



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



In the matter of:)	
)	
)	ISCR Case No. 08-11315
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro Se*

November 4, 2009

Decision

HEINY, Claude R., Administrative Judge:

As a result of her employment, Applicant transferred from one state to another. Even with extensive efforts, she has been unable to sell her home following the move. Applicant has rebutted or mitigated the government’s security concerns under financial considerations. Clearance is granted.

Statement of the 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 a

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

Statement of Reasons (SOR) on April 22, 2009, detailing security concerns under financial considerations.

On May 8, 2009 and July 9, 2009, Applicant answered the SOR, and requested a hearing. On August 5, 2009, I was assigned the case. On August 17, 2009, DOHA issued a notice of hearing scheduling the hearing, which was held on September 21, 2009. The government offered Exhibits (Ex.) 1 through 7, which were admitted into evidence. Applicant testified on her own behalf and submitted Exhibits A through E, which were admitted into evidence. On September 29, 2009, DOHA received the transcript (Tr).

Findings of Fact

In Applicant's Answer to the SOR, she denied being a security risk and denies the allegations set forth in SOR ¶¶ 1.a and 1.b. After a thorough review of the record, pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 40-year-old quality engineer who has worked for a defense contractor since December 2003, and is seeking to obtain a security clearance. Friends and colleagues state Applicant is extremely competent, trustworthy, and ethical. She has a commitment to excellence, and displays the utmost integrity. (Ex. A)

In August 2000, Applicant purchased a home in Tampa, Florida. Applicant obtained a \$210,000 mortgage with approximately \$1,800 monthly mortgage payments. (Ex. E) The home needed a new roof and air conditioners. It also needed repairs to the kitchen, bathroom, and pool. (Ex. 2, 3) In May 2006, Applicant obtained a \$90,000 second mortgage from her credit union to pay for the repairs and remodeling. (Ex. 3, 4) Prior to the remodeling, the house was appraised at \$300,000. (Tr. 37) The remodeling was completed in November 2006. (Tr. 38) Applicant's February 2007 credit bureau report (CBR) indicated Applicant was current on all her financial obligations including her first and second mortgages. (Ex. E) All of the accounts listed in that CBR indicated Applicant had paid the accounts satisfactorily or was paying the accounts as agreed. (Ex. E)

After having lived in her home for seven years, Applicant received a promotion at work requiring her to move to another state. (Tr. 31) In February 2007, she put her Florida home on the market and received two offers. (Tr. 27, Ex. C) However, both offers failed to reach settlement. As the home prices in the area continued to fall, Applicant secured a tenant in her home. After a month, the renter stopped paying and Applicant had a difficult time evicting the tenant.

In April 2007, she moved to the new state. In October 2007, she jointly² purchased a \$275,000 home at her new location, with monthly payments of approximately \$2,500. (Tr. 32, 33, 46, Ex. 5) When Applicant moved to her new

² The record contains no additional information about this individual or Applicant's relationship to this individual, if any.

location, she had \$15,000 in savings. She exhausted those funds making mortgage payments on the Florida property. (Tr. 28) Additionally, Applicant exhausted one of her 401(k) retirement plans paying other creditors. (Tr. 33) In April 2008, Applicant was unable to continue making her mortgage payments and informed both her first and second mortgage companies of her problem. The credit union charged-off the second mortgage. (Tr. 39) In May 2009, Applicant filed for Chapter 13, wage earner's plan, bankruptcy protection, which was confirmed by the bankruptcy court on September 9, 2009. (Ex. B, Ex. 6) The Florida home was included in the bankruptcy. (Ex. 5)

The mortgage company was granted a relief from the stay to allow it to take whatever actions were possible to sell the house or otherwise reduce their financial liability. On July 10, 2009, Applicant surrendered the Florida home to the mortgage company. (Tr. 40, Ex. B) At the time of the bankruptcy filing, Applicant's monthly income was approximately \$6,800; her net take home pay was approximately \$4,600; and she had monthly expenses of approximately \$4,500. Additionally, she receives \$1,500 per month rent from a roommate. (Tr. 46) The Chapter 13 plan required \$425 monthly payments for 59 months. (Ex. 6) Since June 2009, she has been making her monthly payments. (Tr. 29) Under the Chapter 13 plan, except for the Florida mortgage company, all creditors will receive 100% of what they are owed. (Tr. 39, Ex. B0)

Under the bankruptcy code, once the property has been surrendered to a creditor, there is no provision for a debt deficiency. Following the sale of the Florida house, the creditor can not seek payment for any deficiency from Applicant. (Tr. 35) Only in the case where the debt is reaffirmed following a Chapter 7 bankruptcy is a creditor permitted to sue the debtor for a debt deficiency. (Ex. B)

Applicant's August 28, 2008 credit bureau report (CBR) (Ex. 2) lists her mortgage as being in foreclosure. Seven months prior to the May 2008 reporting date, her mortgage was being "paid as agreed." (Ex. 2, page 8) Except for the Florida home, Applicant's credit has been excellent. (Tr. 37) That CBR lists 51 additional accounts. Some of those accounts are now closed and some are various accounts with the same creditor, but all are listed as paid as agreed. Her credit score prior this incident was 760. Applicant's August 19, 2009 CBR indicates all listed accounts are current. (Ex. D)

In July 2008, Applicant completed her Electronic Questionnaires for Investigations Processing (e-QIP), Standard Form (SF) 86. (Ex. 1) In her SF 86, she indicated she had a house in Florida that she had been unable to rent or sell and that it would be going to foreclosure.

Applicant does not have a car payment and was required to surrender her credit cards when she filed for bankruptcy protection. (Tr. 36) She is not being contacted by creditors and all of her other obligations are being paid as agreed.

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 must be considered 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 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.

The record evidence supports a conclusion Applicant has a history of financial problems. Applicant was behind on her mortgage payments and surrendered the house to the mortgage company. 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; or

(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 made a mistake in her real estate purchases. She purchased a second home before selling her first home. Her work required her to relocate from Florida to a state across the country. In February 2007, she put her Florida home on the market. Eight months later she purchased a home in her new location with another individual. Applicant had two offers on her Florida home, but neither went to settlement.

Applicant's financial problems were affected by market factors beyond her control. Home prices greatly declined following a period of homes being over-valued. AG ¶ 20(b) fully applies. The downturn of the market and her inability to sell the home were actions beyond her control. Applicant did all she could to eliminate the debt. She tried to rent the property and exhausted her savings. She acted responsibly under the circumstances.

Applicant has done what she can to eliminate this obligation. In the few months after her move, the market had changed. Market factors prevented the sale of her Florida home, so she secured a renter to help cover the cost of the Florida home. After paying rent for one month, the renter stopped paying and Applicant evicted the renter with difficulty. For one year, until February 2008, Applicant was able to make the monthly mortgage payments on the two homes, in part by exhausting her \$15,000 savings account.

The decline in the value of the real estate is not, of itself, the sole cause of Applicant's financial problems. The decline in value has prevented Applicant from liquidating the debt through sale of the properties at the amounts owed. However, it was the inability to sell her Florida home that resulted in her being unable to make mortgage payments on the house in Florida and her new home. Both are factors beyond her control.

AG ¶ 20(a) applies. The behavior is infrequent. Since the property has been surrendered to the mortgage company, Applicant's Chapter 13 bankruptcy prevents the mortgage company from collecting a debt deficiency on the Florida home. There are no other delinquent obligations. All of her other accounts have been paid in a timely manner and as agreed. The timely payment of all other obligations, with the exception of the Florida property, gives assurance that she will continue to make her monthly

payments to the Chapter 13 plan. The plan will pay all her other creditors 100% of what they are owed. 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.

AG ¶ 20(c) partially applies. There has been no showing Applicant has received financial counseling. However, except for this single debt, Applicant's finances are under control.

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) 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.

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 have incorporated my comments under Guideline F, Financial Considerations, in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

The mitigating evidence under the whole person concept is sufficient to warrant reinstatement of Applicant's security clearance. The debt incurred was not the type that indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Money was not spent frivolously. Applicant has only one outstanding debt. Now that she is in a Chapter 13 bankruptcy plan and has surrendered the Florida home to the lender, this debt cannot be a source of improper pressure or duress. Of course, the issue is not simply whether all her debts are paid—it is whether her financial circumstances raise concerns about her fitness to hold a security clearance. (See AG ¶ 2(a)(1).)

I have considered the unique circumstances surrounding her inability to sell her Florida home. Applicant's reasoning in accepting a work promotion and moving to another state had merit. Before renovations the house was appraised at \$300,000. She made the repairs and renovations assuming she would remain in the home. Only after

the work was completed was she told of the promotion and having to move to a new state. The downturn in the housing market caught a large segment of the population by surprise.

The Appeal Board has addressed a key element in the whole person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of “meaningful track record” necessarily includes evidence of actual debt reduction through payment of debts.” However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has ‘ . . . established a plan to resolve his financial problems and taken significant actions to implement that plan.’ The Judge can reasonably consider the entirety of an applicant’s financial situation and his actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (‘Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.’) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Having had a bad experience in purchasing a home without first selling the prior home, it is unlikely Applicant will repeat the conduct. Applicant was unable to make her monthly mortgage payments on two houses, 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: For Applicant

Subparagraph 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