



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



In the matter of:)
)
) ISCR Case No. 10-10430
)
Applicant for Security Clearance)

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

September 14, 2011

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On May 10, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on June 7, 2011, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on July 25, 2011. DOHA issued a notice of hearing on August 10, 2011, scheduling the hearing for August 30, 2011. The case was reassigned to me on August 30, 2011. The hearing

was convened as scheduled. The Government offered exhibits (GE) 1 through 3, which were admitted without objection. Applicant testified, called a witness, and submitted exhibits (AE) A and B, which were admitted without objection. DOHA received the hearing transcript (Tr.) on September 6, 2011.

Findings of Fact

Applicant is a 59-year-old employee of a defense contractor. She has worked for her current employer since April 2010. She served on active duty in the military or in the reserves from 1974 to 1990. She was honorably discharged. She seeks to retain a security clearance she has held for many years. She has a bachelor's degree. She has never been married and has no children.¹

Applicant worked for a defense contractor in State A from 1996 to 2002. She worked for the same contractor in another part of State A from 2002 to 2006. She moved to State B in 2006 to work with the same contractor. She moved because she wanted to be closer to her family.²

Applicant rented her home in State B until March 2008, when she bought a house. She paid \$196,000 for the house, which she financed through a Department of Veterans Affairs (VA) 6% fixed-rate 30-year mortgage. Her February 2011 credit report lists the amount of the mortgage at \$202,468, with a monthly payment of \$1,683.³

Applicant refinanced the mortgage with another bank in January 2009. She stated that her broker called her and told her that the original lender "was possibly involved in some shady transactions and he advised [her] to refinance the loan." Her new loan was also a VA 6% fixed-rate 30-year mortgage. Applicant stated that she "trusted [the broker] and learned the hard way." She testified that her mortgage increased from \$1,600 per month to \$1,900 per month. Her February 2011 credit report lists the high balance of the mortgage at \$211,403, with a monthly payment of \$1,730. Applicant stated taxes and insurance increased the payment to \$1,900.⁴

Applicant started having trouble paying the mortgage in mid 2009. She told an investigator in June 2010 that the account became delinquent in the summer of 2009. She stated that she had made one payment since then, in May 2010. Applicant testified that she had "[n]o real good reason" for why she was unable to pay her mortgage.⁵ She stated:

¹ Tr. at 21-24, 48; GE 1.

² Tr. at 29; GE 1.

³ Tr. at 25-28, 49-50; Applicant's response to SOR; GE 2, 3.

⁴ Tr. at 26-29, 33-37, 51; Applicant's response to SOR; GE 2.

⁵ Tr. at 24-25, 30-31; Applicant's response to SOR; GE 2.

I just got behind. I bought other things. I don't have any credit cards, so I paid cash for the things that I wanted to have.⁶

Applicant was asked why she did not make partial payments:

I figured it wasn't worth what I was going to pay for it, and I was going to move, and I was going to try to sell it.⁷

Applicant believed that her employer in State B was going to terminate her. The company lost a large contract and offered a voluntary layoff, which she accepted in February 2010. She received a severance package equal to one week's pay for each of the 14 years she worked at the company. Applicant moved to State C in April 2010 and started working for her current employer the same month.⁸

Applicant's February 2011 credit report lists the mortgage as \$32,879 past due, with a balance of \$210,168. Applicant stated that she attempted to sell the property, but the value of the property significantly declined. State B benefitted greatly from the real estate boom and was one of the areas hardest hit by the collapse of the market. Applicant submitted data from Zillow, an Internet site that provides estimated values of properties. Her house's value was estimated at about \$200,000 in 2008, but had declined to \$132,000 by 2011. Applicant stated that the market had not yet started to decline when she bought the house in 2008. However, Applicant's graph from Zillow shows her house's estimated value in 2007 to be more than \$250,000 before it started its steady decline.⁹

Applicant's house is in foreclosure, but the process has not been completed. She is unsure how much the deficiency will be after the house is sold or auctioned. She has retained a bankruptcy attorney and attended the financial counseling required to file bankruptcy. She would prefer not to file bankruptcy. She stated that she will file bankruptcy if the bank attempts to collect on the deficiency balance of the mortgage. If it does not, she will let the *status quo* remain.¹⁰

The SOR also alleges two delinquent debts: one to a bank for \$310 (SOR ¶ 1.c) and one to a collection company for \$310 (SOR ¶ 1.b). Applicant admitted the allegations, but she stated they represent the same debt. She stated that she called the bank, who told her that the debt had been transferred to the collection company. She

⁶ Tr. at 25.

⁷ Tr. at 32.

⁸ Tr. at 30-33, 37-38; Applicant's response to SOR; GE 1, 2.

⁹ Tr. at 30-34; Applicant's response to SOR; GE 2.

¹⁰ Tr. at 33-36, 39-46; Applicant's response to SOR; GE 2, 3; AE A.

stated that she contacted the collection company and paid \$85 online. The company returned the money and told her the company no longer owned the debt.¹¹

Applicant is able to pay her other debts. She earns about \$75,000 a year, which is slightly more than she earned at her previous job. She is renting her current home. She had other delinquent debts in the past, but they have been paid. The investigator asked her about those debts in June 2010. She was unable to provide a reason why they became delinquent.¹²

A coworker of Applicant testified that she is a trustworthy and reliable employee, who has good judgment. He recommended her for a security clearance.¹³

Policies

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 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.

¹¹ Tr. at 53; Applicant's response to SOR; GE 2, 3.

¹² Tr. at 32, 38-39; GE 2. Any debts that were not specifically alleged in the SOR will not be used for disqualification purposes. They may be considered when assessing Applicant's financial history, in the application of mitigating conditions, and in analyzing the "whole person."

¹³ Tr. at 56- 61.

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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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:

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. Two are potentially applicable in this case:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant was unable or unwilling to pay her financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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.

I find that the \$310 debts alleged in SOR ¶¶ 1.b and 1.c represent the same debt. Applicant attempted to resolve the debt, but it was transferred to another collection company. AG ¶ 20(e) is applicable to the duplicate debt. AG ¶ 20(c) is applicable to the SOR ¶¶ 1.b and 1.c debts.

The real concern in this case is the foreclosed mortgage. Applicant bought a house in March 2008, financed through a VA 6% fixed-rate 30-year mortgage. She refinanced the mortgage with another bank in January 2009. It appears the amount owed on the mortgage increased slightly, likely because of closing costs. Applicant stated the terms of the mortgage remained the same. She stated that she was unsophisticated about finances, and she refinanced the mortgage because her broker told her that the original lender "was possibly involved in some shady transactions and he advised [her] to refinance the loan." Her monthly mortgage payment increased. Her credit report states it increased from \$1,683 to \$1,730. Applicant stated that it was closer to \$1,900 because of taxes and insurance.

It appears that Applicant fell victim to a broker who wanted an additional commission. However, Applicant was unable to state that the increase in her monthly payment was what caused her to stop paying the mortgage. In fact, she had no explanation for why she stopped paying the mortgage, other than the decline of the house's value. State B has been devastated by the real estate collapse, and Applicant's house is worth far less than she paid for it. That is the reason why she has been unable to sell the property for anything close to what is owed on the property. It has no direct connection to why she stopped paying the mortgage in the first place.

Applicant accepted a voluntary layoff after her company lost a large contract, because she believed she was going to be terminated. A loss of her employer's business and subsequent layoff could constitute conditions that were outside Applicant's control. However, she stopped paying the mortgage long before her

employment ended. I find that Applicant did not act responsibly under the circumstances, and AG ¶ 20(b) has minimal applicability.

Applicant received financial counseling as required to file bankruptcy. She has decided that she will file bankruptcy only if the bank pursues her on the deficiency owed on her mortgage. I find that Applicant's finances are not yet under control. Her financial issues are recent and ongoing. I am unable to determine that they are unlikely to recur. They continue to cast doubt on her current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(d) are not applicable. AG ¶ 20(c) has some applicability because of the financial counseling. I find that financial concerns remain despite the presence of some mitigation.

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.

I considered Applicant's favorable character evidence. However, Applicant stopped paying her mortgage and let the house go into foreclosure. She expects a large deficiency when the house is sold. Her plan is to do nothing unless the bank seeks payment for the deficiency. If that occurs, she plans to file bankruptcy. Applicant's disregard of her financial obligations reflects poorly on her judgment, reliability, and trustworthiness.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has not mitigated 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
Subparagraphs 1.b-1.c:	For 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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge