



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



In the matter of:)	
)	
)	ISCR Case No. 08-11542
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Fahryn Hoffman, Esq., Department Counsel
For Applicant: Spouse of Applicant

June 15, 2009

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government's security concerns under Guideline F, Financial Considerations. Applicant's eligibility for a security clearance is granted.

On February 26, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline F. 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 for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on March 26, 2009, and requested a hearing before an administrative judge. The case was assigned to me on April 30, 2009. DOHA issued a Notice of Hearing on May 5, 2009. I convened the hearing as scheduled on June 2, 2009. The Government offered Exhibits (GE) 1 through 5. Applicant did not

object and they were admitted. Applicant testified and offered Exhibits (AE) A through E into evidence without objection from Department Counsel. DOHA received the transcript of the hearing (Tr.) on June 10, 2009.

Findings of Fact

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 47 years old and has been employed as a systems analyst for a federal contractor since January 2006. She has been married since 1981 and has two children, ages 24 and 17. Both live at home. Applicant graduated from college in 2003, earning a Bachelor of Science degree. Her husband is a realtor.¹

The SOR reflects two debts that are past due. The debt in SOR 1.a is a delinquent mortgage debt (\$53,713). Applicant and her husband bought a house in 2003 based on their two incomes. She was earning around \$40,000 annually at the time. Due to the real estate market decline Applicant's husband's income was reduced from approximately \$50,000 a year in 2005 to approximately \$38,000 in 2006 and \$23,000 in 2007. The reduction in income affected the couple's ability to pay their mortgage. Their mortgage payments were approximately \$3,800 a month. They depleted their savings while trying to make their mortgage payments. In March 2006 they were unable to pay their mortgage payment and defaulted. They had been in contact with their mortgage company while their financial situation was changing and when they defaulted they contacted their mortgage company again, so they could work out a payment plan that would benefit both sides.²

In January 2006 Applicant was hired by her current employer and her salary increased to approximately \$60,000. She was promoted in January 2009 and her current salary is \$88,000. Her husband continued to work in real estate, but his earnings continued to decrease. He worked from 2006 to 2009 for his realty employer, but in the past three months changed jobs. He also began working at a part-time retail job in October 2007.³

Applicant's husband filed for bankruptcy under Chapter 13 in April 2007 in his name only. The payment plan included their joint mortgage, an investment property, three credit card debts and his car that was repossessed. He made monthly payments of \$2,000 into the plan for nine months until the debts were discharged.⁴

¹ Tr. 21-25, 100-101.

² Tr. 18-20, 25-39, 57-66, 92-100.

³ Tr. 26-29, 59-65.

⁴ Tr. 30-36. All the debts except the mortgage were in Applicant's husband's name.

Applicant attempted to find a resolution to their mortgage default as alleged in SOR ¶ 1.a. In October 2008 she and her husband began the paperwork to modify their mortgage. The paperwork took 60 to 90 days to complete. In January 2009 they were notified by the mortgage company that they had lost their paperwork so they had to resubmit the information and it took another 60 to 90 days to complete the modification. In May 2009 their mortgage was modified and the total amount of the loan increased, which included all of their arrearages and costs. This new mortgage provided for a reduced interest rate. The modification requires monthly payments of \$4,029. The first payment is due July 1, 2009. Applicant testified that she and her husband have sufficient income to make their monthly payments.⁵

The debt in SOR 1.b is a credit card (\$99) that was past due on a balance of (\$978). Applicant has two credit cards with the retailer and provided proof that she is paying both on time and neither is past due.⁶

Applicant appears to have resolved the issues related to the delinquent debts in SOR 1.a and 1.b. She provided a budget, but it did not include the payments she is making toward her student loans (\$148/month, total owed \$23,000) and her quarterly life insurance payment (\$160). Applicant has seven to eight credit cards that have a total balance of \$15,000 that she is making payments on. She continues to use these credit cards. Most of her credit card debt appears to be over her limit or close to her maximum limit. In 2005, she and her husband refinanced their home and took out approximately \$54,000 in equity to pay a federal tax lien from the mid-1980s and a business tax lien associated with her husband for failing to have enough money withheld. She stated they had paid their taxes, but they could not prove it because they did not retain their files. Applicant testified that their taxes are paid.⁷ Their investment property was included in the bankruptcy and in August 2009 the arrearages on that property will be caught up. The \$1,600 payment for the property will be reduced to \$600 at that time, allowing for additional expendable income. During the period when Applicant's husband was making payments into the Chapter 13 payment plan, some of the payment was going toward their home mortgage to prevent foreclosure. The amount paid was less than their mortgage payment. Applicant lists that she has \$7,000 in their checking account and no other savings. Applicant testified she and her husband are trying to make changes in their lifestyle and realign their expenditures.⁸

Applicant's husband testified and took responsibility for his actions that affected the family's finances, such as his business tax lien.

⁵ Tr. 41-43; AE C.

⁶ Tr. 44-50; GE 3 page 2; AE D and E.

⁷ Applicant testified that they had approximately \$90,000 in equity in the house.

⁸ Tr. 50-100; GE 2 and 4. Applicant and her husband's tax lien and her husband's business tax lien were not considered for disqualifying purposes, nor was her overall credit card history. However, these matters were considered when analyzing Applicant's financial practices, ability to pay her debts and her credibility under the whole person section.

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 and 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

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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.

The guideline notes several conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and especially considered the following:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.

Applicant was unable to pay her mortgage and another debt that was past due. She and her husband earned sufficient incomes, even though his was reduced due to a financial market downturn. Based on the evidence, there is sufficient evidence to conclude that Applicant and her husband were living beyond their means and unable to pay their mortgage debt. I find the above disqualifying conditions have been raised.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and especially considered the following:

- (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 individual 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

Applicant's behavior is recent because she and her husband have a new mortgage they recently refinanced and will start making their new monthly payments beginning on July 1, 2009. Rolled into their new mortgage payment are their arrearages. I find mitigating condition (a) does not apply because the debt is still in its earliest stages of resolution and the first payment has not been made. Applicant and her family relied on two incomes when they obtained the mortgage. Applicant's husband's income as a realtor was reduced due to the economic market. This was a condition beyond her control. Her husband's failure to pay his business taxes and their failure to pay their federal taxes on time affected their total financial situation. Earlier they were able to refinance their home and take \$54,000 from it, but needed that money to pay their past taxes. This in turn affected their ability to use this money to pay their mortgage later. It appears Applicant's husband was handling the finances; however, Applicant was also contributing to the family debt. I find under the circumstances mitigating condition (b) only partially applies because some of the tax problems was within Applicant's control, even though the decrease in income was not. To Applicant's credit, she and her husband have been working with the mortgage company throughout the period when his income was reduced. They have continued to work with them and have negotiated a new mortgage that includes paying their arrearages.

Applicant provided proof that she is current on the credit card debt that was alleged. There is no evidence Applicant has received any financial counseling. However, there is a clear indication that she is resolving her mortgage delinquency and initiated a good-faith effort to address the problem as it was occurring. Applicant provided proof that she is current on the credit card debt alleged. She provided sufficient evidence to show the allegation is resolved. Therefore, I find mitigating condition (c) and (d) 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 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 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 and her husband experienced financial problems when his income was reduced. They refinanced their home to pay overdue tax liens that in turn affected their ability to use this money when the market downturn reduced her husband's income. Applicant has resolved the two debts alleged in the SOR. Her husband is working full-time and has a part-time job. Applicant has a significant number of credit cards that are at or close to their maximum limits and is meeting her monthly payments. Although Applicant did not file for bankruptcy, her husband did and she benefited from it. At this time, Applicant appears to have her finances in order and is paying her bills. She and her husband seem to have their finances back on track, but obviously need to be committed to long term changes in their spending habits. I find the record evidence does not leave me with 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 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, Guideline F:	FOR APPLICANT
Subparagraphs 1.a-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 interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge