



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 09-05931
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Allison O’Connell, Esquire, Department Counsel
For Applicant: *Pro se*

July 13, 2010

Decision

CURRY, Marc E., Administrative Judge:

Applicant was unable to make mortgage payments on her home, leading to its foreclosure in 2008, and generating a security concern. Considering the circumstances surrounding Applicant’s purchase of the home, the steps she took to eliminate the debt remaining from the home’s foreclosure, and her significantly improved financial circumstances, I conclude she has mitigated the financial considerations security concern. Clearance is granted.

Statement of the Case

On January 25, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant 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) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on February 4, 2010, and requested a hearing. The case was assigned to me on March 12, 2010. On March 24, 2010, a notice of hearing was issued scheduling the case for April 22, 2010. At the hearing, I received five Government exhibits, nine Applicant exhibits, and the testimony of Applicant. The transcript was received on April 30, 2010.

Findings of Fact

Applicant is a 21-year-old married woman. She is a recent college graduate, earning a bachelor of science degree in electrical engineering in May 2009. (Tr. 19) A few weeks after graduation, Applicant began working as a systems engineer for her current employer, a defense contractor. (Tr 22) She is highly respected on the job, often demonstrating “an uncommon willingness to go far above and beyond the call of duty to ensure that [the company’s] projects [were] successful.” (AE F)

Applicant financed her college education herself through a combination of scholarships and part-time jobs. (Tr. 48) She first worked as a dental assistant, working approximately 25 to 30 hours per week. (Tr. 25) Later, as her college studies intensified she quit the dental assistant job and began working as a substitute teacher. (Tr. 26) She worked approximately 15 hours weekly in this position.

According to one of Applicant’s professors she was an exceptional student. (AE H) She was particularly effective at team-building and overcoming complex engineering challenges. (*Id.*)

Applicant was dating her husband while she was in college. At the time, he was working as a construction project manager. (Tr. 34) In 2006, Applicant and her then-boyfriend decided to purchase a home. Their primary goal was to earn a profit from the home by selling it once it appreciated significantly over their purchase price. (Tr. 29, 30) Also, according to their plans, Applicant’s boyfriend would live in the home and build equity in the home through their mortgage payments, until they decided to sell it.¹ (Tr. 50) They financed the home through a \$6,000 down payment, split evenly between them, and two mortgages with the same mortgage company, as listed in the SOR. (Tr. 28) When Applicant and her then-boyfriend purchased the home, his salary was \$70,000. (Tr. 34) Neither of Applicant’s part-time job salaries ever exceeded \$15 per hour. (Tr. 25-26)

Nevertheless, the mortgage company approved the purchase. The monthly mortgage payments from both loans was \$3,800. (Tr. 29) By 2008, these mortgage

¹Applicant was living with her parents when she purchased the house. She planned to move into the house after graduation and after she and her boyfriend got married. (Tr. 29)

payments proved to be “too much for [them] to handle,” and they fell behind. (Tr. 32) By February 2009, they had stopped making payments entirely. (Tr. 33) They attempted to negotiate a loan modification, but their efforts were unsuccessful. In May 2009, the bank initiated foreclosure proceedings. (Tr. 34) The foreclosure was completed by the fall of 2009. (AE C, AE E)

In October 2009, Applicant retained an attorney and filed for Chapter 7 bankruptcy protection. (AE A) Both of the delinquent mortgage loans, as listed in SOR subparagraphs 1.a and 1.b, were included in the bankruptcy discharge. (AE E at 10; Tr. 53) Also, two debts that were not alleged in the SOR were included in the bankruptcy petition. (AE E at 10; AE C at 4) On February 10, 2010, the bankruptcy court granted the debt discharge. (AE D)

The SOR alleges one additional debt owed to a credit card company. (SOR subparagraph 1.c) Applicant denies this allegation, asserting that it was her then-boyfriend’s account, and that she was merely an authorized user. (Tr. 36) She denies charging any items to this account. Applicant disputed this debt with the creditor. In August 2009, upon conducting an investigation, the creditor acknowledged its mistake, and informed her the alleged debt would not be reported to credit agencies in the future. (AE B)

Shortly after graduating from college, Applicant and her boyfriend got married. (Tr. 35) Currently, Applicant continues to live with her parents while her husband attends medical school abroad. (Tr. 54) She earns \$67,000 annually, and has \$1,100 of monthly after-expense income. (Tr. 43, 47) Since finishing college, Applicant has saved approximately \$10,000. (Tr. 53)

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with the factors listed in the adjudicative process. 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.”

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.

Analysis

Guideline F, Financial Considerations

Under this guideline, “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” (AG ¶ 18). Applicant fell behind on mortgage payments for a home purchased in 2006, resulting in its foreclosure in 2009. AG ¶ 19(a), “inability or unwillingness to satisfy debts,” applies. She had no history of difficulty satisfying her debts before she purchased the home. 19(c), “a history of not meeting financial obligations,” does not apply. None of the other disqualifying conditions are relevant.

Before Applicant’s home was foreclosed upon, she had unsuccessfully attempted to negotiate a loan modification. When these efforts were unsuccessful, she retained an attorney and filed for Chapter 7 bankruptcy. Both mortgages were discharged through the bankruptcy process.

Applicant has been working full-time since graduating from college. She currently earns \$67,000, has no debts, and has saved approximately \$10,000. AG ¶¶ 20(c), “. . . there are clear indications that the problem is being resolved or is under control,” and 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” applies.

The SOR also alleged a credit card delinquency. Applicant successfully disputed this debt, receiving written confirmation from the credit card company that it was not her responsibility. AG ¶ 20(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,” applies.

Whole-Person Concept

Under the whole-person concept, 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.

In 2006, as a teenager, Applicant financed the purchase of a home with two mortgages totalling \$469,000 despite never having previously worked a full-time job. The nature, extent and seriousness of the conduct is significant.

Given Applicant's youth, the naivete of her belief that she could afford such an expensive home was understandable, particularly after the bank approved the mortgage loans. Also, the record evidence indicates that this episode of bad judgment was the only significant misstep in Applicant's adult life. She has been successful at all of her other endeavors - financing her college education, graduating, and obtaining a lucrative job immediately upon graduation. During her educational and professional development, she has earned the respect of both her peers and her educators. Also, although her decision to purchase such an expensive house was flawed, it cannot be characterized as frivolous.

Applicant discharged the debt remaining from the foreclosure through a Chapter 7 bankruptcy process, which she initiated with the assistance of an attorney. She has begun a promising career, and is managing her money prudently, judging by the amount she has saved in the past year. The likelihood of recurrence is minimal. Upon considering this case in the context of the whole person factors, I conclude Applicant has mitigated the security concern.

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.c:	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.

MARC E. CURRY
Administrative Judge