



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



In the matter of:)	
)	
)	ISCR Case No. 09-06043
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: David A. Hayes, Esq., Department Counsel
For Applicant: David Price, Esq.

March 28, 2011

Decision

LYNCH, Noreen A, Administrative Judge:

On September 30, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) alleging security concerns arising 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 (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing. DOHA assigned the case to me on December 23, 2010. A notice of hearing was issued on January 13, 2011, and the case was heard on February 1, 2011. Department Counsel offered five exhibits, which were admitted without objection as Government Exhibits (GE) 1-5. Applicant testified and submitted exhibits AE A through AE H (with 36 attachments) at the hearing, which were admitted without objection. DOHA received the transcript (Tr.) on February 9, 2011. Based on a review of the pleadings, submissions, testimony, and exhibits, I find Applicant met her burden regarding the security concerns raised. Security clearance is granted.

Findings of Fact

Applicant is a 55-year-old employee of a defense contractor. She graduated from high school and attended college for approximately one year. Applicant is divorced and has four children. Applicant served in the U.S. Marine Corps from 1976 to 1996. (AE E) She has worked for her current employer since April 2009. (GE 1)

Financial

Applicant worked in the banking industry after retiring from military service. She was successful and had no financial difficulties until February 2007, when she resigned her bank manager position due to a policy disagreement. After her position ended, she had every expectation that she would find comparable work. She experienced unemployment from February 2007 until May 2007. She was forced to accept various low-paying jobs so that she could pay her expenses. She was also unemployed later from February 2008 until March 2009. (GE 1) She fell behind in paying her bills and voluntarily returned her car in 2007.

In September 2006, when working as a bank manager, Applicant and her fiancée purchased a home for approximately \$620,000. They obtained two home mortgages split 80/20. (Tr. 31) They had planned to refinance the home in one year, but due to the housing market, that did not occur. They are still living in the home. They had difficulty paying the mortgages after 2007, when Applicant experienced unemployment. (Tr. 34) The smaller mortgage has been modified and is current. (GE 2) The larger mortgage is in the process of modification.

The SOR lists 17 delinquent accounts totaling approximately \$17,100. The debts include judgments, medical accounts, vehicle repossession, and a past-due home mortgage of \$117,000. The credit reports confirm them. (GE 3, 4, and 5) Applicant contacted a company to help her with her delinquent bills, especially with the home mortgage. She paid an agency an initial fee of \$2,000, but they did not help her. They did advise her to not make any payments on her home mortgages. (AE D)

At the hearing, Applicant presented documentation that she has paid the accounts in SOR ¶ 1.a through 1.e, which totaled \$1,367; ¶ 1.i through 1.m. for a total of \$1,387; and ¶ 1.o through 1.q for a total of \$1,247.59. (AE A-E; AE I through M; and AE O through Q). She has two accounts in a payment plan for SOR ¶ 1. f and 1.g. The payment plan for SOR ¶ 1.f consisted of three payments of \$400 to settle the account. The final payment occurred in mid-January 2011. She settled the account in ¶1.g (car repossession) for \$5,000 by paying monthly. Applicant will complete her final payment of \$1,000 in April when she receives her income tax refund.

At the hearing, Applicant explained that due to her unemployment and lower paying jobs, she could not pay her bills in a timely manner. She also explained that her jobs paid just enough to pay a portion of her mortgage. She used credit cards to pay some other bills.(Tr. 68) She contacted her creditors and decided to pay the larger bills first. (Tr. 70) She disclosed her financial difficulties on her security clearance

application. At no time was Applicant shirking her responsibility to her creditors. Applicant denied the account in SOR allegation ¶ 1.n because it has been paid years ago, but it has not been removed from the credit report. She continues to seek its removal.

When Applicant and her fiancée could not manage the mortgage payment for the 80% loan in 2008, they contacted the bank, that held the mortgage to discuss a loan modification. During the process, another bank bought the loan. While they were discussing the modification with that bank another bank bought the loan. (AE G) At the same time, Applicant wrote to a national company to mediate the loan modification issue. She paid a fee of \$2,000 to them and was advised not to pay the mortgage. (Tr. 36). The national company did not mediate the issue and referred Applicant to Nationwide Homeowner's Retention Program (NHRP). The NHRP agreed to help with a budget, but did not offer any other assistance. (Tr. 39) After that, Applicant obtained the services of a law firm to liaison with the third bank. In January 2010, Applicant received a letter from the third bank with details concerning the Home Affordable Modification Program. (AE D) Applicant submitted requested documentation to the bank. In December 2010, Applicant believed that the loan modification was complete. However, she received a request for more documentation. Applicant has contacted the bank numerous times, and she is frustrated as she does not understand why the loan modification is not moving quickly. Her latest communication with the third and current bank in February 2011 revealed that the bank is looking for another lender to purchase the mortgage. (Tr. 73)

Applicant's monthly net income is \$3,300. Her military annuity is \$1,500. Her fiancée also has an income of approximately \$4,000 per month. Applicant has a budget. Applicant received financial counseling. She and her fiancée have bank accounts and some savings, including a 401(k) account. Applicant is current on her daily expenses and her car loan. They have a net monthly remainder of approximately \$1,000.

