



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



In the matter of:)
)
-----) ISCR Case No. 14-01798
)
Applicant for Security Clearance)

Appearances

For Government: Allison O'Connell, Esquire
For Applicant: *Pro se*

04/15/2015

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant failed to mitigate the Government's security concerns under Guideline F. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On June 26, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns 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 Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

In a letter dated July 16, 2014, Applicant admitted the sole allegation raised in the SOR. Applicant also requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was assigned the case on October 20, 2014. DOHA issued a notice of hearing on October 28, 2014, setting the hearing for November 13, 2014. The hearing was convened as scheduled.

The Government offered two documents, which were accepted without objection as exhibits (Exs.) 1-2. Applicant offered four documents, which were accepted as Exs. A-D. She was given until November 21, 2014, to submit any additional materials. On November 24, 2014, the transcript of the proceeding (Tr.) was received. On November 25, 2014, nine pages of materials were received from the Government, including a two-page preface (Hearing Ex. 1) and materials from Applicant, accepted as Ex. E. The record was then closed.

Findings of Fact

Applicant is a 45-year-old assistant wireless manager who has worked for the same employer for over a year. She served in the United States Navy for 23 years before being honorably discharged in January 2012. Applicant has a master's degree in business administration and a bachelor's degree in management. She informally separated from her husband a year ago, and the two live in separate rental properties. The couple has four children, ranging in ages from preschool to mid-20s. Applicant is the primary financial resource for the children, herself, and home maintenance. Her husband has been steadily employed as a GS-13, step 10, government employee for some time. He earns in excess of \$100,000 a year. There is no written agreement as to which spouse is responsible for particular obligations. At issue in the SOR is a mortgage account on a second home property that is past due in the approximate amount of \$17,320, with a total balance of \$280,145.

In 2007, Applicant and her husband were living in their jointly owned home when they heard a neighbor was having financial difficulties. They tried to help by jointly purchasing the neighbor's home. (Tr. 15) A short time later, their local real estate market went down, and the couple "got kind of stuck with this home." (Tr. 15) The couple was next adversely affected by a declining job market, which led them to relocate to a more costly region. They have been able to maintain that second home as a rental property, but the continued obligation of a second mortgage for that home, plus renting residences in their new region, has been financially onerous. In addition, Applicant's former house and the rental property are both about 20 years old and in need of numerous routine replacements and repairs.

Applicant has maintained contact with her mortgagor since she first became delinquent on the second home's mortgage in 2012. (Tr. 17) Her delinquency was fostered by a three-month delay in her retirement pay and a four-month delay in finding a new job after her military discharge. (Tr. 29-31) She was again unemployed from March 2013 until May 2013, when she accepted a lower paying position, then unemployed from October 2013 until January 2014.

Applicant has sought to refinance the second home since 2012. She declined a December 2013 offer by the bank that was extended as an alternative to foreclosure. (Ex. A) The offer was for a deed in lieu of foreclosure and \$35,000 in cash. Applicant declined the offer for "sentimental reasons," hoping to find another way to resolve the

issue. (Tr. 17-19) She also was “afraid to do it, [because she] didn’t know what [she] was getting in to.” (sic) (Tr. 19)

After foreclosure was formally entered, Applicant was precluded from making any payments without first requesting a loan reinstatement, which she requested in early 2014. A reinstatement calculation notice was sent on February 26, 2014, indicating that reinstatement could be achieved by paying approximately \$30,600 by March 10, 2014. (Ex. B) Applicant submitted a money order for that amount on March 5, 2014. (Tr. 20; Ex. C) By the end of 2014, however, her attempts to work through the home loan modification process with the customer relations manager had failed. She was about \$20,000 late in loan payments, and the house was again poised for foreclosure, as the loan was transferred to a new lender. (Tr. 20-21; Ex. D) Not having received another offer of loan reinstatement from the new lender, Applicant fears the new lender does not want to work with her. (Tr. 21-22) In the alternative, she is now open to an offer for the deed in lieu of foreclosure. (Tr. 22-23)

The monthly mortgage on the second home, the property purchased in 2007, is \$2,490. It has been continually rented for the past four years. Renters pay \$1,440 a month less any repairs incurred. (Tr. 52) Applicant has saved about \$7,500 for a future offer to reinstate the loan. She last requested a reinstatement the week before the hearing. If extended, she hopes her husband will contribute any additional sums needed to reinstate the loan. (Tr. 55) Meanwhile, Applicant continues to hope for a loan modification. (Tr. 56) She has not fully researched a short sale as a possible solution. (Tr. 75-76) It is difficult to discern which spouse pays for what expenses related to the properties and other matters at any given time; their shared obligations seem to be approached in an *ad hoc* manner. (See, e.g., Tr. 25-30, 36-38, 44-47, 63, 72, 81-82)

There is an incomplete picture of Applicant’s husband’s finances. As for Applicant, between the months of April 2014 and October 2014, she had monthly net remainders ranging from \$793 to \$3,954, with only one month (June 2014, the month in which Applicant expended additional sums for one child’s graduation and prom) in which Applicant had a negative monthly net remainder (-\$464). (Government Summary of Applicant’s post-hearing submissions)

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 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, these guidelines are applied 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.” 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 not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 and 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.

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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence showing Applicant had over \$17,000 in delinquent, mortgage-related debt. This is sufficient to invoke two of the financial considerations disqualifying conditions:

AG ¶ 19(a) inability or unwillingness to satisfy debts, and

AG ¶ 19(c) a history of not meeting financial obligations.

Four conditions could mitigate these finance related security concerns:

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;

AG ¶ 20(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;

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;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

Applicant attributes the onset of her financial difficulties to the time following her military 2012 discharge, when her pay was delayed, disability payment deferred, and she lacked employment. Responsibly, she contacted her lender and tried to negotiate a refinance of the mortgage on her second home. With regard to the actual creation of the delinquent debt at issue, AG ¶ 20(b) applies.

Since the creation of that debt, however, Applicant has persisted in a spectrum of ideas and options, but not settled on a specific plan as to what she wants to do with the property. In 2012, she began negotiating for loan refinancing, which she continues to pursue. In 2013, she refused a deed in lieu of foreclosure program because of "sentimental" attachments to the home she and her husband acquired in 2007, and because she did not fully understand the offer. In 2014, she accepted an offer to reinstate the loan after it had gone to foreclosure. To do this, in March 2014, she paid slightly over \$30,000 on less than two weeks notice. By autumn of 2014, however, the house was again in arrears for about \$20,000 on the mortgage. As for a short sale, she has thus far resisted the pursuit of this avenue as a solution. These facts indicate that she wants to keep the house, but lacks the wherewithal and necessary approval to do so in a consistent manner.

Financial counseling could help her commit to a specific plan. There is no evidence, however, she has received any such counseling, obviating applicability of AG ¶ 20(c) in the absence of any progress. Moreover, actively working in concert with her husband to address the debt could fortify efforts to stay the course on a chosen plan. At

present, however, Applicant appears to be the only spouse involved in maintaining this property. There appears to be sufficient money within her control to adequately address the delinquent debt acquired and now at issue, yet no sustained progress has been made on that debt. None of the remaining mitigating conditions 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 the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). 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 incorporated my comments under the guideline at issue in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a 45-year-old assistant wireless manager who has earned a bachelor's degree in management and a master's degree in business administration. She served in the United States military for over two decades. Currently estranged from her husband, she has been raising four children.

Despite her education and life experience, Applicant appears to be muddled as to how she can best proceed with regard to a second home with a significant delinquency. She has worked to refinance the home since 2012, rejected a 2013 offer to a deed in lieu of foreclosure, then expended over \$30,000 – a sum greater than the amount of the present delinquency – to reinstate the loan after foreclosure. Despite this tremendous commitment, the home was again in arrears for nearly \$20,000 within a few months. As 2014 came to an end, Applicant was still seeking to refinance the home, interested in another chance to convey the title in lieu of foreclosure, and seeking another opportunity to reinstate the loan. History seems poised to repeat itself as Applicant again pursues the same avenues she has pursued in the past few years.

Regardless of which avenue is ultimately chosen, it remains unclear why this account is delinquent. Despite early problems with periods of unemployment and delays in pay, Applicant has had a steady flow of income over the past year. Even taking into consideration unforeseen repairs, Applicant's net monthly remainders reflect a level of income that should be able to satisfy this debt. Indeed, in 2014, on less than two weeks notice, she paid over \$30,000 to reinstate the loan. Then, despite significant positive net monthly remainders, the account again became delinquent. In short, based on her own income – and not even factoring in her husband's joint responsibility for the home – it appears she can afford the property at issue. Without evidence showing why she cannot

afford the home or explain away the delinquency, I find that Applicant failed to mitigate 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:	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 grant Applicant a security clearance. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge