



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



In the matter of:)
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[NAME REDACTED]) ISCR Case No. 09-08089
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Applicant for Security Clearance)

Appearances

For Government: John Glendon, Esquire, Department Counsel
For Applicant: Greg D. McCormack, Esquire

June 24, 2011

Decision

MALONE, Matthew E., Administrative Judge:

In 2007, due to an unforeseen decline in the housing market, Applicant defaulted on two mortgages for an investment property acquired in 2006. The first mortgage was resolved through foreclosure and Applicant owes nothing more on that obligation. The second mortgage was recently resolved through an agreement with the lender. Applicant's finances are otherwise sound and not likely to be a security concern in the future. Based upon a review of the pleadings, exhibits, and transcript, Applicant's request for a security clearance is granted.

Statement of the Case

On August 10, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (E-QIP) to obtain or renew a security clearance required for her job with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA)

issued to Applicant interrogatories¹ to clarify or augment information obtained in her background investigation. Based on all available information, including Applicant's responses to the interrogatories, DOHA adjudicators were unable to make a preliminary affirmative finding² that it is clearly consistent with the national interest to grant or continue Applicant's access to classified information. On June 10, 2010, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which, if proven, raise security concerns addressed in the adjudicative guidelines (AG)³ for financial considerations (Guideline F).

Applicant timely answered the SOR and requested a hearing. The case was assigned to an administrative judge on October 7, 2010, and a hearing was set for December 6, 2010. At Applicant's request, the hearing was re-scheduled for January 11, 2011. On January 6, 2011, that hearing also was continued. The case was transferred to me on February 3, 2011.

Pursuant to a Notice of Hearing issued on February 16, 2011, I convened a hearing in this matter on March 29, 2011. The parties appeared as scheduled. DOHA received a transcript (Tr.) of the hearing on April 6, 2011. The Government presented five exhibits that were admitted without objection as Government Exhibits (Gx.) 1 - 5. Applicant testified and submitted five exhibits that were admitted without objection as Applicant Exhibits (Ax.) A - E. (Tr. 28 - 30) I left the record open after the hearing so that Applicant could submit additional relevant information. (Tr. 99 - 100) The record closed on April 28, 2011, when I received additional information that has been admitted into the record without objection as Ax. F.

Findings of Fact

Under Guideline F, the Government alleged that Applicant owed \$158,341 for a single delinquent debt owed as a second mortgage. (SOR 1.a). Applicant denied the allegation; however, at hearing, she admitted the debt was hers. (Tr. 23 - 24) Applicant's admission is incorporated in my findings of fact. Having also reviewed the transcript and exhibits, I make the following additional findings of relevant fact.

Applicant is 43 years old and is employed by a defense contractor as a financial management analyst. She was hired for that position in August 2007 after working for five months at a small defense contracting company owned by her sister. (Gx 1; Tr. 37 - 38) From July 1985 until March 2007, Applicant was a budget and program analyst employed by the federal government. She was first granted a secret clearance in January 1995.

¹ Authorized by DoD Directive 5220.6 (Directive), Section E3.1.2.2.

² Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

³ The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006). Pending official revision of the Directive, they take precedence over the guidelines listed in Enclosure 2 to the Directive.

Applicant and her husband, a retired Marine Corps Gunnery Sergeant, have been married since September 1998. Applicant was previously married from September 1989 until January 1997. She has one child, age 19, from that marriage. Applicant's current husband was also married before and has two children, ages 25 and 16, from that marriage. (Gx. 1)

In December 2005, Applicant and her husband obtained two mortgages to buy a townhouse for little cash out of pocket. The house was near a college they thought her husband's older child would be attending. They planned for the child to live there and to pay the mortgages by renting the house to other students. However, the child matriculated at a school in a different state. Applicant and her husband rented out the townhouse and were able to pay the mortgages on the house until 2007. At that time, they had to evict delinquent tenants. When they tried to find new tenants, they found that the market value of the house had fallen significantly. This had an adverse effect on the rental market because prospective tenants were not willing to pay rents high enough to cover the mortgages obtained when values were higher. (Tr. 40 - 41) In April 2009, after several months of attempting to re-let or sell the house, it was sold through a short sale that ended Applicant's obligations for both mortgages. (Gx. 1; Gx. 2; Tr. 40 - 44)

In 2006, Applicant and her husband purchased a home that a builder had constructed as part of a housing development. The purchase price was about \$485,000. The builder agreed to rent the property back for two years to use as a model for prospective buyers. (Applicant characterized this property as a "spec" house.) After the lease ended, Applicant and her husband planned to sell the property for a profit. Applicant and her husband obtained a first mortgage of \$339,500 and a second mortgage of \$145,945 to finance the purchase of the house with very little cash down. The rental price the builder agreed to pay was enough to cover monthly payments for both mortgages. (Gx. 5; Tr. 45 - 50)

Applicant and her husband were the only borrowers on the mortgages. However, also on the title to the house was another couple, friends of Applicant and her husband who were real estate agents, and who advised Applicant and her husband that this would be a good deal given the real estate market at the time. The other couple had no apparent financial obligation other than their verbal commitment to help pay the mortgages should unforeseen events happen. (Tr. 46 - 47)

In about May 2007, the market for new homes had declined quickly and to the point that the builder who was renting back the "spec" house abandoned the lease and stopped trying to sell houses in that development. Applicant believes the builder went out of business. Applicant and her husband, along with the real estate agent couple, covered the mortgage payments for several months while they tried unsuccessfully to sell or rent out the house. At that time, they were also trying to resolve the delinquent mortgages on the townhouse they bought in 2005. Their last payment on either of the "spec" house mortgages was in October 2007. The first mortgage was foreclosed in May 2008. The house was sold at auction for \$325,000. Applicant and her husband had no further obligation on the first mortgage, but they still owed approximately \$12,544 for missed payments on the second mortgage. (Gx. 1; Gx. 2; Gx. 3; Tr. 50 - 58)

In trying to resolve their mortgage deficiencies since 2008, Applicant's husband conducted most of the negotiations with creditors for both the townhouse and the "spec" house. Applicant did not take any action of her own until November 2010, when she realized the ongoing debt for the second mortgage on the "spec" house might jeopardize her security clearance. At that time, she wrote to the collection agency to whom the debt had been referred and offered to settle the debt for a lump sum payment of \$12,544, which was the past-due amount. The collection agency rejected her offer, but made a counter-offer of \$14,500, which represented about 10% of the original loan amount. The amount alleged at SOR 1.a includes interest and fees since that loan became delinquent. Applicant accepted the counter-offer, withdrew the funds from her retirement account, and transferred the funds to her attorney's trust account for immediate payment once the agreement was finalized. However, on January 6, 2011, the collection agency reneged on its acceptance of 10% and demanded a 15% settlement amount. At the time of her hearing in this matter, Applicant and her attorney were still trying to negotiate the original 10% settlement Applicant thought had been agreed upon. (Ax. A; Tr. 52 - 58) On April 25, 2011, the collection agency agreed to accept the 10% settlement. The debt was resolved on April 27, 2011. (Ax. F)

Applicant's husband works as a medical supplies sales representative and does not require a security clearance. He did not take into account the need to resolve these debts in a more timely fashion so that Applicant could get a security clearance. It is likely they would have agreed to the 15% demand by the collection agency and resolved this debt in January 2011 had Applicant's husband not balked at paying that amount. (Tr. 67 - 70, 81)

Applicant and her husband earned about \$300,000 annually for tax years 2008 and 2009. However, because Applicant does not yet have a security clearance, she is now working only part-time, earning about \$56,000 annually. (Ax. B; Tr. 36) A personal financial statement submitted while Applicant was still earning approximately \$112,000 annually shows that she and her husband had about \$4,300 cash remaining after paying all of their monthly expenses, including debts. (Gx. 2) A personal financial statement submitted post-hearing shows that since Applicant has been reduced to a half-time employment, they have less than \$200 remaining each month. However, they are still current on their obligations and have incurred no new delinquent or past-due debts. (Ax. F)

Applicant is studying for a bachelor's degree in business management. She expects to obtain her degree in September 2011. Her work record since 1985 has been exemplary. Numerous references enthusiastically recommended her for a position of trust based on close and extended interaction over many years. (Tr. 34 - 35; Ax. C; Ax. D; Ax. E)

Policies

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest⁴ for an applicant to either receive or continue to have access to classified information. Each decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁵ and consideration of the pertinent criteria and adjudication policies in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole-person” concept, those factors are:

(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.

The presence or absence of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information.

The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the Government's case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁶ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.⁷

⁴ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵ Directive. 6.3.

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

Analysis

Financial

The security concern about Applicant's finances, as stated in AG ¶ 18, is that:

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 Government's information, as well as Applicant's e-QIP disclosures, and her admissions and testimony established that, as alleged in SOR 1.a, Applicant owed \$158,341 for a delinquent second mortgage on an investment property. The original amount borrowed was \$145,495, but the balance demanded from the creditor included interest and fees after default. Although not alleged, it is relevant that Applicant and her husband also defaulted on the mortgages for a townhouse they bought in 2005 for her stepchild's use in college. Available information requires application of the disqualifying conditions listed at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*), and AG ¶ 19(c) (*a history of not meeting financial obligations*).

By contrast, the record supports application of the mitigating conditions at 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*); AG ¶ 20(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*); AG ¶ 20(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 AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*). Applicant's mortgages failed, in large measure, because the local real estate values fell faster and farther than anyone could have expected. As to the townhouse, despite their child's change of schools, they were able to rent the property and cover the mortgages for about two years. However, when they lost rental income due to delinquent tenants, the value of their townhouse had fallen enough that no one would pay them sufficient rent to cover the mortgages obtained when values were much higher. Around the same time, the builder to whom they were renting the "spec" house withdrew. In trying to sell or rent the "spec" house, they encountered the same immutable market conditions as they had with the townhouse. Available information shows that Applicant acted responsibly by trying to sell, rent, or otherwise resolve their real estate obligations.

Available information also shows that, despite losing half of Applicant's income, she and her husband have resolved the debt at SOR 1.a, and they are meeting all of their current financial obligations. It is not likely they will venture into real estate

investments in the future. As to AG ¶ 20(d), Applicant and her husband had sufficient resources to make payments on the SOR 1.a debt before November 2010. Given recent mortgage market performance, this matter would likely have settled in the same manner; that is, for a fraction of the loan value. But Applicant deferred to her husband's efforts to negotiate their debt resolution until she was forced, by the adjudication of her security clearance eligibility, to take her own action. Considering all of the facts and circumstances probative of this issue, I conclude her efforts constituted a good-faith effort, on her part, to resolve her debt. On balance, Applicant has mitigated the security concerns about her finances.

Whole-Person Concept

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guidelines F. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is 43 years old, and has an excellent record of more than 20 years of federal service, and has established herself as a valuable, reliable employee of a private defense contractor since 2007. The circumstances that caused Applicant and her husband to experience financial problems were unforeseen and not due to any misconduct or irresponsibility. Their debts have been resolved and Applicant will not likely encounter such problems in the future. Applicant pays her taxes on time and has no new delinquent debts or other obligations she cannot pay as required. She also enjoys a solid reputation among her friends and business associates. A fair and commonsense assessment of all of the available information shows that Applicant has resolved any doubts about her suitability for access to classified information.

Formal Findings

Formal findings 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: For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the national interest for Applicant to have access to classified information. Request for security clearance is granted.

MATTHEW E. MALONE
Administrative Judge