



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



In the matter of:)	
)	
)	ISCR Case No. 11-01085
)	
Applicant for Security Clearance)	

Appearances

For Government: Allison O’Connell, Esq., Department Counsel
For Applicant: Sheldon I. Cohen, Esq.

04/15/2013

Decision

RIVERA, Juan J., Administrative Judge:

In 2002, in less than six months, Applicant acquired six real estate properties with no money down, and at closing she received between \$10,000 and \$30,000 each for four of the properties. The purchases were beyond Applicant’s financial ability, and all properties were foreclosed. Applicant has substantial debt, which includes five delinquent mortgages and \$130,000 in student loans. She failed to establish financial responsibility in the acquisition and resolution of her debts. Moreover, she demonstrated questionable judgment. The record evidence fails to convince me of Applicant’s eligibility for a security clearance. Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on March 10, 2010. On August 10, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) listing security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct).¹ Applicant answered the SOR on September 8,

¹ DOD acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines*

2012, and requested a hearing before an administrative judge. On October 17, 2012, the Government amended the SOR by adding ¶ 1.d, alleging that Applicant is indebted to the IRS for \$10,000. Applicant answered the amended SOR on November 2, 2012, admitting she is indebted to the IRS in the approximate amount of \$3,500. (Appellate Exhibit (App. Ext.) 1)

The case was assigned to me on October 31, 2012. The Defense Office of Hearings and Appeals (DOHA) issued the first notice of hearing on November 16, 2012, scheduling a hearing for December 12, 2012. Applicant requested a postponement, which was granted. The second notice of hearing was issued on December 11, 2012, scheduling a hearing for January 11, 2013. At the hearing, the Government offered exhibits (GE) 1 through 13. Applicant testified, presented the testimony of two witnesses, and submitted one exhibit (AE 1), a binder with tabs A through OO. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on January 23, 2013.

Findings of Fact

Applicant admitted the factual allegations in the SOR with comments. Her admissions are incorporated as findings of fact. After a thorough review of all the evidence, including her testimony and demeanor while testifying, I make the following additional findings of fact:

Applicant is a 36-year-old employee of a government contractor. She has never been married and she does not have any children. This is her first security clearance application. She attended college from 1994 until 1998, and received a bachelor's degree in business management. She completed her master's degree in human resources management in 2000. She started working on her Ph.D. in 2006. She is currently preparing her dissertation for her Doctorate of Management in Organizational Leadership. Applicant paid for her own education by working while attending college and by taking educational loans and grants. Applicant owes approximately \$130,000 in student loans. (Tr. 215)

Applicant started working full-time in 1998. After a year working for a headhunter, she was hired by a large communications company, where she worked until 2007. Applicant changed jobs in 2007, and worked for her new employer for a period, but she was laid off. Between 2007 and 2009, Applicant had several periods of unemployment and she also was underemployed. She was unable to find permanent employment until January 2010.

In January 2002, Applicant purchased her first home for approximately \$136,000. (Tr. 61) She was making approximately \$47,000 a year, and her mortgage payment was between \$800 and \$1,000. She had \$1,000 on savings. Her Aunt D, a successful realtor

for Determining Eligibility for Access to Classified Information (AG), implemented by the DOD on September 1, 2006.

at the time, assisted Applicant with this real estate transaction. Within a short period of time from the purchase of her home (more than two months, but less than six months), Applicant purchased five additional real estate properties (investment properties), acquiring approximately \$600,000 in mortgages.

Applicant testified that she was naïve and did not know much about real estate transactions. She trusted and relied on her Aunt D, who advised Applicant to purchase the investment properties through Aunt D's business associate (TW). Applicant claimed that she never completed or signed any purchase contracts, loans, or lease applications. She never looked at any of the loan documents or the home appraisals. She put no money down to purchase any of the properties. However, she received between \$10,000 and \$30,000 per property, after the closing of each of the investment properties.

Applicant did not attend any of the mortgage closings. She did not know the terms of the loans, or that all the investment properties mortgages were adjustable rate mortgages. She authorized the sister of TW to represent her at the closings. However, Applicant claimed she never signed the power of attorney authorizing TW's sister to act as her attorney-in fact. (Tr. 125-127)

Applicant testified that her goal was to buy distressed properties, use the money she received at closing to rehabilitate the properties, rent the properties as Home and Urban Development (HUD) Section 8 properties (low income housing), and then sell the properties after they appreciated in value. Her testimony is contrary to the March 2012 statement she provided to a government investigator. According to the agent's report of that interview, Applicant told the investigator that she wanted to make a "quick turnaround profit" from her investment properties.

Of the five investment properties Applicant purchased, one sold for a profit. Three of the other four properties received some renovations; one property was never renovated or rented. Applicant claimed she used the money she received at the closings to pay for the renovations and to pay the mortgage payments while the properties were not rented. All four properties were foreclosed around 2004-2005. Applicant acknowledged she owed deficiencies on all four foreclosed properties. She never made any payments towards the balance of those deficiencies. She presented no evidence of efforts to contact the creditors or to resolve these four delinquent mortgages. Except for consulting with an attorney about real estate matters and a second attorney about filing for bankruptcy protection, Applicant made no effort to address these delinquent mortgages. (Tr. 173-175)

Applicant explained that after she exhausted the money she received at the closings, her earnings (her salary plus the rental income) were insufficient to pay for her day-to-day living expenses and the mortgages. Applicant's financial problems were exacerbated with the increase of the adjustable rate mortgages.

In her March 2010 SCA, Applicant reported that in March 2003 she took a seven day cruise; in March 2005, she took a five day cruise; and in September 2005, she took another cruise.

Applicant stopped making mortgage payments on her home (rented since 2003) in January 2009, and the property was foreclosed in September 2009. She explained that she was unemployed and underemployed between 2007 and 2009. She used her bank savings and retirement savings (401(k)) to pay for some of the mortgage payments, but she stopped because she needed the money to pay for her day-to-day living expenses. The tenant left the property overnight, owing a couple of month's rent, and they left the property with substantial damages. Applicant contacted the mortgage holder and informed the bank of her situation. She tried to do a short sale of the property and then a deed-in-lieu of foreclosure, with no results.

Applicant's residence was sold after foreclosure and apparently the proceeds satisfied the first mortgage. Applicant had a \$22,569 second mortgage on the property that was charged off and remains unpaid. Applicant acknowledged the debt. She claimed she has been trying to identify the mortgage holder to establish a payment plan, but without results. She averred she is willing to pay the debt, but there is no creditor demanding payment. (Tr. 80, AE OO)

Applicant expressed remorse for the purchase of six real estate properties, five of which went to foreclosure. She repeatedly testified that she was the victim of a fraudulent real estate scam perpetuated by TW, with the assistance of Aunt D. Applicant trusted Aunt D's advice and she was steered wrong. Both TW and Aunt D were convicted in federal court of fraud and served time in jail. Applicant was interviewed by federal law enforcement agents and provided statements, but she was never charged for any offenses related to the real estate fraud. (GE 7, 8)

Applicant owed \$10,000 to the IRS for tax years 2004, 2007, and 2009. She did not file her 2004 income tax return until 2007. When she filed her 2004 income tax return, she incorrectly reported her income from the investment properties. Applicant received rental income from her tenants and payments from HUD. She reported her rent income, but failed to report the HUD payments she received. She testified that she owed money for tax years 2007 and 2009, because she did not have sufficient deductions. In February 2010, when she was notified of the delinquent taxes, Applicant requested and entered into a payment agreement with the IRS. She is current on her payments and owes approximately \$3,500. (Tr. 115-117)

Applicant submitted numerous reference statements from friends and coworkers, and the testimony of two witnesses. Overall, Applicant has an impeccable reputation. At work she exceeds expectations and is considered to be the consummate professional, a hard-worker, well-respected by her peers, and of the highest integrity. She is considered to be trustworthy, honest, and to exercise good judgment. Her references recommend Applicant for a security clearance.

