



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



In the matter of:)	
)	
)	ISCR Case No. 10-01727
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esq., Department Counsel
For Applicant: *Pro se*

December 3, 2010

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has not mitigated Financial Considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On June 18, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F, Financial Considerations. The action was taken under Executive Order (EO) 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 for cases after September 1, 2006.

Applicant answered the SOR on July 1, 2010, and requested a hearing before an administrative judge. The case was assigned to me on August 9, 2010. DOHA issued a notice of hearing on August 16, 2010, and the hearing was convened as scheduled on September 23, 2010. The Government offered Exhibit (GE) 1 through 8, which were

admitted without objection. The Applicant offered Exhibit (AE) A through JJ, which were admitted without objection, called two witnesses, and testified on her own behalf. DOHA received the transcript of the hearing (Tr.) on October 6, 2010.

Findings of Fact

Applicant is a 48-year-old employee of a defense contractor. She is single and has three adult children. She possesses a bachelor's degree from an American university. She has held a security clearance for approximately 20 years, first as a civilian employee of the Air Force, and later as a government contractor. She also has a real estate broker's license issued July 2006. (GE 1; AE W; AE GG; Tr. 49-53, 74.)

The SOR alleges one delinquent mortgage debt, as listed on credit reports obtained in 2009 and 2010. In 2005, Applicant purchased a home for \$625,000. She financed the home through a first mortgage of approximately \$490,000 and a home equity line of credit (HELOC), originally for \$70,000 (the line of credit extended up to \$136,000, which she later utilized). At the time she acquired the loans, her income was \$227,000 a year. (GE 2; GE 5; GE 6; GE 8; Tr. 54-56.)

The first mortgage, alleged in SOR subparagraph 1.a., was a five-year adjustable rate mortgage (ARM). Knowing that her interest rate would soon adjust on her first mortgage, Applicant contacted her lender in June of 2009 to refinance the loan. She did not qualify for a refinance at that time. She continued making payments on her first mortgage until August 2009. In August 2009, she needed car repairs and was unable to make her first mortgage payment. She has not made a payment on her first mortgage since that time, despite claiming that she had the funds available to make payments in September through December of 2009. In 2010, the mortgage rates adjusted under the ARM and her payments due increased from \$2,500 a month to \$3,900 a month. The home currently appraises at \$449,500. (GE 2; GE 3; AE 1; AE I; AE J; AE K; AE L; AE M; AE N; AE O; AE S; Tr. 54-65.)

Applicant was current on her HELOC loan until July 2010. The balance on this loan is now \$171,000. She had worked out a temporary loan modification program with the lender on this loan. However, she stopped payments in July 2010 because she no longer qualified for the modification due to defaulting on her first mortgage. She has not made a payment on her HELOC loan since July 2010. (GE 5; GE 6; Tr. 55-56, 66, 81.)

In approximately January of 2010, Applicant hired a company to audit her mortgage. She interpreted the Securitization Report, done by the audit company, to indicate that the lender no longer owns her loan. A foreclosure of the property, by the first mortgage holder, was scheduled for April 2010. Applicant requested an injunction stopping the foreclosure, based upon the audit company report. An injunction was not issued by the court, but Applicant was successful in temporarily halting the sale by talking to the auctioneer, trustee, and other individuals. She continues to pursue an injunction and other relief in a law suit filed in state court, alleging that the lender foreclosing on her property does not own the note. In September 2010, Applicant also filed a petition in U.S. District Court, alleging that the lender had no legal standing to

bring foreclosure claims against her property and has no interest in her property, among other claims. Applicant asserts that the lender in SOR allegation 1.a. has been “paid off.” However, the documentation from the audit show that “FURTHER INVESTIGATION IS REQUIRED” and that the report was “not a forensic analysis.” Applicant failed to provide a title report or other evidence to support her claims. She did admit that she was indebted to a lender for the home, but indicated that she did not know who the proper creditor was. (GE 1; GE 4; AE A; AE H; AE P; AE Q; AE R; AE JJ; Tr. 66-82.)

Applicant asserted that her income has consistently decreased since 2005. In 2006, it fell to \$136,329; and by 2009 she was only make an annual salary of \$119,149. Her budget shows that she can not afford to make the payments at the current rate of \$3,900 per month. (AE A; AE B; AE C; AE D; AE E; AE F; AE G; Tr. 57.)

Applicant has invested the money that she would have spent on her mortgage payments into a property she holds jointly with her mother. She has also spent a significant amount of money on the audits of her mortgage. However, she still occupies the home. She has not attempted to sell or rent the property. (Tr. 69, 101.)

Applicant’s two witnesses, her boyfriend and her manager, attested to her trustworthiness. She also presented eleven letters of recommendation from co-workers, supervisors, and friends. These letters indicate Applicant is “trustworthy” and “honest.” Her performance evaluations indicate that she “meets, exceeds, and far exceeds” expectations in her daily tasks. Additionally, she has received numerous awards and certificates from her employer and clients. She also is a member of a city development plan and does other volunteer work and community service activities. (AE V; AE X; AE Y; AE Z; AE AA; AE BB; AE CC; AE DD; AE EE; AE FF; AE HH; AE II; Tr. 86-100.)

Policies

When evaluating an applicant’s suitability for a security clearance, the 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, which are to be 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, administrative judges apply the guidelines 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, 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 the 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 the applicant may deliberately or inadvertently fail to protect or 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 EO 10865 provides that adverse 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, as follows:

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 concern under AG ¶ 19. One is potentially applicable in this case:

(a) inability or unwillingness to satisfy debts.

Applicant accumulated delinquent mortgage debt and is unable or unwilling to pay her obligations. While she may contest who the debt is owed to, she admits that

she is indebted on her home. She has not made any payments on her primary mortgage since August 2009. Her budget shows she cannot afford the payment at its current interest rate. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

- (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 took out the mortgage alleged in SOR subparagraph 1.a. to finance the purchase of her home. She agreed to the loan, knowing that the ARM would eventually increase her monthly payments. Applicant has a real estate broker's licenses and has a higher degree of knowledge of the risk involved in such transactions. When she discovered she could no longer afford the payments, and was not able to get a loan modification, she defaulted on the loan. This behavior is not responsible. She continued her irresponsible actions by spending the money that she should have saved for her mortgage payments. She claimed she had the money for the payments in September through December of 2009, but chose to spend it in other ways, like her property investment. Thus, her financial difficulties can not be attributed solely to her declining income. She has done nothing to indicate that the problem is under control or that she has acted responsibly under the circumstances. AG ¶¶ 20(a), 20(b), 20(c), and 20(d) are not mitigating.

Applicant disputes the validity of her indebtedness to the creditor listed in allegation 1.a., but she does not deny that she has an underlying mortgage debt that is not being paid. This forum is not the proper place to litigate the validity of her civil

claims. Overall, her dispute over the legitimacy of her debt does not mitigate her poor judgment in defaulting on her mortgage and spending her mortgage money on an investment property. 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 relevant 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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is well respected by her colleagues, managers, and friends. She has earned recognition for her exceptional work performance through awards and certificates. She gives her time and resources to community service. Yet, she has made several questionable financial choices that do not demonstrate the judgment, reliability, or trustworthiness needed to hold a security clearance. Not only is she delinquent on the debt alleged in SOR subparagraph 1.a., but she has also become delinquent on her HELOC loan. She did not demonstrate any attempt to resolve this additional \$171,000 debt. There are significant unresolved concerns about Applicant's finances and judgment.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the Financial Considerations security concerns.

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.: 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.

Jennifer I. Goldstein
Administrative Judge