



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-05836

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel

For Applicant: *Pro se*

11/21/2015

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department's intent to deny her eligibility for a security clearance to work in the defense industry. Applicant accumulated \$143,600 in delinquent debt as a result of a series of events beyond her control. However, despite having significant assets at her disposal, the delinquent accounts remain unresolved. Applicant's promise to pay the delinquent accounts in the future does not mitigate the security concern. Clearance is denied.

Statement of the Case

On January 22, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline.¹ DOD adjudicators were unable to find that it is clearly consistent with the

¹ This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

national interest to grant or continue Applicant's security clearance and recommended that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant's security clearance.

Applicant timely answered the SOR and requested a hearing.² At the hearing, convened on August 11, 2015, I admitted Government's Exhibits (GE) 1 through 5 and Applicant's Exhibits (AE) A through F, without objection. After the hearing, Applicant submitted AE G through H, which were also admitted without objection.³ I received the transcript (Tr.) on August 20, 2015.

Findings of Fact

Applicant, 71, is self-employed. Since 2008, she has worked on a contract for a federal contractor. Although she does not require a security clearance for her current contract, the federal contractor is sponsoring Applicant's security clearance application in anticipation of future work that may require Applicant to access or handle classified information. Applicant submitted a security clearance application in May 2013. She disclosed 11 delinquent accounts totaling \$186,200, including the past-due mortgage on her primary residence. The ensuing investigation confirmed the debts disclosed by Applicant. The SOR alleges that Applicant is indebted to eight creditors for \$143,600.⁴

Relying on their respective expertise and experience in running a small business and in the real estate industry, Applicant and her husband decided to invest in real estate as a vehicle for retirement savings. They purchased their primary residence in 1990, a second home in 1998, and four investment properties in 2006. They sold one of the investment properties in 2007 and held the three remaining investment properties as rental units. Applicant and her husband were able to manage their personal and investment-related financial obligations, including mortgages on the properties, until 2008.⁵

The 2008 collapse of the national real estate market had a significant impact on Applicant's finances. Applicant's husband lost his job as a mortgage broker and has not worked since. Their real estate portfolio lost significant value. They began having difficulty renting the three investment properties and experienced a significant decrease in rental income. The rental properties were no longer self-sustaining. Between 2010 and 2011, Applicant experienced health problems that prevented her from working regularly, resulting in the loss of several contracts. The cumulative effect of these events caused Applicant to have difficulty meeting her financial obligations. The mortgage on Applicant's primary residence became delinquent and she began to rely

² The Government's discovery letter, dated October 15, 2014, is appended to the record as Hearing Exhibit (HE) IIII.

³ The e-mails regarding the admissibility of the Applicant's exhibits are included in the record as HE IV.

⁴ Tr. 21-24, 31; GE 1, 3-5.

⁵ Tr. 25, 35-37; AE G.

heavily on credit cards. In 2010, Applicant and her husband decided to stop paying their credit cards.⁶

Between 2011 and 2012, Applicant and her husband sold the three investment properties at a cumulative loss of \$229,000. In 2012, Applicant was able to modify her home mortgage. She paid off all of her debts under \$10,000, though she did not specify either the identity or the number of accounts paid. Applicant's income has also rebounded. She now earns between \$85,000 and \$100,000 annually and remains the couple's only source of income. However, she has not made significant progress in addressing the delinquent debts alleged in the SOR. To date, Applicant is only making payments of the debt alleged in SOR ¶ 1.g, paying \$100 a month on the account since 2013. During her July 2013 subject interview, Applicant stated her intent to resolve her delinquent debts with the proceeds from the sale of her primary residence. According to a popular real estate database, Applicant's home has appreciated to four times its purchase price. Applicant believes she has between \$500,000 and \$800,000 in equity in the home. At hearing, Applicant reiterated this plan. She anticipates listing the home for sale sometime in 2016.⁷

In addition to the equity in her primary residence, Applicant has approximately \$228,000 in equity in her second home, and \$9,000 in cash savings. Applicant testified that she is able to live within her means and can meet her recurring financial obligations.⁸

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 to be 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, administrative judges apply the guidelines 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

⁶ Tr. 33-34, 64-66.

⁷Tr. 29-31, 44, 47-61, 66-70; GE 2; AE F-G.

⁸ Tr. 27-28, 72; AE H.

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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant 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. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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

Unresolved delinquent debt is a security concern because “an individual who is financially over extended is at risk of having to engage in illegal acts to generate funds.”⁹ Financial difficulties have proven to be a significant motivating factor for espionage or attempted espionage.¹⁰ The Government does not have to prove that an applicant poses a clear and present danger to national security,¹¹ or that an applicant poses an imminent threat of engaging in criminal acts. Instead, it is sufficient to show that an applicant has a history of unresolved financial difficulties that may make her more vulnerable to financial pressures.¹²

Applicant began experiencing financial problems in 2008, when the loss of earned and rental income affected her ability to pay her bills. As a result, she stopped

⁹ AG ¶ 18.

¹⁰ ISCR Case No. 96-0454 (App. Bd. Feb. 7, 1997).

¹¹ See *Smith v. Schlesinger*, 513 F.2d 463, 476 n. 48 (D.C. Cir. 1975).

¹² See ISCR Case No. 87-1800 (App. Bd. Feb. 14, 1989)

paying her credit cards in 2010. Applicant's admissions and the credit reports in the record establish the Government's *prima facie* case. The record supports a finding that Applicant has a history of not paying her bills and having an inability to do so.¹³ Applicant's financial problems were caused by events beyond her control, but her actions to date do not support a finding of full mitigation of the financial considerations concern. Although Applicant acted responsibly by disposing of her investment properties, she still has appreciable assets that she has not used to resolve her outstanding delinquent debt.

In order to mitigate the financial considerations concerns an Applicant is not required to be debt free. All that is required is that Applicant has a plan to reduce her delinquent debt and that she has taken steps to effectuate that plan. Here, Applicant has offered a plan, contingent on the future sale of her primary residence, to repay her delinquent accounts. This future promise to pay her delinquent debts, however well intentioned, is not sufficient evidence to mitigate the financial considerations concerns. Applicant did not present a positive track record of debt repayment or reduction. Her current ability to live within her means and to timely pay her recurring financial obligations does not resolve the issue. Because the delinquent debts in the SOR remain unresolved, Applicant's financial problems are considered ongoing and, consequently, her finances are not under control.

After reviewing the record, I find that Applicant is not suitable for access to classified information at this time. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2(a). An adverse finding in this case is not a finding that Applicant does not possess the good character required of those entrusted with access to classified information. Even good people can pose a security risk because of facts and circumstances not entirely under their control.¹⁴ Here, Applicant's financial problems were not caused by irresponsible financial habits or a reckless investment and business plan, but market forces and health issues beyond her control. This decision should not be construed as a determination that Applicant cannot or will not attain the type of financial stability necessary to obtain a security clearance in the future. Rather, it is recognition of the fact that financial issues have historically been a motivating factor behind acts of espionage. The award of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. While a favorable decision is not warranted at this time, in the future, she may well present persuasive evidence of debt reduction and repayment.

¹³ AG ¶¶ 19(a) and (c).

¹⁴ ISCR Case No.01-26893 at 8 (App. Bd. Oct. 16, 2002); *See also Department of Navy v. Egan*, 484 U.S. 518, 527-28 (1988).

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, Financial Considerations: AGAINST APPLICANT

Subparagraphs 1.a-1.f, 1.h: Against Applicant

Subparagraphs 1.g: For Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Nichole L. Noel
Administrative Judge