Applicant believes that she has learned from her mistakes, and she is in the process of getting her life and her financial situation back in order. She believes that she has matured and is behaving responsibly. Applicant states that she understands the importance of being financially responsible and following laws and regulations.

Policies

Eligibility for access to classified information may be granted “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. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch 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).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant’s security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

Under Guideline F, the security concern is that 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. (AG ¶ 18)

Applicant has a history of financial problems that date back to 2004-2005. Her financial problems are current, as evidenced by the five foreclosed properties and delinquent mortgages alleged in the SOR. Two of the financial considerations disqualifying conditions apply: AG ¶ 19(a): inability or unwillingness to satisfy debts, and AG ¶ 19(c): a history of not meeting financial obligations.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

- (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;
- (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; and
- (f) the affluence resulted from a legal source of income.

Applicant's evidence fails to fully establish the applicability of any mitigating condition. Her financial problems are ongoing, she has a large delinquent debt, and the evidence fails to show that she acted responsibly in the acquisition of her debts or in the

resolution of the debts, or that she acquired the debt under circumstances that are unlikely to recur. AG ¶ 20(a) does not apply.

Presuming Applicant was a victim of fraud, that she had limited experience in real estate transactions, and that she mistakenly relied on Aunt D's bad advice to purchase the properties, I find Applicant actions were not caused by circumstances beyond her control. By all accounts, Applicant is a smart, diligent, and well-educated woman. In January 2002, she was 27 years old. She had a bachelor's degree in business management, and a master's degree in human resources management. Applicant voluntarily entered into the six real estate transactions within less than six months. She abrogated all financial responsibility, and negligently failed to review any loan documents, property appraisals, and rental agreements. Moreover, she exercised bad judgment when she purchased properties and acquired mortgages clearly beyond her financial means.

Applicant presented little evidence of efforts taken to contact the four mortgage creditors for her investment properties, to pay those mortgages, or to otherwise resolve her investment properties' delinquent mortgages. To the contrary, available evidence suggests Applicant disregarded those mortgages while she enjoyed the money she received at the closings by taking vacation cruises in 2003 and 2005.

Applicant's periods of unemployment and underemployment during 2007-2009 established circumstances beyond her control that contributed to or aggravated her financial situation. She did not gain full employment until January 2010. Applicant's evidence showed she acted more responsibly and made some efforts to contact her home's first mortgage creditor, and attempted to avoid the foreclosure of her home. Apparently, the proceeds of the sale of her home released her of financial responsibility for the first mortgage. However, she owes \$22,569 for the second mortgage, which was charged off. Applicant claimed she has been making efforts to identify the owner of the second mortgage to establish a payment plan. In light of the evidence presented, I find Applicant's actions cannot be considered as good-faith efforts to resolve her delinquent second mortgage.

I find that Applicant failed to show financial responsibility in the acquisition of six mortgages in a short period, and in her efforts to resolve her delinquent mortgages. She presented little documentary evidence of payments made, contacts with creditors, or of good-faith efforts to resolve her delinquent mortgages. AG ¶¶ 20(b) and (d) do not apply. AG ¶ 20(c) partially applies. Applicant sought help from two attorneys to deal with her financial problems. However, considering the number of delinquent mortgages, Applicant's lack of knowledge as to the aggregate total of the debts, her pending student loan debts, and her little effort to resolve her delinquent mortgages, I cannot find that there are clear indications that her financial problems are being resolved or under control.

Concerning SOR ¶ 1.d, I find that Applicant filed her 2004 income tax return in 2007, with errors. When she was notified of her delinquent income taxes, Applicant

contacted the IRS and established a payment plan to pay her taxes due for 2004, 2007, and 2009. As of her hearing date, she owed approximately \$3,500 and she was current on her payments.

On balance, questions remain about Applicant's judgment, current financial situation, and her ability and willingness to resolve her delinquent debts. The evidence available is insufficient to establish that Applicant has a track record of financial responsibility. The remaining mitigating conditions (AG ¶¶ 20(e) and 20(f)) are not applicable to the facts of this case.

Guideline E, Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

SOR ¶ 2.a cross-alleges SOR ¶ 1.c - that Applicant purchased four investment residential properties using four mortgage loans, and that she received large sums of money at settlement. The four investment properties were foreclosed and the mortgage loans remain unpaid. Applicant's transactions were investigated by federal law enforcement agents, but she was not charged with any crime. Her Aunt D and TW, her aunt's business associate, were convicted of fraud and sentenced to jail.

Applicant claimed she was a victim of fraud, that she had limited experience in real estate transactions, and mistakenly relied on Aunt D's bad advice to purchase the properties. I find that Applicant voluntarily entered into these four real estate transactions. She abrogated all financial responsibility, and negligently failed to review any loan documents, property appraisals, and rental agreements. Moreover, she exercised bad judgment when she purchased the properties and acquired mortgages clearly beyond her financial means. She did not attend the closings and designated a stranger as her attorney-in-fact to represent her during the transactions. The stranger represented her in consecutive transactions even though Applicant knew she never signed the power of attorney authorizing the stranger to represent her. Applicant put no money down to purchase the properties. At the closings, Applicant received between \$10,000 and \$30,000 for each of the four properties she purchased.

Applicant's \$48,000 yearly income was insufficient to cover the six mortgages she acquired in less than six months. At the time of these transactions (2002), Applicant was 27 years old; she had a bachelor's degree in business management and a master's degree in human resources management. Applicant presented little evidence of efforts

taken to avoid foreclosure on the investment properties, or to pay her delinquent mortgages after the foreclosures. She does not know how much money she owes as a result of these delinquent mortgages.

Applicant's behavior triggers the applicability of the following disqualifying conditions under AG ¶ 16:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing.

AG ¶ 17 provides seven conditions that could mitigate the personal conduct security concerns.

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Considering the record as a whole, I find that none of the Guideline E mitigating conditions apply. AG ¶¶ 17(a), (b), (f), and (g) are not pertinent to the facts of this case. AG ¶ 17(c) does not apply because Applicant's actions continue to cast doubt on her trustworthiness, reliability, and judgment. Applicant behavior is recent. The second mortgage on her home (not alleged under Guideline E) and four of her investment properties mortgages are still delinquent and unresolved.

AG ¶¶ 17(d) and (e) partially apply, but do not fully mitigate the personal conduct security concern. Applicant partially acknowledged her mistakes, sought legal counsel, and no longer associates with her aunt and TW. She cooperated with federal agents during their investigation, and she disclosed her questionable behavior in her 2010 SCA. She has taken steps to reduce her vulnerability to exploitation and duress. Notwithstanding, Applicant's behavior still raises serious questions about her judgment, reliability, trustworthiness, and her ability to protect classified information.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c).

Applicant, 36, is considered to be an exceptional employee with outstanding moral character. Her references believe she is trustworthy, reliable, honest, and displays good judgment. Even if Applicant was steered wrong by her aunt, at the time of the transactions, Applicant was a mature, well-educated woman and her actions were voluntary. She failed to show financial responsibility or judgment in the acquisition of the properties and in the resolution of her delinquent mortgages. Applicant cannot avoid responsibility by blaming her aunt for her questionable judgment. Considering the record as a whole, Applicant's financial problems and her actions demonstrate a lack of suitability for a security clearance.

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:	For Applicant
Subparagraphs 1.b-1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a:	Against Applicant

Conclusion

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

JUAN J. RIVERA
Administrative Judge