



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



In the matter of:)
)
) ISCR Case No. 07-15050
)
)
Applicant for Security Clearance)

Appearances

For Government: John Glendon, Department Counsel
For Applicant: *Pro Se*

October 31, 2008

Decision

HEINY, Claude R., Administrative Judge:

A February 2007 foreclosure on Applicant’s investment real estate eliminated the mortgage debt on the property, but not the equity line of credit debt, and it remains unpaid. Applicant acted responsibly and appropriately in her attempt to prevent the foreclosure. Applicant has rebutted or mitigated the security concerns under financial considerations. Clearance is granted.

Statement of Case

Applicant contests the Defense Department’s intent to deny or revoke her eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued to

¹ 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) approved by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant a Statement of Reasons (SOR) on May 13, 2008, detailing security concerns under financial considerations.

On July 2, 2008, Applicant answered the SOR, and requested a hearing. On July 22, 2008, I was assigned the case. On July 25, 2008, DOHA issued a notice of hearing scheduling the hearing held on August 21, 2008. The government offered Exhibits (Ex.) 1 through 5, which were admitted into evidence. Applicant testified on her own behalf. The record was kept open to allow Applicant to submit additional matters. On August 27, 2008, additional documents were received. There being no objection, the material was admitted into evidence as Ex. A. On September 2, 2008, the transcript (Tr.) was received.

Findings of Fact

In her Answer to the SOR, Applicant denied the factual allegations of the SOR.

Applicant is a 47-year-old analyst who has worked for a defense contractor since 2001, and is seeking to obtain a security clearance. (Tr. 38, 79) Her husband describes Applicant as a woman of integrity, strong character, and great moral values who is the "most trustworthy, reliable and dependable human being" he knows. (Ex. A)

In 1985, Applicant came to the United States from Zimbabwe. (Tr. 35) In July 2005, she became a naturalized U.S. citizen. (Tr. 38) Her son, born in 1987, is a U.S. Navy medic. (Tr. 36) Applicant divorced in 1995 and remarried in 1996. (Tr. 37) In 1998, her second child, a daughter was born. In 2004, her youngest child, also a daughter was born prematurely, had developmental delays, and has special needs. (Tr, 57, Ex. A, Ex. 2) Applicant works 30 hours per week due to her daughter's special needs. At present she commutes between three and four hours a day, four days a week. If Applicant receives a clearance, her employer would transfer her to a work location closer to her home. (Tr. 28)

In June 1995, Applicant obtained a master's in business administration (MBA) in finance.(Tr. 37) She owes approximately \$18,000 in student loans, which are currently in a forbearance or deferment status. (Tr. 67) Applicant also owes \$18,000 on a credit card. (Tr. 66) Neither of these debts are delinquent.

In the mid 2000s, Applicant was looking for a way to make money while remaining at home with her daughter. She observed others purchasing investment properties and selling them at a profit. She and her husband intended to purchase real estate, keep it for five or six months, and they sell it at a profit. (Tr. 44) They decided to purchase a town home; her husband states it looked to be a good decision. (Tr. 88) Her husband urged against a real estate investment because he did not want the hassle of rental property. (Tr. 88) He believes the logic of his wife's decision was impeccable at the time particularly when viewing the way home prices were increasing at the time. (Tr. 88 - 89) Unfortunately, the market conditions turned in an unexpected way. (Tr. 89)

They chose to purchase a town home in an area five minutes from their home and in a neighborhood where they had previously lived for seven years. (Tr. 91) Even though Applicant felt uneasy about the transaction, she went through with the purchase. Applicant credit was excellent at the time of the purchase. (Tr. 21, 25)

In July 2005, Applicant purchased a town home. Applicant put down \$1,000 earnest money. The remaining balance of \$377,741 (\$370,000 contract price plus \$7,741 settlement charges) was split into a \$296,000 first mortgage and an equity line of credit of \$74,000. Following the purchase, the housing market took a downward turn. Within three months of the purchase, the town home had declined \$75,000 in value.

Applicant was to make monthly interest only payments of approximately \$3,000 on the two loans. (Tr. 42) Applicant paid \$2,125 monthly on the first mortgage and \$625 on the line of credit plus escrow fees. (Tr. 43) The line of credit was at a variable interest rate, which increased raising their monthly payment to \$850 on the equity line of credit. (Tr. 53, 54)

Applicant asserts she never used the line of credit on the town home. Purchasers are normally required to pay a minimum of 20% of the contract sales price at the time of closing. On a \$370,000 mortgage 20% would be \$74,000. The line of credit was \$74,000.

It was never Applicant's intention to occupy the town home. It was intended the property would be rented thereby generating income and covering part of the monthly mortgage. Just prior to purchasing the home, Applicant learned the expected monthly rent would not exceed \$1,500, which would cover only half of the \$3,000 monthly mortgage payment. (Tr. 45) Tax advantages of owning rental property routinely provide some relief to address a portion of the shortfall. However, Applicant was told the only tax advantage she could claim was a \$2,000 per year deduction for depreciation, which resulted in a yearly tax savings of \$1,200. (Tr. 62-63, Ex. A)

Applicant had problems renting the property. The two months following purchase, the sellers stayed in the home paying rent. Applicant was unable to find a tenant for the next two months. (Tr. 47) The first tenant she located failed to timely pay the rent, then failed to pay rent for two months, broke windows, and did other damage to the property. The tenant occupied the town home for five months. (Tr. 71) From January through March 2006, Applicant actively sought to evict the tenant. In March 2006, the tenant was evicted. Applicant was unable to find new tenants and had to make mortgage payments on both the investment property and her home after March 2006.

Applicant contacted the mortgage company to determine her options. Applicant qualified with the mortgage company for a "short sale." (Tr. 49) A short sale allows a home to be sold at its current market value to avoid a potential foreclosure and negative credit rating. (Ex. 2) Applicant worked with her mortgage company for five or six months attempting to negotiate a short sale. Applicant hired a realtor to attempt to find a new buyer. (Tr. 51)

In 2003, Applicant and her husband purchased the home they live in for approximately \$300,000. (Tr. 29) They have never been late on a mortgage payment and the taxes on the home are paid timely. (Tr. 41) Last year their home was assessed at \$550,000, but had devalued to approximately \$450,000. During 2006, they refinanced their home several times to continue paying the mortgage on the town house. Applicant increased her hours at work to generate more income. Applicant exhausted her funds in her 401(k) retirement fund making the town home's monthly mortgage payment. Applicant contemplated selling her home and moving into the town home, but this was prevented by the current status of the housing market. Their neighbor's home failed to sell having been on the market for a year and a half. Applicant attempted to sell the town home. Since the fair market value of the house had dropped, the town home could not be sold for the value owed on the first mortgage and equity line of credit. Applicant continued to make payments until October 2006, when all funds were exhausted.

In December 2006, Applicant's realtor found a buyer who offered to purchase the town home for \$326,000, which was a "much higher" offer than they going rate. (Ex. 2) The buyer moved into the town home, with a clause in the purchase contract directing the return all rents paid if the offer to purchase failed to close. In February 2007, the mortgage company informed Applicant the property would go to foreclosure. The potential buyer left the property and in March 2007 the town home was sold at foreclosure for \$305,000.

Since the foreclosure, the mortgage company has actively sought repayment of the home equity line of credit. Applicant states, "[f]or endless weeks and months, they harassed me. They hired another company to do it and they were brutal." Applicant offered \$5,000 to settle the matter, which was not accepted. The creditor stated at least \$18,000 was needed. (Tr. 73) "The debt collector called evenings, early mornings, and afternoons, at work, weekends and my cell phone." However, Applicant has not recently received a demand for payment from the creditor regarding the home equity line of credit. (Tr. 74) As of April 2008, it was Applicant's plan to pay the home equity line of credit. (Ex. 2) Applicant has made inquiries with an attorney as to bankruptcy, but was reluctant to go that route. (Tr. 95)

Until November or December 2006, Applicant was able to pay the property owners' association (POS) monthly fees. In November 2007, the property owners association obtained a \$319 judgment (SOR ¶ 1.a) against Applicant for unpaid monthly fees. Applicant states her tenant was supposed to have paid the monthly payments. In April 2008, the judgment was paid in full or otherwise satisfied. (See Answer to SOR)

In July 2007, a health care provider obtained a \$15,000 judgment against Applicant. (See Answer to SOR) The judgment was released in April 2008.

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 useful 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 over-arching adjudicative goal is a fair, impartial and common sense 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 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 applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to obtaining 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 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.

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

Revised Adjudicative (AG) ¶ 18 articulates the security concerns relating to financial problems:

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 having to engage in illegal acts to generate funds.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage her finances so as to meet her financial obligations.

Applicant purchased investment property that went to foreclosure in February 2007. The foreclosure eliminated the first mortgage of approximately \$300,000, but failed to eliminate the \$74,000 equity line of credit. Applicant offered to settle the debt for \$5,000, but the creditor indicated that a minimum payment of \$18,000 was required. No payment has been made on this debt. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶19(c), "a history of not meeting financial obligations," apply.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a) – (e) are potentially applicable:

(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 financial problems were contributed to by market factors beyond her control. Shortly after purchasing the investment real estate for \$370,000, the fair market value of the property dropped to \$300,000. The decline in the value of the real estate is not, of itself, the cause of the debt. Although the decline did prevent Applicant from liquidating the debt through sale of the property at the amount owed on the town house.

It was the inability to secure a proper renter that was an additional factor beyond her control that resulted in the foreclosure. Applicant's first renter failed to pay the rent and after five months an eviction action was required. Another temporary tenant who was living in the property following a purchase offer had all rents returned to her when the property failed to close. With a renter paying a portion of the monthly mortgage, Applicant may have been able to prevent the foreclosure.

Applicant asserts she never used the line of credit. However, the line of credit was used to pay the customary 20% down payment required of purchasers. The variable interest rate on the equity line of credit increased Applicant's inability to make her monthly payments.

Applicant did what she could to prevent the foreclosure. She increased her hours of work, thereby bring home more income. She actively sought to secure new tenants, but was unsuccessful. She used her 401(k) retirement funds until they were exhausted. She refinanced her principle residence, until all the available equity in that residence was eliminated. She actively pursued alternatives with the mortgage holder including the possibility of a short sale. She did what she could to prevent the foreclosure.

Following foreclosure, Applicant offered to settle equity line of credit for \$5,000, which was a good-faith offer to settle the debt. The creditor refused and demanded a minimum payment of \$18,000, an amount she was unable to pay.

As her husband stated, her reasoning in purchasing the investment was sound at the time. Homes were increasing in value. They knew the area and were only five minutes from the property so they could monitor the property. They anticipated house prices would continue to increase. The downturn in the housing market caught a large segment of the population by surprise. Applicant and her husband were very insistent that they would not buy investment property again.

AG ¶ 20(a) applies. The behavior is infrequent. The sole unpaid debt is the line of credit. There are no other delinquent obligations. The debt was incurred under circumstances that are unlikely to recur. The downturn in the housing market does not cast doubt on Applicant's current reliability, trustworthiness, or good judgment.

Under AG ¶ 20(b), the down turn of the market and the inability to find a paying were beyond her control. Applicant did all she could to prevent the foreclosure. She acted responsibly under the circumstances. Her current finances prevent making an offer of more than \$5,000 to settle the line of credit.

AG ¶ 20(c) does not apply. There has been no showing Applicant has received financial counseling. However, except for this single debt, Applicant's finances are under control. AG ¶ 20(d) does not apply to the line of credit, but does apply to the property owner's association judgment because that judgment (SOR ¶ 1.a, \$319) was paid and the judgment released.

Whole Person Concept

Protection of our national security is of paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the adjudicative process is the fair-minded, commonsense assessment of a person's trustworthiness and fitness for access to classified information. In reaching this decision, I have considered the whole person concept in evaluating Applicant's risk and vulnerability in protecting our national interests.

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) 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The two debts are not the types that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Money was not spent frivolously. The debts set forth in the SOR were not incurred on luxuries, but were the monthly association fees on the investment property and the equity line of credit used as down payment to purchase the property. Applicant worked extra hours, used the equity in her home, and used her retirement funds to

prevent foreclosure, which shows a strong desire by Applicant's to prevent the foreclosure.

Having had a bad experience with investment property it is unlikely Applicant will repeat the conduct. A house went to foreclosure, but this does not indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. It does not raise questions about her reliability, trustworthiness, or ability to protect classified information. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from her financial considerations.

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: FOR APPLICANT

Subparagraph 1.a and 1.b: 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 eligibility for a security clearance. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge