



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----, -----) ISCR Case No. 07-14530
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro Se*

July 16, 2008

Decision

WHITE, David M., Administrative Judge:

Applicant first encountered financial problems, after a long and successful career with a defense contractor, when she bought a house on risky terms at the peak of the housing boom. Her two home-improvement loans and a credit card became delinquent before she could sell the house. When the house sold, she applied the proceeds and obtained a signature loan to repay the remaining debts. She resumed a financially sound lifestyle renting a home. Based upon a thorough review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Applicant submitted her Electronic Questionnaires for Investigations Processing (e-QIP), on April 27, 2007. On December 21, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F and E. 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

revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense (DoD) for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on January 9, 2008. She answered the SOR in writing (Answer) on January 22, 2008, and on January 31, 2008, she requested a hearing before an administrative judge. Department Counsel was prepared to proceed on March 24, 2008, and DOHA assigned the case to me on April 1, 2008.

DOHA issued a notice of hearing on April 4, 2008. Although Applicant did not sign and return her written receipt for the notice of hearing until April 15, 2008, she acknowledged on the record that she actually received the notice of hearing at least 15 days prior to the hearing. (Tr. at 9.) I convened the hearing as scheduled on April 21, 2008. Department Counsel offered Government Exhibits (GE) 1 through 5, which were admitted without objection. Applicant testified on her own behalf, and submitted Applicant's Exhibits (AE) A through H, which were admitted without objection. I granted Applicant's request to leave the record open until May 5, 2008, in order for her to submit additional documents. Department Counsel forwarded Applicant's submission of those documents, without objection to their consideration, on May 5, 2008. These documents were marked AE I, and the record was closed. DOHA received the transcript of the hearing (Tr.) on May 1, 2008.

Findings of Fact

Applicant is a 53-year-old employee of a defense contractor, for whom she has worked, with a security clearance, for 24 years. She has never married and has no children. She lives with her sister in a house they rent for \$1,725 per month. (GE 1 at §§ 2, 11, 13, 14, 26; Tr. at 6; GE 3 at 56.)

In her Answer, Applicant admitted formerly owing each of the three debts alleged in SOR ¶ 1, totaling \$24,088. She denied that she deliberately falsified answers on her e-QIP, as alleged in SOR ¶ 2, explaining that she did not realize any of the debts were 90 or 180 days delinquent since she had been making payments toward them as she was able to do so, and planned to pay them in full when she sold her house.

The facts of this case are not in dispute. Applicant had a good credit record and no areas of security concern when she last updated her security clearance in 2001. Her financial troubles arose when she purchased a house for the first time in July 2005, near the peak of the housing boom and predatory mortgage lending era. Shortly after buying the home, she hired Sears to remodel her kitchen, incurring the two loans listed in SOR ¶¶ 1.b and 1.c. Her mortgage loan was an "80/20" loan, meaning that she was given an 80% first mortgage (\$185,600) without mortgage insurance, and borrowed the 20% down payment (\$46,400) as a second mortgage. When equity in the home stopped rising at the anticipated rate in 2006, the lender invoked some clause in the contract to require substantially higher monthly payments to cover mortgage insurance. Applicant and her sister could not afford to regularly pay these increased mortgage payments

while staying current on her Sears loans and her unsecured \$3,423 credit card debt to American Express as listed in SOR ¶ 1.a. She made payments as she could, and decided to sell the house.

Applicant was in contact with her creditors and attempted to negotiate periodic payments pending the sale of her home when she planned to pay the debts in full. She always intended to repay her creditors, and rejected the option of voiding the debts through bankruptcy. When she completed her e-QIP she believed that the imminent resolution of these debts meant she did not need to list or disclose them as delinquencies responsive to questions 28.a or 28.b. The credit bureau reports do not establish that any of those debts were indeed 90 or 180 days delinquent at the time she signed her e-QIP. (GE 2; GE 4; AE A; AE B; AE C; AE F; Tr. at 26, 32, 40, 55-57, 64.)

In October 2007, Applicant succeeded in selling her home and made about \$6,000 after paying off her mortgage balances and associated costs. She then qualified for and was given a \$22,000 signature loan from her credit union. In November 2007, she used these funds to fully repay the three delinquent debts listed in the SOR. She has made, and can afford to continue making, her regular \$600 monthly loan payments for this loan. Her reduced housing costs, now that she and her sister are renting again, are low enough that she has regular surplus monthly income. (Tr. at 35-38, 51-55.)

In AE I, Applicant provided a letter from a long-time colleague attesting to her reliability, dependability, trustworthiness, and good work performance. She also included two recent performance appraisals and some informal notes describing these same characteristics. Applicant's demeanor during the hearing reflected her earnest approach to her obligations and determination to avoid any debt problems in the future. She testified credibly and demonstrated full awareness of how her problems arose and how to avoid similar issues going forward.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used to evaluate 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 over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the 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.

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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides that “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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. Of these nine different disqualifying conditions, the Government asserted

that two were raised by Applicant's financial circumstances (Tr. at 82.): "(a) inability or unwillingness to satisfy debts;" and "(c) a history of not meeting financial obligations."

The evidence shows that Applicant, as recently as October 2007, was delinquent in paying the three SOR-listed debts totaling about \$24,000. These delinquencies arose because her mortgage lender sharply increased her monthly mortgage payments when housing prices stopped rapidly rising. Although she was temporarily unable to repay these debts, she remained in contact with the lenders and made prompt efforts to sell the house to permit repayment of her mortgage and other debt. The record establishes a long history of financial responsibility with a temporary, 18 to 24 month period when she was unable to repay some of her debts on time. She was never unwilling to repay the debts. Of the three delinquent debts, two of them, comprising 86% of the total amount, were home improvement loans taken out in connection with purchasing Applicant's former home. At the time these debts were incurred, they were widely considered to be wise investments in what was, until then, a rapidly rising housing market. When the boom ended, Applicant found herself unable to meet the cash flow requirements because her lender increased her monthly payments. This relatively brief period of inability to pay some debts, and short history of not meeting some financial obligations raise only minor security concerns under AG ¶¶ 19(a) and 19(c).

AG ¶ 20 provides conditions that could mitigate security concerns. The four potentially pertinent conditions are:

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

Applicant did not dispute the debts in question (¶ 20(e)), nor is there any concern about unexplained affluence (¶ 20(f)).

Applicant's delinquent debts arose solely because she, like many others at the time, thought it would be a good investment to buy a home. She entered into a highly risky mortgage arrangement, which went bad when housing prices peaked. This was

not an unreasonable judgment at the time and, having been burned once, she is most unlikely to take such risk again (¶ 20(a)). The housing downturn was entirely beyond Applicant's control, was not foreseen by investors far more sophisticated in such matters that she is, and her decision to sell the house and liquidate her debts was highly responsible under the circumstances (¶ 20 (b)). Although Applicant did not need or seek financial counseling, there are crystal-clear indications that she resolved the problem by repaying all the debt and her current financial situation is under control (¶ 20(c)). Finally, she did make a good-faith effort and repaid all overdue creditors. Her present loan repayments on her new signature loan are current and fit easily within her monthly budget (¶ 20(d)). Taken together, Applicant's actions, all of which were undertaken before issuance of the SOR, fully mitigate the minimal security concerns raised by her temporary period of financial over-extension that ended when she sold her house.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The disqualifying condition alleged in the SOR and raised by the evidence in this case is:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Given Applicant's level of financial and legal sophistication, and the absence of any security issues arising in her many prior clearance proceedings, she testified credibly that she did not understand that she was incorrectly answering the two finance-related questions listed in SOR ¶ 2. She now understands that she should have checked the details more thoroughly and reported any responsive delinquencies. Based on the evidence, including her demeanor and testimony, I conclude that she did not deliberately omit responsive information in an attempt to conceal it and deceive the Government about its existence. Accordingly, I find no substantial evidence that she deliberately falsified or omitted information on her e-QIP security clearance application with respect to the delinquencies noted in the SOR, even if they were, in fact, debts that qualified for disclosure under the respective questions.

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 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) 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 common sense 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. Applicant's conduct of potential concern was a temporary period of financial over-extension brought about due to the unforeseen housing downturn. Applicant is a mature, experienced adult who is accountable for her decisions and conduct, and has performed her duties at work very well for a long time. She properly responded to her financial set-back by selling her home and cutting her losses. She has repaid all delinquent debts and is again living in a financially responsible manner. There is no potential for pressure, coercion, exploitation or duress since she acted responsibly under the circumstances, and is no longer financially overextended.

Applicant's good reputation and performance at work is commendable, and further mitigates any security concerns arising from her temporary financial hardship. She has no delinquent debt, and has no intention of incurring additional debt in the foreseeable future. She acted responsibly to keep her mortgage payments current at the temporary expense of her other debts, thereby protecting her most important asset and permitting her to favorably resolve the situation. She remained in communication with her creditors, and her actions under the circumstances demonstrated honesty, trustworthiness and good judgment.

On balance, Applicant presented sufficient evidence to mitigate security concerns arising from her temporary inability to satisfy debts, and relatively brief history of not meeting financial obligations. Overall, the record evidence leaves no doubt as to Applicant's present eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has fully mitigated personal conduct and 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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

DAVID M. WHITE
Administrative Judge