



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



In the matter of:)
)
) ISCR Case No. 10-00953
)
)
Applicant for Security Clearance)

Appearances

For Government: William T. O'Neil, Esquire, Department Counsel
Richard A. Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

02/10/2012

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant and her spouse owe a foreclosure judgment of \$128,952.69 after they defaulted on the primary mortgage for their previous residence in 2008. Applicant also defaulted on a second mortgage balance of \$26,518. They recently proposed settlement offers through their attorney, which have not been accepted by their creditors as of January 2012. Applicant also violated the terms of a credit card provided by a previous employer, and she made no effort to repay a \$1,565 delinquent balance. Clearance denied.

Statement of the Case

On July 13, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, Financial Considerations, which provided the basis for its preliminary decision to deny her a security clearance. DOHA took action 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 on September 1, 2006.

Applicant answered the SOR allegations on August 17, 2011, and she requested a decision without a hearing. On September 16, 2011, the Government submitted a File of Relevant Material (FORM) consisting of nine exhibits (Items 1-9). DOHA forwarded a copy of the FORM to Applicant and instructed her to respond within 30 days of receipt. Applicant responded on October 26, 2011, submitting a personal statement (AE A) and a letter from her attorney (AE B), which were entered as Applicant exhibits (AE) without objection. On November 7, 2011, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

On January 5, 2012, I reopened the record to give Applicant an additional opportunity to document her efforts to address the debts alleged in the SOR. On January 27, 2012, Applicant timely submitted a letter in which she made representations about settlement negotiations. The document was incorporated into the record as AE C without objection.

Findings of Fact

The SOR alleged under Guideline F that Applicant has two mortgage loans in foreclosure after she fell behind around \$6,000 on a \$26,000 balance (SOR 1.a) and \$28,000 on a \$106,000 balance (SOR 1.b), and that she also owes a \$1,565 collection balance (SOR 1.c). (Item 1.) In her response to the SOR, Applicant admitted the delinquent mortgages, but she indicated that a hearing was scheduled for September 9, 2011, to vacate the final judgment of foreclosure so that she could sell the house mortgaged by the loans in SOR 1.a and 1.b. She denied the collection debt alleged in SOR 1.c on the basis that there was no record of the debt, and it had been removed from her credit record by two of the three credit reporting agencies. (Item 4.)

After considering the Government's FORM and Applicant's exhibits A-C, I make the following findings of fact.

Applicant is a 40-year-old electrical engineer with a master's degree in electrical engineering. She has been employed full-time by a defense contractor since May 2007, after working as a network planning engineer for the company under the employ of a subcontractor from August 2006 until May 2007. (Item 5.) She holds a secret-level security clearance, which was granted around June 2008. (Items 4, 5.) Applicant has been married since December 1998, and she and her spouse have two children ages 6 and 11. (Item 5.)

In May 2003, Applicant was awarded her graduate degree. In June 2003, she and her spouse moved back to their home state after living and working in an adjacent state for four years. They owed delinquent real estate taxes of \$1,300.31 on their previous residence due to Applicant's previously low wages and periods of unemployment. They moved in with her in-laws at no rent, and they were eventually able to settle the tax debt in early December 2004. (Items 5, 6.)

In September 2003, Applicant began working as a middle school science teacher for the local school district. From August 2004 to December 2005, she taught electronics at night at a community college. She gave birth to her second child in July 2005 and found it difficult to fulfill her time commitments to the college with a new baby. In December 2005, her contract was not renewed. Applicant returned to the school district to teach science to gifted students. (Items 5, 6.)

In November 2005, Applicant and her spouse bought a house. They took out a primary 30-year conventional mortgage of \$111,200, to be repaid at \$916 per month (SOR 1.b).¹ Applicant also took out a 15-year second mortgage of \$27,800, to be repaid at \$203 per month. (Item 6.) Around August 2006, the second mortgage was transferred to its current holder. (SOR 1.a). (Items 5-9.)

Applicant did not work during the summer of 2006, but she was paid by the school district because she had chosen to receive less pay during the previous semester. In August 2006, Applicant resigned from the school district on good terms, to work as a subcontractor for her present employer. In May 2007, she took advantage of an opportunity to work on a different program as a direct hire for the company. (Items 5, 6.)

In May 2008, Applicant and her spouse bought a new home closer to her job. They took out a 30-year mortgage of \$210,535, with monthly repayments of \$1,656. They moved in with her mother-in-law for one month until their new home was ready, and they rented out their previous residence to help cover the mortgages on that house. (Items 5, 6.) Shortly thereafter, their tenant stopped paying the rent. Applicant and her spouse had their tenant evicted, but they could not find another renter. They could not afford to pay the mortgages for their previous residence and also pay the new mortgage for their present residence. In September 2008, Applicant made a last payment on the second mortgage for the vacant property. The loan balance was \$26,518 (SOR 1.a). In October 2008, Applicant and her spouse made a last payment on the house's primary mortgage, which had a principal balance of \$106,216 (SOR 1.b). Their primary lender initiated foreclosure proceedings around July 2009. (Items 6-9.)

On September 15, 2009, Applicant executed an Electronic Questionnaire for Investigations Processing (e-QIP) for her employer. In response to the financial delinquency inquiries, she listed the \$1,300.31 real estate tax debt settled in December 2004; a \$1,565 charged-off balance on a credit card account that had been provided for her business use by a previous employer in June 1998 (SOR 1.c);² and the two delinquent mortgages on her previous residence (SOR 1.a and 1.b). Applicant disclosed that the primary mortgage was in foreclosure, and that she and her spouse had given their primary lender "immediate possession" in a voluntary foreclosure as soon as they were unable to

¹The bank that originally held the debt is different from the current mortgage holder. The original lender may have been acquired by the financial institution that foreclosed on the property in September 2010. There is no evidence showing a transfer of the loan from the original lender to the current holder.

²The \$1,565 credit card delinquency had been charged off in June 2001 and was in collection. (Item 9.) The account was opened in June 1998 and closed in June 2008. High balance on the account was reportedly \$5,937. (Item 6.)

make their monthly loan payment. As for the second mortgage, Applicant indicated that arrangements were being made to satisfy the debt. (Item 5.)

A check of Applicant's credit on September 24, 2009, confirmed that Applicant's delinquencies were limited to those debts listed on her e-QIP. Applicant and her spouse were making timely payments on a \$24,240 auto loan taken out in October 2008, and on the \$206,928 mortgage balance for their current residence. (Item 9.)

On October 27, 2009, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM) about her employment history and the past-due debt balances on her credit record (SOR 1.a-1.c). Applicant indicated that she and her husband had tried to work out a payment plan on the primary mortgage for their previous residence by adding the delinquent balance to the end of their loan, but they fell further behind until they stopped paying altogether around September 2008. Applicant expressed her belief that the foreclosure proceedings were final, but she did not know whether the house had been sold. Applicant also did not dispute the delinquency on the second mortgage, although she questioned the credit agencies' reporting that the debt was hers alone and not jointly incurred by her and her spouse. Concerning the credit card debt, Applicant explained that it was a corporate card for expenses when she traveled to Europe for her then employer about 12 years ago. She admitted that she had used the account for both personal and business travel, and that she did not repay the personal charges. Applicant indicated that the \$1,565 was a negotiated balance that was less than the original debt. There were times when she had the funds to pay the debt but chose not to. She expressed her intent not to pay the debt. (Item 6.)

As of January 2010, Applicant was \$3,059 past-due on the second mortgage (SOR 1.a). Applicant's and her spouse's primary mortgage was in foreclosure proceedings with \$13,735 past-due (SOR 1.b). They were making timely payments of \$417 per month toward their auto loan balance of \$20,378, and of \$1,779 per month on the \$205,000 principal balance of their mortgage for their current residence. The delinquent credit card debt (SOR 1.c) had been dropped from her credit record by Equifax (Item 8), although Trans Union continued to report a \$1,565 past-due balance. (Item 6.)

On September 28, 2010, the holder of the primary mortgage on their vacant house was awarded a final judgment of foreclosure in the amount of \$128,952.69. A foreclosure sale was scheduled for December 23, 2010. On November 23, 2010, the court cancelled the foreclosure sale on the creditor's motion. On December 23, 2010, Applicant and her spouse retained legal counsel, at a \$1,500 retainer fee, to defend the summary judgment of foreclosure, and to negotiate settlement of the foreclosure action. (Items 4, 6.)

Applicant informed DOHA on December 23, 2010, that she was planning to have the foreclosure judgment vacated so that she and her spouse could pursue a short sale of the house to resolve the delinquent mortgages on the property. She had filed a dispute with Trans Union over listing the old business credit card debt because it was beyond the seven-year reporting date. Applicant furnished a credit report confirming she had no new past-due accounts. (Item 6.)

On July 13, 2011, DOHA issued an SOR to Applicant because of the outstanding mortgage delinquencies and the long-overdue credit card debt. (Item 1.) Around August 16, 2011, Applicant contacted the credit card lender. Her account had been closed, and the lender was in the process of removing the debt from her credit profile. On August 17, 2011, Applicant informed DOHA that the lender had no record of the debt and would not accept any payments. As for the mortgage delinquencies, a hearing was scheduled for September 9, 2011, on her and her spouse's motion to vacate the judgment of foreclosure so that they could sell their vacant property and settle the mortgages. (Item 4.)

As of October 26, 2011, Applicant was negotiating settlements of her delinquent mortgages. She had proposed settlement terms, which her attorney characterized as "uncommonly generous and exceptionally favorable to the mortgage companies." Her attorney expected the lenders to accept her offers, pending final assessment of the payoff balances. (AE B.) Applicant asked DOHA for more time to resolve the debts before revoking the security clearance that she needs for her job. (AE A.)

On January 5, 2012, I gave Applicant until January 27, 2012, to document her efforts, on her own or through her attorney, to address the mortgage debts, including through selling the property, settling with her lenders, or paying on the debts. In a timely response, Applicant indicated that the holder of the first mortgage had the authority to sell the house through foreclosure and had not responded to her offers to settle the debt (SOR 1.b). She planned to continue to pursue an amicable settlement, notwithstanding the creditor's unwillingness to negotiate. Concerning the second mortgage (SOR 1.a), a collection agency (reporting representing the primary lender) offered to settle for 20% of the balance, but the assignee wanted to deal with her directly. Before she could accept the offer, she was contacted by another assignee, who offered to settle for \$7,955.43, if paid by January 31, 2012. She countered with \$3,000, which is what she could borrow from a family member, but the lender rejected her offer. As of January 27, 2012, Applicant and her spouse were reassessing their finances and asking relatives for assistance in resolving the debts. Applicant expressed her intent to resolve the debts. (AE C.)

As of early December 2010, Applicant's hourly wage was \$45.48 for her work with the defense contractor. Her federal taxable gross wages totaled around \$100,000. Her spouse earned considerably less from his job at a hospital, where he was paid \$18.30 an hour. His gross income for 2010 was about \$40,000. They had about \$1,453.46 in net income each month after paying educational costs for Applicant to pursue her MBA. (Item 6.)

From September 2008 to December 2009, Applicant was enrolled in a part-time engineering management master's degree program offered by the state university at a local community college one weekend a month. After graduating from the engineering management program, she began attending an affiliated one-year MBA program in January 2010. Program costs total \$26,190 for four terms of study, and she is responsible for \$306.77 per month of the tuition costs. Unlike the engineering program, the MBA

courses are held on the campus of the state university, so she incurs additional transportation, lodging (\$210 per month), and food (\$40 per month) costs. (Item 6.)

Applicant and her spouse have not been late in their car payments or in the home loan for their present residence. As of May 2011, their mortgage had a principal balance of \$200,000, while they owed \$15,000 on their car loan. (Item 7.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall 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, 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. 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 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 that 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. 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 *a/so* 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.

Guideline F notes several conditions that could raise security concerns. AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations," are established. As of the close of the record in this case, Applicant owes a \$128,952.69 foreclosure judgment (SOR 1.b) and about \$26,518 for a defaulted second mortgage (SOR 1.a) on her previous residence. Furthermore, around 1998, Applicant used a business credit card account for personal expenses, and she did not repay the personal charges. At her October 2009 interview with an OPM investigator, she admitted she did not intend to repay the \$1,565 collection balance (SOR 1.c). Although the lender is no longer pursuing the debt because her account has been closed, her misuse of the business credit card account implicates AG ¶ 19(b), "indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt."

Concerning potentially mitigating conditions, 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," cannot reasonably apply when there has been no resolution of the debts in the SOR. Mitigating condition 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," applies in the absence of any evidence to indicate that their tenant's default on the rent was reasonably foreseeable. However, AG ¶ 20(b) does not mitigate Applicant's years of knowing disregard of the credit card debt, or eliminate the financial burden of about \$155,470 in delinquent mortgage debt, for which she and her spouse were still liable as of January 2012.

As to whether Applicant acted reasonably to address the mortgage debts, she submits that she and her spouse arranged with their primary mortgage lender to add the delinquency to the end of their loan, and then gave the lender "immediate possession" of the house in a voluntary foreclosure as soon as they could no longer afford the mortgage.

Available information does not substantiate her claim of due diligence, however. Applicant told an OPM investigator in October 2009 that she believed the foreclosure proceedings were final, but she did not know whether the property had been sold. A summary judgment of foreclosure was not issued until September 2010, so it appears that Applicant made no effort to keep herself apprised of the foreclosure proceedings. She did not retain legal counsel until December 23, 2010, some three months after the court assessed her and her spouse's liability at \$128,952.69 on the primary mortgage, and they then moved to vacate the judgment so that they could sell the house. A hearing was reportedly scheduled for September 9, 2011, on their motion. Presumably, they were not successful in having the judgment vacated. As of January 2012, she was attempting to negotiate settlements of both mortgage debts.

The attorney handling the settlement negotiations asserts Applicant has been "very proactive" in her efforts to resolve the mortgage debts. He characterized her repayment proposals as "uncommonly generous." In January 2012, I gave Applicant an opportunity to provide details of the negotiations and perhaps establish AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." About the first mortgage, Applicant indicates only that she is continuing her efforts to reach the creditor, who has not been responsive to her attempts to settle. Without further detail about the dates and amounts of any settlement offers, I cannot conclude that she has acted diligently. Concerning the second mortgage, Applicant was apparently offered a settlement of 20% by an assignee representing the primary mortgagee. Sometime later, she received an offer from a different assignee offering to settle the \$26,518 balance for \$7,955.43. Despite a household income in excess of \$100,000, Applicant asserts that she is unable to meet the settlement. She counteroffered with \$3,000, which she would have to borrow from a family member. Her evidence falls short of establishing AG ¶ 20(d). Furthermore, it would be premature to apply 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," given the status of the settlement negotiations. Little progress has been made toward resolving any of the debts in the SOR in the year since the foreclosure and the two years since her interview with the OPM investigator, when she knew or should have known that the delinquencies were of concern to the DOD.

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).³

³ The factors under AG ¶ 2(a) are as follows:

- (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 her favor, Applicant has a record of timely payments on her car loan and on her mortgage for her current residence. There is no evidence of new delinquencies, so it could be said that the debts in the SOR are not characteristic of the manner in which handles her finances generally. Yet, Applicant indicates she cannot afford the latest settlement offer on the second mortgage when her income would suggest otherwise. As of December 2010, she was spending at least \$556.67 per month to obtain an MBA degree. Even with those educational expenses, Applicant and her spouse had a reported \$1,453.46 in net remainder each month. It is unclear what has changed about her financial situation to where she is nonetheless in a position of having to borrow from family members to settle the delinquent mortgages. Based on the record before me, I cannot conclude that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

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

Subparagraph 1.a-1.c: Against Applicant

Conclusion

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

Elizabeth M. Matchinski
Administrative Judge