



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-05210

Appearances

For Government: Meg Foreman, Esq., Department Counsel
For Applicant: *Pro se*

01/28/2016

Decision

LYNCH, Noreen A., Administrative Judge:

On December 8, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant 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 June 8, 2015. A notice of hearing was issued on June 23, 2015, scheduling the hearing for September 22, 2015. At Applicant's request, the case was postponed for good cause. The hearing was rescheduled for November 13, 2015. Government Exhibits (GX) 1-4 were admitted into evidence without objection. Applicant testified, and did not submit exhibits at the hearing. The transcript was received on November 24, 2015. 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 admitted the SOR allegations under Guideline F. She provided explanations for each alleged debt.

Applicant is 46 years old. She graduated from high school and attended college from 2006 to 2009, obtaining an associate's degree. She also obtained a certificate from a dental school. Applicant is single and has no children. She served in the United States Navy from 1993 until 2001. She was recalled in 2001, and she served on active duty from November 2001 to June 2002, receiving an honorable discharge. She retired from the U.S. Navy Reserves in 2014. She has been with her current employer since 2004, where she serves as a security specialist. She completed a security clearance application in 2013. (GX 1) Applicant has held a security clearance, but it is not clear for what period of time.

The SOR alleges approximately \$67,000 in delinquent debt on one mortgage loan, and the other mortgage account is delinquent in the amount of \$70,300. (GX 2 and 3)

Applicant purchased two home properties in 2007. She paid about \$70,000 for one property and \$95,000 for the second property. She planned to live in one home when she found a job in that area. Applicant allowed her cousins to live in one home while she was working in another state. Her mother lived in the other property. (Tr. 15) When Applicant was deployed to Afghanistan in 2009, her mother had the legal authority to make the mortgage payments and access Applicant's bank account. Upon return to the states in late 2010, Applicant learned that mortgage payments had been missed. (Tr. 30) She also states the amount of the monthly payment increased. Applicant made payments until 2011. (Tr. 41)

As to SOR allegation 1.a, Applicant stated that the property went to foreclosure in 2011. She made inquiries over the years about the status of the home. Applicant claimed that payments were made consistently from 2007 until 2009, when she was deployed. She submitted her bank statements which show a monthly payment of about \$650. (Attachments to SOR) She contacted the bank in 2015 to see if she could receive help from any national programs. She is awaiting an answer. (Tr. 46) Applicant's mother died in 2014 and the residence is empty.

As to SOR allegation 1.b, Applicant stated that the property was taken by the bank. She claims she has not received any documentation as to a sale and if she owes a deficiency debt. (Tr. 47) She learned in 2011 that the bank had returned several payments to her mother but could not explain what happened for this to occur. She will be responsible for the deficiency amount.

Applicant emphasized that the debts are not the result of an inability to live within her means or poor self-control. She claims that it was poor judgment to leave the properties in her mother's care while Applicant was deployed. She acknowledged that she did not monitor the accounts when she was deployed. She did not have automatic payments because her mother was paying for the one property and her cousins were

paying the for the other property. (Tr.33) She stated that she tried to continue to make payments after she returned home from deployment and tried to avoid foreclosure. She believes that between the two properties she paid \$15,000, but to no avail. (Answer to SOR)

Applicant points to the fact that she is in good standing with other financial institutions, such as a credit union and another bank since approximately 1993. (Tr. 19) She has no credit card delinquencies and has had several car notes that have been paid. She has spoken to a bankruptcy attorney to discuss possible bankruptcy proceedings, but has not pursued financial counseling. At the hearing, she was no longer certain that she would proceed with a bankruptcy. (Tr. 22)

Applicant could not explain what actually occurred in her absence with the monthly mortgage payments for the two properties. She emphasized that her mother was in charge of making the payments and that her mother had access to Applicant's accounts. She stated that her mother told her in 2010 that payments were being returned but she did not understand the reasons for the returned checks. Her mother called the bank but did not received an explanation.

Applicant's net monthly pay is about \$3,000. She has a car note which is current. She has a net remainder of about \$400. She is current with her other bills. Her credit reports confirm that she has accounts that are "paid as agreed." She acknowledged that she has not sought financial counseling.

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 protect classified information.” It also states that “an individual who is

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.*

financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant admitted that she incurred delinquent debt when two properties that she bought in 2007 went to default. The outstanding debts are about \$137,000. Her credit reports confirm the 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.

The nature, frequency, and relative recency of Applicant's financial difficulties make it difficult to conclude that it occurred "so long ago." Applicant still has unresolved financial issues concerning the two home loan mortgages. She is awaiting more information and is deciding on a course of action which might involve bankruptcy. 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) does not apply.

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) does not apply. Applicant was deployed to Afghanistan and left the two properties under the care of her mother. Her mother had access to Applicant's accounts. Applicant did not monitor the mortgage payments and did not learn until almost 2011 that payments had been missed and the mortgages were in default. It was not entirely unreasonable to leave the properties in the care of her mother, but Applicant made no effort to monitor two mortgage agreements for two accounts that had a value of over \$100,000. She did not act responsibly under the circumstances.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has some application. Applicant as noted above made payments when she learned about the events in 2011. She contacted the banks and is trying to deal with the situation. However, she has no plan in place. She considered bankruptcy but is not sure she wants to proceed in that direction. 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) does not 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 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 46 years old. She served in the U.S. Navy and received an honorable discharge. She also served in the Reserves. She has been with her current employer since 2004. She is single and has no children. When she was deployed in 2009, she left the financial control of two home mortgages valued at over \$100,000 with her mother. She has exercised some good faith efforts to resolve the issues, but she has no plan in place to further resolve these debts. The situation is not resolved nor under control. Granted, Applicant has not incurred new delinquent debt and has not had any other difficulties. She elected to purchase two properties in 2007 and made payments, but when deployed she did not monitor the mortgage accounts.

Applicant made a bad decision. She has learned from that decision. However, due to the nature of the mortgages, the amount of time these properties have been in foreclosure, and the amount of debt, the situation is not resolved.

Applicant did not persuade me that she refuted or mitigated the Government's case concerning the financial considerations security concerns. Any doubts must be resolved in the Government's favor.

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 :	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	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. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge