



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



In the matter of:)	
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Applicant for Security Clearance)	ISCR Case No. 14-00657

Appearances

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

07/10/2014

Decision

LYNCH, Noreen, A., Administrative Judge:

On April 7, 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 June 3, 2014. A notice of hearing was issued on June 5, 2014, scheduling the hearing for June 26, 2014. Government Exhibits (GX) 1-3 were admitted into evidence without objection. Applicant testified. She submitted Applicant Exhibits (AX) A-I, which were admitted into the record without objection. I kept the record open until July 10, 2014, for additional submissions. Applicant timely submitted additional documents AX J through O. The transcript (Tr.) was received on July 7, 2014. 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 allegations under Guideline F (Financial Considerations), with explanation.

Applicant is a 37-year-old program analyst for a defense contractor. She obtained her Associate's degree and is taking courses to receive her Bachelor of Science degree. Applicant is divorced, and she has two children. Applicant has been with her employer since November 2013. (AX B) However, she has worked in the defense contracting field for many years. She has held a security clearance since about 1995.

The SOR alleges an indebtedness for a past-due mortgage account in the amount of \$60,288; a charged-off account for \$30,140; two parking tickets; and a 2007 judgment for \$8,252. She disclosed the debts on her security clearance application.

Applicant had no financial difficulties until she lost her job in September 2012, due to a reduction in force. (AX C) Her annual performance ratings had been "superior." At that time, Applicant had no delinquent debts. She received unemployment compensation and looked for employment, but she was not successful in finding employment until 2013. (GX 1)

The home that Applicant purchased in 2010 for approximately \$490,000 had monthly mortgage payments of \$3,200. She had a down payment of about \$30,000. At the time, Applicant earned about \$82,359 and had a part-time job. Applicant could not maintain the mortgage note when she lost her job. Applicant's last mortgage payment was September 2012. She tried to work with the bank to obtain a modification based on her loss of employment. (AX L) She also tried to obtain a forbearance on the loan, but was told that she was two months too late. (AX M) Applicant remains in the home, and cares for the property. She pays the household expenses. 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. (AX K) In April 2014, a mediation occurred which was not successful. (Tr. 48) In fact, the same day the bank denied Applicant a modification, they sold the note to another company. (Tr. 45; AX H, N)

Applicant purchased a vehicle in 2010. The monthly car note was about \$1,300. She was making the car payments until she lost her job. The car has been repossessed. She has not contacted the company yet because she wants to pay the mortgage account. Applicant owes approximately \$30,140. (GX 2)

Applicant loaned her car to a friend who received two parking tickets. Applicant was not aware of the tickets. She testified that the ticket notices did not come to her address. She paid both parking tickets this year. (AX D, E)

Applicant consulted an attorney in March 2014 after the frustration of sending numerous modification packets to various banks. Her attorney has advised her to

pursue different options to manage the debt with the Homeowners Association (HOA) and the collection account, in addition to the mortgage loan. (AX F, J) The primary focus has been on the home mortgage loan. The goal of the plan is to obtain payments that Applicant can afford. The possibility of a settlement with the collection account for the car is a goal being pursued by her attorney. (Tr. 47; AX J)

As to the 2009 judgment for the HOA past due account, (\$8,252) Applicant has not yet resolved the issue. She explained that she and her partner had been paying the HOA dues when they lived in the development in 2007. (Tr. 61) Applicant stated that she has never received any notice from the association. She could not find any bank statements to show a record of payment for the years that she lived in the development. It is her intent to resolve the issue.

Applicant earns approximately \$85,000 annually. (AX K) She receives child support for her two children. The amount varies month to month, but is usually not less than \$850. (Tr. 27) After expenses and debt payments, she has a net remainder of about \$2,000. (GX 2) She has about \$10,000 in a saving account. (Tr. 31) She is current with her credit accounts. (Tr.52) Applicant has about \$14,000 in credit card debts. (Tr. 52) She has not purchased another car, but she is using a vehicle that a friend has allowed her to use.

Applicant submitted four character references from her former employer, coworkers, and friends. (AX A) Each letter attests to her significant contribution to her employer. Applicant is praised for her excellence in administrative detail and financial service to the agency. She is a team player with great attention to detail. Applicant is described as a person of integrity, loyalty, and trustworthiness. Applicant is dedicated to her family and provides for them. She has worked with sensitive information without incident for many years.

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:

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.*

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;
- (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. She admits that she has a collection account and an unpaid judgment. Her admissions and her credit report confirm her debt. 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's delinquent debts are the result of conditions beyond her control, and she has acted reasonably and responsibly in the situation. Applicant lost her employment due to a reduction in force in September 2012. She could not find employment until November 2013. She could not maintain her monthly mortgage payment and contacted the bank immediately. She applied for a forbearance and later for a loan modification. She has submitted several packages due to a change in the loan service company. After much frustration, she contacted an attorney for advice. A mediation occurred in April 2014. However, there was not a successful result. Applicant's attorney continues to work with the bank and another modification packet has been sent. Applicant paid the parking tickets that were incurred as a result of a friend using her car. Applicant prioritized the debts and the focus has been on the mortgage loan. She intends to pursue and resolve the HOA judgment either by settlement or another method. Her attorney advised her to concentrate efforts on the home loan and then pursue the collection account and judgment. She is clearly making efforts in regard to her mortgage loan. She retained counsel to pursue a plan to resolve the other two debts. She has not walked away from her debts. She is engaged in the process. AG §§ 20 (b), (c), and (d) 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 37 years old. She is a single mother who provides for her children. She has held a security clearance without incident for many years. Before the reduction in force and termination of her position, she had no financial difficulties. She is a mature and educated person who has worked in the defense contracting field for many years.

Applicant has attempted to resolve the mortgage loan issue since the inception of her unemployment. She hired an attorney after not being successful with the lenders. She is following his plan of prioritizing the delinquent debts. She used her savings to maintain and support her family. She has lived in her home and cared for the property. She has been forthright and honest in her disclosures on her security clearance application. She has documented her efforts. I have no 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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant

Subparagraph 1.d:
Subparagraph 1.e:

For Applicant
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's security clearance. Clearance is granted.

NOREEN A. LYNCH.
Administrative Judge