



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-06455

Appearances

For Government:
Jeff A. Nagel, Esq., Department Counsel

For Applicant:
Pro se

July 30, 2012

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP) on March 10, 2010. (Government Exhibit 1.) On February 16, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial Considerations). 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 March 21, 2012, and requested a decision without a hearing (Answer). She subsequently requested a hearing before an administrative judge. (Tr. At 8.) Department Counsel was prepared to proceed on April 12, 2012. This case was assigned to me on May 4, 2012. DOHA issued a notice of

hearing on May 10, 2012. I convened the hearing as scheduled on June 7, 2012. The Government offered Government Exhibits 1 through 9, which were received without objection. Applicant testified on her own behalf, called one additional witness, and submitted Applicant Exhibit A, which was also received without objection. Applicant asked that the record remain open for the receipt of additional documents. Applicant submitted Applicant Exhibit B on June 20, 2012, which was admitted without objection. DOHA received the transcript (Tr) of the hearing on June 15, 2012. The record closed on June 22, 2012. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is 33, divorced and has a bachelor of science degree. She is employed by a defense contractor and seeks to obtain a security clearance in connection with her employment.

Guideline F, Financial Considerations

The Government alleges that Applicant is ineligible for clearance because she is financially overextended and, therefore, at risk of having to engage in illegal acts to generate funds. Applicant admitted the factual allegations in the SOR. Those admissions are findings of fact. She also submitted additional information to support her request for a security clearance.

The SOR contains three allegations. Paragraphs 1.a and 1.b concern the first and second mortgages, respectively, of her house. Both loans are in default. The SOR alleges a total loan balance of approximately \$597,000. Paragraph 1.c concerns Applicant's filing for Chapter 7 bankruptcy relief in 2010.

Applicant was married in 2002. In approximately 2005 Applicant and her husband bought her parents' house for \$380,000. Applicant had no issues making payments on this debt. Applicant and her husband separated in 2006 and were divorced in 2007. As part of the divorce proceedings, Applicant's husband wanted to be removed from the loan. The original mortgage company required that their mortgage to be bought out and a new mortgage be applied for by Applicant alone. Applicant testified:

So, I went and tried to get a loan. And at the time, it was like the height of the real estate - - you know, everybody was getting equity loans and refinances. So, unfortunately, I got into - - in order to take him off the loan - - I had to go into this negative amortization loan where, basically, you're just paying the interest and your principle balance is just increasing. So, I've gone from \$380,000 to \$520,000. (Tr. 29.) (See Tr. 36-40.)

For a time Applicant was able to maintain her house payments, as well as her other debts. Eventually, her debts began to get overwhelming. In approximately 2009 she began working with a credit counseling agency. Working with Applicant's creditors,

they were able to resolve four debts. However, one credit card company refused to work with Applicant and the agency recommended that Applicant seek legal counsel. She did so, and the attorney recommended that Applicant file for Chapter 7 bankruptcy protection and get a fresh start. (Tr. 30-31, 48-51.)

Applicant followed the attorney's advice and filed a bankruptcy on May 1, 2010. She received a discharge in bankruptcy on September 7, 2010. A total of \$92,972 in unsecured debt was discharged. (Government Exhibit 4.)

As stated, Applicant was also trying to modify her first mortgage loan at the same time. This was because the negative amortization aspects of the loan kept increasing her monthly loan payments to a position that was not sustainable. Applicant testified:

I called the bank, and the bank said - - well, [Applicant], you are on time with your all your payments so we can't help you. And I'm like, well I'm in this loan and it's not good. And - - we're sorry ma'am. The only thing we can tell you - - and we're not supposed to say this, but - - is if you don't pay your mortgage then we'll help, because there's too many people and blah, blah, blah. But the only way you're going to get help is if you can't make your payment, and if you are showing signs that you need, you know. Other than that, you know, we can't. People who are making their mortgage payments can't. So, I spoke to my cousin, and my cousin was like - - well, yeah. We're going to have to see if we can modify this loan. It's just ridiculous. We need to get you out of it. So, she has been helping me every step of the way. (Tr. 32.)

Applicant and her cousin, who also testified and has been in the real estate and home mortgage businesses for over 20 years, have been working for months to modify Applicant's mortgage. In order to get the bank to discuss modification, Applicant stopped making her mortgage payments in June or July 2010. Applicant's cousin confirmed Applicant's testimony about banks' attitudes on modification. Applicant has repeatedly submitted all requested information to the bank in a timely fashion, which allows the bank to determine whether they will modify the loan and on what terms. As of the date the record closed, the bank had not yet made a decision on the loan modification. Applicant's cousin testified that such actions can take from one to three years. (Government Exhibit 3 at 3-6; Applicant Exhibits A and B at 9-10; Tr. 40-42, 56-67.)

Applicant has also been in contact with the second mortgage holder. This debt totals \$47,000. She testified that they told her, "fix your first loan and then we'll talk to you about payments on your second loan." She has also not made payments on that loan since 2010. (Tr. 45-47.)

Applicant's present financial situation is stable. She has no credit cards and is able to maintain payments on all of her monthly debts. Applicant does not believe she will have any problems paying any modified mortgages. (Tr. 43-44; Government Exhibit 2 at 13.)

Mitigation

Applicant is a well-respected person and employee. She submitted letters of recommendation from two co-workers, including the security manager. The security manager states, "I feel that [Applicant] can be trusted to protect and handle classified information." (Applicant Exhibit B at 4.) A co-worker states, "I have no doubt that [Applicant] can be completely trusted to protect and handle classified information." (Applicant Exhibit B at 3.)

Applicant also presented documentation of cash bonuses she received in 2011 and 2012. She was awarded the bonuses because of her "outstanding support" to her employer's operations. (Applicant Exhibit B at 6-7.)

Two friends also submitted letters on Applicant's behalf. They are both very laudatory. (Applicant Exhibit B at 5-6.)

Policies

Security clearance decisions are not made in a vacuum. 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 to be used as appropriate 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, reliable information about the person, past and present, favorable and unfavorable, in making a decision. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, "Any 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, "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination 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. 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, by her own admission, and supported by the documentary evidence, has two mortgage loans that are currently in default. She also filed for Chapter 7 bankruptcy relief in 2010, discharging a substantial amount of unsecured debt. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), disqualifying conditions may be mitigated where “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.” In addition, AG

¶ 20(b) states that disqualifying conditions may be mitigated where “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.” The evidence shows that both of the above mitigating conditions apply to Applicant. Her financial situation was caused by her divorce and the necessity to obtain a predatory loan to get her soon to be ex-husband off the mortgage, as well as the financial effects of that mortgage on her general debts. There is no evidence of poor judgment on her part.

Applicant, following advice of the bank, stopped making her payments to come within loan modification guidelines. Documentation and testimony show that she has been very aggressive in attempting to modify the loan. She has also repeatedly attempted to resolve the second mortgage as well. Finally, after attempting to resolve her debts by use of a credit resolution service, she filed for bankruptcy relief. Based on the particular facts of this case, I also find that she has “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” as required by AG ¶ 20(d).

Applicant has received financial counseling as required by the bankruptcy court. (Government Exhibit 4.) As found above, her current financial situation is stable. In addition, Applicant has been proactive in contacting her remaining creditors, and attempting to resolve the debts. I find that “there are clear indications that the problem is being resolved or is under control,” as required by AG ¶ 20(c).

The Applicant has acted in a way that shows good judgment, making the best she could out of a difficult situation. The stated mitigating conditions apply to the facts of this case.

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 relevant circumstances. 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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. Applicant's financial difficulties were not a result of poor judgment on her part. Rather, they were brought about by the turmoil in the mortgage industry as well as the general economy, and the necessity to take Applicant's husband off of the existing mortgage. Under AG ¶ 2(a)(2), I have considered the facts of Applicant's debt history. As stated above, this situation concerning the home mortgages and bankruptcy are aberrations, and not indicative of her usual conduct. Based on the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is a low likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from her financial situation. Accordingly, the evidence supports granting her request for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a through 1.c: For Applicant

Conclusion

In light of all of the circumstances presented by the record, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge