



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-04707
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Nichole Noel, Esq., Department Counsel
For Applicant: *Pro se*

June 18, 2010

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant served on active duty in the U.S. Army from March 1997 to March 2006. She received a security clearance in January 1998 and was eligible for access to sensitive compartmented information (SCI) during her military service.

On December 11, 2009, the Defense Office of Hearings and Appeals (DOHA) sent her a Statement of Reasons (SOR) detailing the basis for its preliminary decision to revoke her clearance, citing security concerns under Guideline F. DOHA acted 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 adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

Applicant received the SOR on December 18, 2009; answered it on January 4, 2010; and requested a hearing before an administrative judge. DOHA received the request on January 8, 2010. Department Counsel was ready to proceed on February 18, 2010, and the case was assigned to me on March 4, 2010. DOHA issued a notice of hearing on March 10, 2010, scheduling the hearing for March 25, 2010. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted in evidence without objection. Applicant testified, presented the testimony of two witnesses, and submitted Applicant's Exhibits (AX) A through H, which were admitted without objection. I kept the record open until April 1, 2010, to enable Applicant to submit additional documentary evidence. At her request, I extended the deadline until April 9, 2010. She timely submitted AX I, J, and K, which were admitted without objection. Department Counsel's comments regarding AX I, J, and K are attached to the record as Hearing Exhibit I. DOHA received the transcript (Tr.) on April 1, 2010.

Findings of Fact

In her answer to the SOR, Applicant admitted the allegation in SOR ¶ 1.a and denied the allegation in SOR ¶ 1.b. Her admissions in her answer and at the hearing are incorporated in my findings of fact.

Applicant is a 34-year-old network engineer employed by a defense contractor. She holds an associate's degree in business and is working toward her bachelor's degree through an on-line university. (Tr. 42.) She married in December 2000 and divorced in December 2001. She remarried in August 2007, but she was separated as of the date of the hearing. She and her husband were uncertain at the hearing whether they would reconcile or seek a divorce. She has two children born from her previous marriage and one born during her current marriage. (Tr. 42-43.)

Applicant purchased a home for \$300,000 in October 2005, financed with two sub-prime mortgages, while she was still on active duty as a U.S. Army sergeant (pay grade E-5). The first mortgage was an adjustable-rate mortgage for \$240,000 and the second was a fixed-rate mortgage for \$60,000. (Tr. 46.) Both mortgages were with the same lender, to whom Applicant was referred by the real estate agent who sold her the house. Payments on the two mortgages totaled about \$2,211 month. (GX 3 at 5; AX G at 12-13.) Applicant's monthly take-home pay was about \$ 3,956. (AX G at 12.)

Applicant testified that she was financially naïve when she negotiated the purchase of her home and the related financing. She had never purchased a home before. She did not know the terms of her mortgages until closing. She testified she was unaware that she could withdraw from the purchase agreement up to the time that closing was completed. (Tr. 21-22).

Applicant started working part time for a defense contractor while she was still on active duty. She continued to work for this contractor after leaving active duty, but she was laid off for about two weeks, and was late in making a mortgage payment. She notified the mortgage lender in June 2006 that she was having difficulty making her

payments, and she was advised that a hardship assistance program was available. She applied for that program in August 2006, and the late payment apparently was resolved. (AX K.)

In May 2007, Applicant was laid off and was unemployed for about a month. She found a temporary job that lasted until September 2007, and was then unemployed until November 2007, when she was hired by her current employer. (Tr. 57-58.). She missed her mortgage payments for October, November, and December 2007. She received a foreclosure notice in December 2007, and she and her family moved out of the house into an apartment in January 2008 to avoid eviction. (GX 3 at 3, 5.) She made no further payments.

Applicant tried to refinance the mortgage but was unsuccessful. (Tr. 62-63.) A friend offered to buy Applicant's house for \$175,000, but the mortgagor would not agree to the short sale. (AX H.) The mortgagor moved forward with the foreclosure and scheduled an auction for April 2008, with a starting bid of \$109,000. (GX 3 at 5; AX E at 6.) The action to revoke her clearance was triggered when she self-reported the foreclosure to her facility security officer. (Tr. 8.)

Applicant did not contact the mortgage company after January 2008. She learned through an internet search that the house was sold for about \$90,000. (Tr. 38-39.)

Applicant's credit report dated July 17, 2009, reflected that the two mortgage debts were transferred to another creditor, with a zero balance on the first mortgage and a balance of \$59,545 on the second mortgage, charged off as a bad debt. (GX 4 at 2-3.) An August 2009 account statement from the original lender also reflects a zero balance on the first mortgage. (GX 2 at 7.)

When Applicant was questioned by a security investigator about the delinquent second mortgage in November 2008, she was unaware that a new creditor held the second mortgage debt. (GX 3 at 5.) In response to DOHA interrogatories in August 2009, she acknowledged the delinquent second mortgage, reported the current balance as zero, and stated that the account was shown on her credit report as charged off. (GX 2 at 2.) In her answer to the SOR, she admitted being indebted to the new creditor in the amount of \$59,546. There is no evidence that she attempted to contact the new creditor. She has not disputed the credit report information.

