



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



In the matter of:)
)
) ISCR Case No. 08-12161
)
)
Applicant for Security Clearance)

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel
For Applicant: *Pro Se*

January 22, 2010

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the record evidence as a whole, eligibility for access to classified information is granted.

On September 8, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (eQIP). On June 18, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). 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.

On July 13, 2009, Applicant answered the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. On September 25, 2009, Department Counsel prepared a File of Relevant Material (FORM) containing nine Items and mailed Applicant a complete copy on September 29, 2009. Applicant received the FORM on October 6, 2009, and had 30 days from its receipt to file objections and submit additional information. On or about October 20, 2009, Applicant submitted four exhibits to which Department Counsel had no objection. On or about November 13, 2009, Applicant submitted another document without Department Counsel's objection. On November 17, 2009, DOHA assigned the case to me. After receiving the file, I marked Applicant's exhibits as AE A through E and entered them into the record.

Findings of Fact

In her Answer to the SOR, Applicant admitted the factual allegations contained in Paragraphs 1.a and 1.b.

Applicant is 46 years old and married to her second husband. She has been enrolled in college from April 2007 to the present. From February 2001 to December 2001, she worked for the federal government as a mail assistant. She then obtained a position with a federal contractor for whom she worked until September 2003. From October 2003 to September 2007, she owned a hair salon. After a six-month period of unemployment, she obtained a position with a private company. In September 2008, she completed an e-QIP and started her current position as an administrative specialist with a federal contractor. (Item 5.)

In October 2006, Applicant and her husband purchased a \$554,000 home with a primary mortgage of approximately \$439,000 and a second mortgage for \$115,000. (Item 8 at 13-14.) Credit bureau reports (CBR) dated September 2008 and June 2009 report that both mortgages became delinquent in late 2007 or early 2008, and apparently went into foreclosure.¹ (Items 7; 8; 9.)

In her Answer, Applicant stated that she attempted to work with the mortgage company to modify the loans for several months after she closed her business in September 2007 and was unemployed. A customer service representative advised her not to pay the mortgages until the company sent her a loan modification. (Item 4.) According to a July 2009 letter from her lawyer, Applicant contacted him about modifying her mortgages in November 2008. (Item 4.) He noted that Applicant's income and business were adversely affected by the economic downturn and her husband's inability to work for a period of time because of a knee injury. He affirmed that Applicant unsuccessfully attempted to work out a loan modification with the mortgagor. (*Id.*) After

¹Applicant did not disclose that her mortgages were delinquent in the September 2008 e-QIP. In her Answer to the SOR, she stated that she did not know they were delinquent because her husband paid the family bills. (AE A.) Although the government did not raise a falsification security concern under the Personal Conduct Guideline in the SOR, this information may be considered in the whole-person analysis.

reviewing the file, he asserted that the lender engaged in “predatory and deceptive lending practices” and “placed this borrower into a non-affordable loan putting them at jeopardy of losing their home.” (*Id.*) In January 2009, Applicant filed an Official Qualified Written Request to restructure the two mortgages. (Item 6.) On August 27, 2009, Applicant executed a loan modification agreement, in which the second mortgage was released and merged into the first after she paid \$1,000. (AE B.) The total mortgage amount was modified to \$535,700 and required three initial monthly payments of \$4,129, beginning on September 6, 2009, and monthly payments of \$3,218 thereafter. (Item 8.) Applicant submitted evidence that she made the first payment of \$4,129 on August 31, 2009, and that the mortgage company released the second mortgage. (Item 8, AE E.)

On January 29, 2009, Applicant entered into an agreement with a credit counseling service to consolidate \$46,600 of debt, including her husband’s credit card bills, through monthly payments of \$1,192 beginning in February 2009. (Item 6.) Applicant’s March 2009 family budget reflected a net monthly income of \$8,040, expenses of \$2,540, a \$4,700 mortgage payment, and the \$1,192 debt repayment, leaving a negative \$392. (Item 6.) The revised mortgage payment eliminates the negative balance at the end of the month.

Applicant’s student loans total approximately \$28,641 and are deferred until 2011. (Item 7 at 2; AE A.) In January 2008, she obtained a \$4,250 student loan. Between August and December 2008, she borrowed another \$8,500.

The SOR alleged that Applicant’s two mortgage loans were past due debts and raised security concerns. The status of each debt is as follows:

1. (¶ 1.a) noted that Applicant was \$9,000 past due on the \$115,000 second mortgage. This mortgage was satisfied and released in August 2009. This debt is resolved.
2. (¶ 1.b) alleged that Applicant was \$80,000 past due on the \$439,000 first mortgage. This mortgage was modified and restructured at the end of August 2009. She presented evidence that she made the first required payment under the new loan. The mortgage is being resolved.

Applicant stated in her Answer that she does not believe that she is living above her means. She paid off two of her charge cards and consolidated her husband’s credit card debt through the credit counseling services.² With the large reduction of her monthly mortgage payment and her monthly monitoring of the family bills (instead of her husband), she believes her finances are resolving. (AE A.)

²The SOR does not raise any security concerns regarding her credit cards.

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 (DC) and mitigating conditions (MC), 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 overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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. According to Directive ¶ E3.1.15, an "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."

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 that an 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 adverse to an applicant 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are 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.

AG ¶ 19 sets forth two conditions that could raise a security concern and be potentially disqualifying in this case:

- (a) an inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

After closing her business in September 2007, Applicant was unable to resolve her delinquent mortgages until August 2009. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 20 includes six conditions that could mitigate security concerns arising under this guideline, three of which may be applicable in this case:

- (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 closed her business in September 2007 and was unemployed for six months. According to her attorney, she experienced financial problems as a consequence of the poor economic climate and her husband's knee injury. Those circumstances were conditions beyond her control. Sometime in 2008, she attempted to renegotiate her mortgages, but ultimately needed to hire a lawyer in November 2008

(albeit after completing an e-QIP) after her individual attempts failed. However, within two months of closing her business and becoming unemployed, she decided to attend college and assumed additional debt of approximately \$13,000 of student loans, which was a decision within her control. Thus, AG ¶ 20(b) has limited application. Applicant obtained credit counseling and entered into a repayment plan for debts not included in the SOR in January 2009. The \$1,192 monthly repayment is included in her budget. Her new loan modification agreement reduced her monthly mortgage payment from the March 2009 amount of \$4,700 to \$4,129 through November 2009; thereafter, it will be reduced to \$3,218, giving her a remainder of \$1,400 in her budget. This amount should be sufficient to manage payments on her student loan, which becomes due in 2011. These actions warrant an application of AG ¶ 20(c) and AG ¶ 20(d) because they indicate that the mortgages are being paid and resolved through her good-faith efforts to modify the loans.

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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They include the following:

- (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.

According to 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. Applicant is a 46-year-old woman, who has worked for a defense contractor for the past year. She and her husband were unable to pay their two mortgages after Applicant's business closed in September 2007 and she became unemployed for six months. The current economic downturn and her husband's injury further exacerbated the problem. She attempted to renegotiate the loans, but was unable to do so without the assistance of a lawyer. Those loans were consolidated in August 2009 and a lower monthly payment established. Based on Applicant's awareness of the effect that future financial problems could have on her employment, along with her budget that is sufficient to pay her expenses, debts, and reduced mortgage payments, it is unlikely that similar financial problems will recur. Overall, the record evidence leaves me without concerns as to Applicant's eligibility and

suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ 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

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.

SHARI DAM
Administrative Judge