Another letter of recommendation from Applicant’s security manager attests to Applicant’s integrity in the workplace. She is described as an exemplary employee and a person who is of good moral character. She was forthcoming by reporting the adverse information concerning the home mortgage loan. Applicant has been diligent in her efforts to resolve an issue that was created due to unfortunate circumstance. (AX A)

Applicant’s current position is stable with good health benefits and opportunity for growth and promotion. She is in line for a supervisory position. Applicant’s net monthly income is \$1,400. She has steady employment. Applicant is current with all her expenses.

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.

The U.S. 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

The security concern for financial considerations is set out in AG ¶ 18:

Failure or an 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

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.*

protect classified information.” It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant admitted she owes the delinquent debts. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against her and mitigate security concerns.

Applicant has a mortgage loan that is past-due in the amount of \$13,032. She managed to maintain a mortgage payment on the home after she lost one of her jobs and her friend contributed nothing. Not only did he not contribute, he stole money from her account. She could not maintain the loan due to her low income. When she bought the home, her expectation was that her significant other would be a partner and help her with the loan and expenses. The financial problems occurred when he lost his job and did not attempt to find another one. Applicant kept working and trying to maintain the mortgage loan for as long as she could. Consequently, Financial Considerations Mitigating Condition (FC MC) 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.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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) partially applies. As noted above, Applicant had no financial difficulties until her significant other lost his job and stopped contributing to the mortgage loan. He also drank and gambled with some of Applicant’s money. Applicant lost one of her jobs in 2011, and could not maintain the loan. She contacted the company and attempted to work out a solution to the problem. She continued throughout the years to do so. She is waiting for a response from the company concerning the foreclosure. She is willing to do what is necessary to resolve the issue.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has some application. Applicant took steps starting to pay some debts. She has paid two debts that are listed on the SOR. She did not know of one debt and is in the process of starting a payment plan. She now has steady employment with a company that will provide her with benefits and opportunity for growth and promotion. FC MC 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) partially 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 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 40 years old. She is single and has no children. Applicant has held positions of public trust. She is now gainfully employed in a job with benefits and opportunity for promotion. She is highly regarded by her employer. She lives within her means. Her credit reports reflect that she pays most of her accounts "as agreed." Without the events that occurred beyond her control, she would not have had any difficulties. She has acted responsibly. Applicant will continue to resolve the mortgage loan issue, and investigate the debt in SOR ¶ 1b.

Applicant has shown sound judgment and reliability throughout the years. She has persuaded me that she refuted and mitigated the Government's case concerning security concerns under the financial considerations guideline. She met her burden of proof.

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.d:	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 a security clearance. Clearance is granted.

NOREEN A. LYNCH.
Administrative Judge