



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



In the matter of:)
)
) ISCR Case No. 09-06147
)
)
Applicant for Security Clearance)

Appearances

For Government: Kathryn MacKinnon, Esq. Department Counsel
For Applicant: *Pro Se*

September 29, 2010

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for a security clearance is denied.

On April 6, 2010, the Defense Office of Hearings and Appeals (DOHA) issued 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 Adjudicative Guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on May 3, 2010, and requested a hearing before an administrative judge. The case was assigned to me on July 2, 2010. DOHA issued a Notice of Hearing on July 21, 2010. I convened the hearing as scheduled on September 1, 2010. The Government offered Exhibits (GE) 1 through 5. Applicant did

not object and they were admitted. Applicant testified on her own behalf and offered Exhibits (AE) A through G, which were admitted without objections. The record remained open until September 14, 2010, to allow Applicant an opportunity to provide additional documents, which she did. One document was provided and it was marked as AE H. Department Counsel had no objections and it was admitted.¹ DOHA received the hearing transcript (Tr.) on September 8, 2010.

Findings of Fact

Applicant admitted all the allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 50 years old. She is married and has two grown children. She has worked as a senior consultant for a federal contractor since 2001. She has been continuously employed since 1984.²

In 2006, Applicant and her husband purchased a home. They financed the purchase with two mortgages. Mortgage #1 (\$275,000, SOR ¶1.f) had an initial monthly payment of \$1,675. Applicant believed the payment would increase after one year, but it would not continue to increase. However, she later learned that each year the mortgage payment increased. In April 2009, her monthly payment was \$2,005. Mortgage #2 (\$65,000, SOR ¶ 1.c) had a monthly payment of \$672.³

In 2009 Applicant's husband did not receive two months pay due to a problem with his employer. She estimated that he did not receive \$7,000 in pay. They paid what they could, but this event caused them to fall behind in paying their mortgages. He eventually received the back pay he was owed, but it was about six months later and he received it piecemeal and not in one payment. They used this money to pay other bills and put some toward their mortgage. In August 2009, they received a notification of foreclosure from their mortgage company. They hired an attorney in September 2009. The mortgage company would not accept any further payments because the loan was in a foreclosure status. They were five months past due with their payments. By March 2010 they were approximately \$40,000 past due in their payments. On the advice of her attorney she did not attempt to make any mortgage payments and the attorney submitted paperwork to the loan companies to modify her loan. She has not made any payments on this mortgage since June 2009. The request to the mortgage company is still pending.⁴

¹ Department Counsel's Memorandum was marked Hearing Exhibit I.

² Tr. 82-85.

³ Tr. 34-44.

⁴ Tr. 25-26, 34-44, 49-51; AE F.

Regarding Mortgage #2 there was confusion as to who was the current creditor. Applicant attempted to pay one company and they would tell her to pay a different one. The same would happen with the other company. Neither would accept her payments and each would tell her to pay a different creditor. Once it was determined who owned the debt, Applicant negotiated a payment plan to pay \$1,000 on August 25, 2010, and then \$400 each month until September 2011 (one year). After consistently monthly payments for a year, the mortgage company will re-evaluate the payment schedule. Applicant stated the loan officer would not provide any document in writing. Applicant made a payment of \$1,000 on August 23, 2010. She is still \$3,000 in arrears, but stated the creditor is aware and once Applicant establishes a consistent payment record the creditor will renegotiate the terms of the payment. Applicant is not paying the full monthly amount that is due or paying any amounts in arrears, rather she is attempting to establish a track record of consistent payments.⁵

Applicant explained when her husband did not receive his pay for two months it had an effect on their ability to pay other debts. They fell behind in their car payments too. Because they fell behind in their car payments, the insurance on one of their vehicles lapsed for a short period. During that period the car was stolen and later found burned. Their lack of insurance caused them to have to repay the total amount of the loan (SOR ¶ 1.d, \$12,861). Applicant did not pay the debt and it was charged-off. The creditor entered into a consent judgment stipulation which requires Applicant to make \$300 monthly payments on the 13th of each month until the debt is paid in full. Applicant made a payment of \$150 on August 16, 2010 and another payment of \$150 on August 27, 2010, instead of one payment of \$300. She stated the creditor agreed, contrary to the stipulation, to accept payment in this manner. Applicant purchased a new car in 2008 to replace the stolen car. Her car payments are \$549 a month. She was two car payments behind because she had to pay the \$1,000 for the payment agreement on Mortgage #2, and the \$300 for the payment agreement on the consent judgment. She also had to pay her attorney's fees.⁶

Applicant also had difficulty maintaining her car payments on their second vehicle (SOR ¶ 1.e, \$1,159) and missed two payments. She contacted the creditor and they agreed to accept \$391, plus \$6 processing fee, bi-weekly from July 30, 2010 to October 22, 2010, to allow her to catch-up on the missed payments. After she completes the rehabilitation schedule, she stated the creditor agreed to re-evaluate the loan and may agree to refinance the debt. Applicant has made four bi-weekly payments and is current with the payments. Applicant does not have a written agreement with the creditor.⁷

⁵ Tr. 24-25, 27-33, 78-79; AE E.

⁶ Tr. 22-23, 44-49, 51-55, 68-73; GE 3; AE B, H.

⁷ Tr. 25, 27, 52, 55-57; AE G.

The debt in SOR ¶ 1.a (\$266) was paid on April 29, 2010.⁸ The debt in SOR ¶ 1.b (\$366) was paid in May 2010.⁹ The debt in SOR ¶ 1.g (\$861) was paid.¹⁰

Applicant admitted that when they sought advice from an attorney, they realized they bought a house they could not afford and they are overextended in their finances. Applicant does not have any savings. Although she has not been making payments on Mortgage #1 since June 2009, she has not saved the money she would normally have used to pay the mortgage. Her husband took a loan from his retirement account that he is repaying. She does not have credit cards or have any other loan payments. She does not have a budget and does not know where they spend their money, other than for household requirements, such as utilities. She has not attended any financial counseling. Her husband has been continuously employed, and is now looking for a part-time job. Applicant admitted her finances are a mess and the notification of the security concerns has been a wake-up call for her. She and her husband have also incurred about \$4,500 in attorney's fees to help them resolve their foreclosure. Applicant received about \$1,200 for her 2009 tax refund. She used it to pay bills. She is living paycheck to paycheck.¹¹

Applicant provided character letters that I have considered. Her supervisor since 2001 stated Applicant's work habits and work products are exemplary. She is punctual and cooperative. She takes on ad hoc assignments to support emergency needs. She is professional, courteous, reliable, and a person with integrity. Coworkers describe her as hardworking, loyal, and she demonstrates high morals standards.¹²

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used 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(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,

⁸ Tr. 21; AE C.

⁹ Tr. 23, 27; AE D.

¹⁰ GE 5.

¹¹ Tr. 60-68, 73-82, 87.

¹² AE A.

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, 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 and has the ultimate burden of persuasion to obtain 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 safeguard 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.” 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 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 the disqualifying conditions under AG ¶ 19 and especially considered:

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

Applicant had delinquent debts that were unpaid and unresolved for a period of time. I find there is sufficient evidence to raise these disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under 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;
- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (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.

Applicant's has debts she is still resolving and they are current. She does not have a budget or have a realistic grasp on how she spends her money. I find that AG ¶ 20 (a) does not apply.

Applicant's husband did not get paid for two months which affected their ability to pay their mortgages and other bills. This event was beyond their control. She also was unaware of the contractual obligations she incurred when she secured a mortgage for her home, in that the mortgage rate would be adjusted annually. The annual increase in the mortgage was something she should have understood and planned for before purchasing their home. This was within her control. In order for AG ¶ 20(b) to fully

applicable, a person must have acted responsibly under the circumstances. In this instance, Applicant admitted that since their home has been in a foreclosure status, she has not made payments because the mortgage company would not accept them. Her attorney is attempting to renegotiate the loan. However, Applicant has not saved any of the monthly payments that she normally would be paying to the mortgage company. Instead she has used that money to pay other bills or for other things. She is renegotiating other debts and is hopeful she can secure new payment plans after a period of time of consistent payments. Applicant does not have a budget and admitted she does not know where she spends her money. She lives paycheck to paycheck. To make payments on certain delinquent debts, she has gotten behind in paying other debts. Applicant has not provided sufficient evidence to conclude she acted responsibly. I find AG ¶ 20(b) only partially applies.

Applicant has not had any financial counseling. She does not have a grasp on how she spends her money or a realistic plan for managing her finances. She has made efforts to work out rehabilitation payment plans, but has not presented a plan for how she will meet future payments when they are no longer at a reduced rate and when she has to make her regular mortgage payments. Without a budget and an understanding for managing her money, her long-term financial stability is unlikely. She did pay several of her delinquent debts and is attempting to resolve her other debts, but it is too early to conclude that there are clear indications that the problem is under control. I find AG ¶ 20(c) does not apply. I find AG ¶ 20(d) partially applies because she has paid some creditors. Applicant did not provide any documents to support a dispute of any of the debts. I find AG ¶ 20(e) does not 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 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 experienced financial difficulty when her husband did not receive pay for two months. She was unable to pay her mortgages and other bills. Her first mortgage is in a foreclosure status. She hired an attorney and she is hopeful they can renegotiate the loan, but that is still pending. Applicant also has begun rehabilitation payment plans with other debts. She is required to make consistent payments before the creditors will renegotiate the loans. She is in the initial stages of these plans. To Applicant's credit she has attempted to address her delinquent debts. However, it appears she is able to manage staying current on the rehabilitation plans because they are at a reduced rate and she is not currently paying her largest bill, her mortgage payment. She has not saved any money while her mortgage payments have been suspended. Without a detailed financial plan, and a budget that she strictly abides by for a consistent period of time, it is unlikely her finances will be stabilized. Once Applicant has resolved the foreclosure issues, has completed her rehabilitation plans and is consistently paying all of her bills, her security clearance application should be reconsidered. However, at this juncture, it is too early to conclude that her financial situation is not a security concern. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the guideline for 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge