



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



In the matter of:)	
)	
)	ISCR Case No. 10-05606
)	
Applicant for Security Clearance)	

Appearances

For Government: David F. Hayes, Esquire, Department Counsel
For Applicant: *Pro se*

December 13, 2011

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the file and exhibits in this case, I conclude that Applicant mitigated the Government's security concerns under Guideline F, Financial Considerations. Her eligibility for a security clearance is granted.

Statement of Case

On January 14, 2010, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP). On May 27, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. DOHA acted 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 responded to the SOR on June 30, 2011, and she provided additional information. She did not request a hearing and asked that her case be adjudicated on the written record. The Government compiled its File of Relevant Material (FORM) on July 18, 2011. The FORM contained documents identified as Items 1 through 9. By letter dated August 3, 2011, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information and objections within 30 days of receipt. Applicant received the file on August 12, 2011. Her response was due on September 11, 2011. Applicant timely submitted 54 pages of additional information. Department Counsel did not object to Applicant's submissions. On September 27, 2011, the case was assigned to me for a decision. I marked Applicant's submitted materials as Item A and entered them in the record.

Findings of Fact

The SOR contains two allegations of financial delinquency under Guideline F, Financial Considerations (SOR ¶¶ 1.a. and 1.b.). The SOR alleges at ¶ 1.a. that Applicant was responsible for a charged-off account totalling approximately \$62,780. The SOR alleges at ¶ 1.b. that Applicant owed \$36,311 on a past-due mortgage account that was in foreclosure status with a total loan balance of \$276,000. In her answer to the SOR, Applicant admitted the delinquencies. Applicant's admissions are entered as findings of fact. (Item 1; Item 4.)

The facts in this case are established by the record provided by the Government and by information provided by Applicant in her response to the FORM. The record evidence includes Applicant's Answer to the SOR; her January 2010 e-QIP; her April 27, 2011 adoption of the summary of a personal subject interview, along with additional information she provided;¹ her additional responses to DOHA interrogatories; her credit reports of May 3, 2011 and February 6, 2010; and her 54-page response to the FORM. (See Items 4 through 9; Item A.)

Applicant, who is 37 years old, earned a bachelor's degree in information management in 2002 and a master's degree in information management in 2004. Since December 2009, she has been employed as a senior principal analyst, systems, by a federal contractor. Her current annual salary is \$124,000. She has held a security clearance since 2004. (Item 5; Item 7.)

Applicant was married in 2002. In 2006, she was required by her employer to move to a southern state, where she purchased a condominium apartment from a

¹ Applicant was interviewed under oath by an authorized investigator from the U.S. Office of Personnel Management (OPM) on March 23, 2010. On April 27, 2011, in response to DOHA interrogatories, Applicant signed a notarized statement affirming that she had read the investigator's summary of the interview, and she adopted the investigator's summary as accurately reflecting her interview. She also provided additional information about her current family situation, foreign travel, change of address, and current financial situation. (Item 6.)

developer for approximately \$313,000. Her husband accompanied her to the new location, but because he was unemployed at the time of the purchase, Applicant assumed responsibility for a \$251,000 first mortgage and a \$62,000 second mortgage on the property. She also was responsible for taxes and homeowners' fees, which were underestimated and not accurately reported when she closed on the property in July 2006. (Item 4; Item 5.)

Soon after Applicant closed on the property, the housing market in Applicant's new community took a serious downturn, the developer went bankrupt, and her marriage came to an end. In 2007, Applicant's job required that she move again to another metropolitan area. She vacated the property, but her ex-spouse continued to live there. In June 2007, Applicant listed the property for sale, and she and her ex-spouse continued to make the monthly payments on the two mortgages. Applicant relocated to another state to carry out her job and incurred rental and other living expenses in her new location. (Item 4; Item A.)

Applicant's ex-spouse has experienced financial difficulties, and since July 2008, he has been unable to assist her with the mortgage payments. In October 2008, Applicant contacted the holder of the first mortgage and attempted to negotiate a deed in lieu of foreclosure. Her offer was declined because the holder of the first mortgage considered the second mortgage to be a lien on the property. In December 2008, Applicant consulted an attorney. Applicant reported that the attorney told her mortgage companies "have no reason to work toward a solution when payments are current." Relying on this information, Applicant stopped making payments after November 2008 on the two mortgages. (Item 4; Item A.)

No offers were made to purchase Applicant's condominium between June 2007 and February 2009. In February 2009, Applicant listed the property at a reduced price with the intent of selling the property through a short sale. When she was interviewed by an authorized investigator in March 2010, Applicant explained that the holder of the first mortgage had agreed to the short sale, but she was awaiting approval of the short sale by the holder of the second mortgage. She told the investigator that if the two holders agreed to the short sale, she did not believe she would be responsible for the balance of the debt. (Item 6; Item A.)

In her response to the FORM, Applicant provided documentation showing she had entered into contracts with potential buyers for the short sale of the property four times between August 2009 and May 2011. Each of these agreements was later cancelled when the banks and other involved parties failed to reach agreement. The property, purchased in 2006 for \$313,000 has a current value of approximately \$70,000. (item 4; Item 7; Item A.)

In July 2009, Applicant retained an attorney, who provided a letter, dated April 26, 2011, describing his advice to her on loss mitigation. The attorney described his unsuccessful attempts to assist Applicant with short sales of her property. The attorney stated that, in his professional opinion, Applicant's best option to mitigate her losses

was to request protection from her creditors under Chapter 13 of the Bankruptcy Code. Later, the attorney determined that Applicant was eligible to file for Chapter 7 bankruptcy. She provided documentation establishing that she had filed for Chapter 7 bankruptcy in July 2011. She also provided documentation establishing that she had received financial credit counseling in June 2011. (Item 7; Item A.)

Applicant asserted that, aside from the two delinquent mortgages alleged in the SOR, she had an exemplary record of financial stability and responsibility. Her two credit reports confirm that she has no outstanding financial delinquencies other than the first and second mortgages on the condominium she purchased in 2006. (Item 7; Item 8; Item 9; Item A.)

Applicant now lives in a committed relationship and has an infant son. She provided four letters of character reference, two from family members and two from current coworkers. The family members recounted how Applicant has worked responsibly to deal with the financial difficulties related to her condominium mortgages. The coworkers asserted that Applicant is diligent in carrying out her work responsibilities, highly trustworthy, and a person of good character and integrity. (Item A.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the revised adjudicative guidelines (AG). 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, the administrative judge applies these 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in seeking 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 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 relating to the guideline 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 two potentially disqualifying conditions that could raise security concerns in this case. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly, under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant accumulated substantial delinquent debt related to the two mortgages on the property she purchased in 2006, and the record reflects that she failed to pay those debts for several years. This evidence is sufficient to raise security concerns under these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant’s financial delinquencies. Unresolved financial delinquency might be mitigated if it “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(a)). Additionally, unresolved financial delinquency might be mitigated if “the conditions that resulted in the financial problem were largely beyond the person’s control, [such as] 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(b)). Still other mitigating circumstances that might be applicable include evidence 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” (AG ¶ 20(c)); that “the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts” (AG ¶ 20 (d)); that “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” (AG ¶ 20(e)); or that “the affluence resulted from a legal source of income” (AG ¶ 20(f)).

After Applicant purchased her condominium in 2006, a severe downturn occurred in the housing market. Moreover, the developer from whom she purchased the property declared bankruptcy, and Applicant’s marriage ended. Today, Applicant presents an overall record of financial responsibility, with the exception of the two unsatisfied mortgages related to her purchase of a condominium in 2006. While these two financial delinquencies are relatively recent, they occurred under circumstances that are unlikely to recur and do not cast doubt on Applicant’s current reliability, trustworthiness, and good judgment. Accordingly I conclude that AG ¶ 20(a) applies to the facts of this case.

The financial downturn in the housing market and the end of Applicant’s marriage occurred in 2007. Additionally, Applicant was advised in 2007 by her employer that she needed to move to another metropolitan area in order to continue in her job. These were all conditions largely beyond Applicant’s control. However, Applicant provided documentation showing that she acted responsibly under circumstances that were largely beyond her control. She sought out her creditors and requested a deed in lieu of foreclosure. When this was rejected by the creditors, she sought legal counsel to mitigate her losses. Several times, she attempted, with her attorney’s assistance, to

initiate short sales of the property. Although these attempts were not successful, she persisted for over three years in seeking short sales to resolve her mortgage debts. When the attempts at achieving a short sale of the property failed and the property continued to decline in value, she then followed the advice of counsel and sought resolution of her mortgage debts by filing for Chapter 7 bankruptcy. Applicant took positive action to satisfy her debts and acted responsibly in attempting to resolve them. I conclude AG 20(b) applies in this case and that Applicant followed a course of responsible conduct in the face of circumstances largely beyond her control.

Applicant has received financial credit counseling, and it appears that her financial problems will be resolved through her Chapter 7 bankruptcy. Moreover, she provided documentation demonstrating that she made many good-faith efforts to resolve her delinquent mortgage debts. DOHA's Appeal Board has explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.'

(ISCR Case No. 02-30304 at 3 (App. Bd. April 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

Applicant's documentation established that she acted responsibly and reasonably in her attempts to resolve her two legitimate delinquent mortgage debts. She demonstrated good judgment, adherence to duty or obligation, and good faith in persistently attempting to resolve her just debts. The record reflects a consistent pattern of financial responsibility. I conclude that AG ¶¶ 20(c) and 20(d) apply to the facts of Applicant's case and that it is very likely that she will avoid the recurrence of financial delinquency in the future.²

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an 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

² I also conclude that AG ¶¶ 20(e) and 20(f) do not apply to the facts of this case.

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 is a resourceful and responsible person. She has worked hard to succeed in life, and this is admirable. She presented documentation showing multiple attempts to work with her creditors to resolve her mortgage debts. When her efforts were declined, she followed the advice of counsel and sought protection in bankruptcy. Applicant's credit reports and her letters from those who know her well personally and professionally attest to her capacity to manage her income and pay her creditors. Applicant's record demonstrates her good judgment, her reliability, her trustworthiness, and her ability to protect classified information. I conclude that she met her burden of persuasion in mitigating the Government's allegations under the financial considerations adjudicative guideline.

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. and 1.b.: 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 eligibility for a security clearance. Eligibility for access to classified information is granted.

Joan Caton Anthony
Administrative Judge