Applicant's delinquent medical bill was incurred during the birth of her youngest child, but she did not know that she owed anything until it was referred for collection, because the bill was mailed to the wrong address. (GX 3 at 6; Tr. 65-66.) The medical bill was paid in August 2008. (AX J.)

Applicant has not sought or received financial counseling. Her current monthly net income is about \$4,260. Her expenses are about \$2,511, leaving a remainder of about \$1,749. (AX B.) She uses some of the remainder to help her mother. (Tr. 70.)

Applicant and her three children have been living with her brother since November 2009, and she pays him rent of \$1,000 per month. (Tr. 68, 78.)

Applicant's brother is a federal employee and holds a security clearance. He was generally familiar with Applicant's efforts to avoid foreclosure, but he was not familiar with the details. (Tr. 79-80.) Her spouse, who is employed by a federal law enforcement agency and holds a clearance, corroborated Applicant's efforts to avoid foreclosure. (Tr. 89-91.)

Applicant's supervisor has known her since 2003, when she was on active duty. Applicant has continued to work for the same supervisor as a civilian contractor employee. Her supervisor strongly endorses continuation of Applicant's security clearance because of her integrity, loyalty, and honesty. (AX A.)

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to 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.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is not necessarily a determination as to the loyalty of the applicant. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

The SOR alleges a delinquent second mortgage for about \$59,549 (¶ 1.a) and a delinquent medical bill for \$325 (¶ 1.b). Applicant admitted the delinquent second mortgage. She denied the delinquent medical bill and submitted proof that it was paid in August 2008. She has refuted the allegation in SOR ¶ 1.b, and it is resolved in her favor.

The concern under this guideline is set out in AG ¶ 18 as follows:

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.

Several disqualifying conditions under this guideline could raise a security concern and may be disqualifying in this case. AG ¶ 19(a) is raised where there is an “inability or unwillingness to satisfy debts.” AG ¶ 19(c) is raised when there is “a history of not meeting financial obligations.” AG ¶ 19(e) is raised when there is “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’s payment history on her home mortgages raises AG ¶¶ 19(a) and (c). AG ¶ 19(e) also is raised by her purchase of a home on terms she could not afford.

Because the Government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a), (c), and (e), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Security concerns based on financial problems can be mitigated by showing that “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.” AG ¶ 20(a). Applicant’s delinquent mortgage is recent. It was foreclosed after she missed several payments. The foolhardy mortgage debt is unlikely to recur, because Applicant is more financially savvy than she was when she purchased her house in 2005. When she first fell behind on her mortgage, she repeatedly contacted the original lender in an effort to refinance, negotiate new terms, or execute a short sale. However, there is no evidence that she has attempted to contact the creditor who acquired the delinquent second mortgage, even though her security interview in November 2008 and the DOHA interrogatories in August 2009 put her on notice that the delinquent second mortgage continued to raise security concerns. I conclude AG ¶ 20(a) is not established for SOR ¶ 1.a.

Security concerns under this guideline also can be mitigated by showing that “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.” AG ¶ 20(b). Both prongs, i.e., conditions beyond the person’s control and responsible conduct, must be established.

The unfavorable terms of Applicant’s mortgage were not beyond her control, because she could have refused to go forward with the purchase and financing. Her periods of unemployment that caused her to fall behind on her payments were beyond her control. She tried to avoid foreclosure, but she did not act responsibly with regard to the delinquent second mortgage after her efforts to avoid foreclosure failed. I conclude AG ¶ 20(b) is not established for SOR ¶ 1.a.

Security concerns under this guideline also can be mitigated by showing that “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” AG ¶ 20(d). The concept of good faith “requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.” ISCR Case No. 99-0201, 1999 WL 1442346 at *4 (App. Bd. Oct. 12, 1999). Applicant tried to avoid foreclosure and resolve the delinquent mortgages, but she abandoned her efforts after the mortgage was foreclosed and the house was sold. She presented no evidence of efforts to resolve the delinquent second mortgage that is still reflected on her credit report. The evidence strongly suggests that she was not motivated by a sense of obligation to the lender, but rather by her desire to avoid foreclosure. After she was unsuccessful in avoiding foreclosure, she made no further

efforts to contact the new creditor or resolve the delinquent second mortgage. I conclude AG ¶ 20(d) is not established for the delinquent second mortgage alleged in SOR ¶ 1.a.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the relevant circumstances. An 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 have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is an intelligent, articulate woman. She has held a clearance for 13 years. She demonstrated integrity and candor by self-reporting the impending foreclosure on her home. Her financial naïveté during her ill-fated home purchase is somewhat surprising in light of her age, military experience, and educational level, but I found her testimony about her failure to understand the consequences of the transaction plausible and credible. Although she initially acted aggressively to prevent foreclosure, her lack of initiative to resolve the delinquent second mortgage after the foreclosure sale raises concern about her trustworthiness and good judgment.

After weighing the disqualifying and mitigating conditions under Guideline F, evaluating all the evidence in the context of the whole person, and mindful of my obligation to decide close cases in favor of national security, I conclude Applicant has not mitigated the security concerns based on financial considerations. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with the national interest to continue her eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

LeRoy F. Foreman
Administrative Judge