Applicant's employer describes her as an exemplary employee, who conducts herself with professionalism and is highly regarded by her peers. (AE F) She is a great asset to the company. Her employer is aware of the financial issues and approves of her efforts to address and resolve them.

Applicant had a distinguished career in the Marine Corps. (AE H) She was a mentor to young Marines. She served overseas on numerous occasions, and helped with training programs. When she retired from the military, the commandant praised her dedication and achievements. He described her as an example to young Marines because of her values.

Applicant submitted numerous character references, attesting to her devotion to duty, and professionalism. A coworker describes Applicant as extremely competent, efficient, and organized. She is described as a true asset to any organization. (AE H)

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief 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, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." ¹ The burden of proof is something less than a preponderance of evidence. ² The ultimate burden of persuasion is on the applicant. ³

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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." ⁴ "The clearly consistent standard indicates that security clearance

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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.” It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant had 17 delinquent debts in the approximate amount of \$17,000 for a number of years. She has a past-due amount of \$117,000 on a home mortgage. Consequently, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against her and mitigate security concerns.

Applicant was unemployed for various periods of time in 2007 and 2008. She accepted lower paying positions after her last banking position ended in 2007. She was not able to pay her bills in a timely fashion. Prior to 2007, she had no financial difficulties. Applicant consistently used good judgment in her finances. The past-due mortgage situation is unlikely to recur. Consequently, Financial Considerations Mitigating Condition (FCMC) AG ¶ 20(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) applies.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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)

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ *Id.*

applies. Applicant was successful in the banking industry after she left the military. When she left her banking position in 2007, she had difficulty finding comparable work. She was underemployed and unemployed, which greatly impacted her ability to pay her bills. In addition, due to the housing market, the home she and her fiancée purchased in 2006 could not be refinanced. This led to past-due mortgage payments. She immediately tried to get professional help and was advised not to pay the mortgage. She started paying her delinquent debts as soon as she was gainfully employed. She contacted a law firm to help with a loan modification program. She acted reasonably under the circumstances.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Applicant provided evidence of payments for all the delinquent accounts. She credibly denied one small account. The past-due home mortgage has been ongoing for several years, but Applicant has diligently been working on a loan modification. She was able to get a modification on the smaller mortgage. She has contacted the current bank. She hired a law firm to help negotiate her loan modification. She paid the national company \$2,000 to mediate the loan. She has not wavered in her efforts to rectify the loan. In December 2010, it appeared that the loan modification was complete, but more documentation was requested. She appears to be caught in the bureaucracy of a home modification program. Applicant completed financial counseling, developed a budget, and pays her monthly expenses. FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control) applies.

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 an 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 commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case as well as the “whole-person” factors. Applicant is 55 years old. She served honorably in the U.S. Marine Corps for 20 years. She is praised for her dedication to her country. She is described by her employer as an exemplary employee. She is a responsible parent and had no financial difficulties before 2007. Applicant was successful in the banking field after leaving the military. She had great difficulty in finding employment after her banking position in 2007. She accepted lower paying positions to pay her bills. She experienced unemployment.

The unexpected unemployment combined with the housing market crisis in 2008, left Applicant with an inability to maintain her bills and her monthly mortgage. She has worked diligently to pay her delinquent bills. She has also modified her smaller mortgage. She has documented and testified credibly that she has worked since 2008 to get the larger mortgage modified. At no time did she act in an unreasonable manner. She has taken responsibility for her situation. She does not want to lose her home and lose it to foreclosure. She does not want to walk away from the home. Applicant was candid and forthright in the entire security clearance process. She disclosed her financial delinquencies on her security clearance application. She was organized at the hearing and has shown that at one point in time, in December 2010, the loan modification was to be resolved. At the last minute that did not occur, but through no fault of Applicant. Applicant impressed me as a professional who is determined to resolve the final hurdle in her financial situation. I have no doubts about her sincerity and find that it is clearly consistent with the national interest to grant a security clearance.

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 through 1.q:	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 a security clearance. Clearance is granted.

NOREEN A. LYNCH.
Administrative Judge

