



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



In the matter of:)	
)	
)	ISCR Case No. 11-03724
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Jr., Esquire, Department Counsel
For Applicant: *Pro se*

02/25/2013

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to deny her eligibility for a security clearance to work in the defense industry. Although Applicant has demonstrated a willingness to resolve her delinquent debt, she has not established a sufficient track record of financial rehabilitation. Clearance is denied.

Statement of the Case

Acting under the relevant Executive Order and Department of Defense (DOD) Directive,¹ on October 1, 2012, DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations guideline. DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue Applicant’s security clearance and recommended that the case be submitted to an

¹ This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960; as amended, as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

administrative judge for a determination whether to revoke or deny Applicant's security clearance.

Applicant timely answered the SOR in November 2012 and requested a hearing. The case was assigned to me on November 23, 2012. At the hearing convened on December 12, 2012, I admitted Government's Exhibits (GE) 1 through 4 and Applicant's Exhibits (AE) A through E, without objection. After the hearing, I left the record open to allow Applicant to submit additional documentation. She timely submitted AE F through BB. These documents are admitted over Department Counsel's objection.² Department Counsel's memorandum regarding Applicant's post-hearing submissions is appended to the record as Hearing Exhibit (HE) 1. I received the transcript (Tr.) on December 20, 2012.

Procedural Issues

Applicant received less than 15 days written notice of the time and place of the hearing. After being advised of the notice requirement under Directive ¶ E.3.1.8, Applicant waived notice, indicating that she was ready to proceed with the hearing as scheduled.

Findings of Fact

Applicant, 54, is the mother of three children, ages, 10, 28, and 29. Employed by a federal contractor as a production control planner, she has held a security clearance without incident for the past seven years. She is considered an exceptional employee, whose trustworthiness and ethics serve as a model to other employees. Between 2008 and 2012, she received numerous awards lauding her outstanding work performance.³

The SOR alleges that Applicant is indebted to 12 creditors for approximately \$81,700.⁴ Applicant's financial problems began after her 17-year-marriage ended in divorce in 1999. To minimize the stress and trauma experienced by her older children, then teenagers, Applicant elected to assume the mortgage and remain in the marital home. Acquiescing to her ex-husband's request, Applicant agreed to reduce his monthly child support obligation, accepting \$400 less than she was entitled to receive. After the divorce, Applicant's income and the reduced child support was not enough to raise two children and maintain the home. As a result, she began to use credit cards to make ends meet. Because she could not afford the minimum payments on the credit cards,

² Citing relevancy, Department Counsel objected to AE H, a Department of Agriculture Center for Nutrition Policy and Promotion article about the Expenditures on Children by Families in 2011. Presumably Applicant, who argues that unexpected expenses related to the care of her children contributed to her financial problems, submitted this article to put her expenses in context. The document is relevant to the financial issues raised in the SOR, however, its admissibility is not indicative of the weight I have given the document in determining Applicant's security worthiness.

³ Tr. 33-35; GE 1; AE C-D.

⁴ The total number of creditors, as well as the total amount owed, has been adjusted for duplicate accounts. Applicant established that ¶¶ 1.g, 1.m. and 1.o are duplicates of ¶¶ 1.h, 1.i, and 1.k, respectively.

Applicant did not realize how much credit card debt she was accumulating or appreciate that she was headed toward serious financial trouble.⁵

By the summer of 2009, Applicant could not afford to pay her mortgage or the minimum payments on her credit cards. She wrote hardship letters to her creditors, explaining that she would continue to pay her debts, but that the amount would be less than the required minimum payments. She consulted two debt consolidation programs, but she could not afford the proposed terms of the debt repayment plans. In August 2009, Applicant retained a lawyer to help resolve her financial issues. The lawyer advised Applicant that he would obtain a mortgage modification to reduce Applicant's \$1,700 monthly payment to a more manageable amount. He would then use the savings generated by the lower mortgage payment to pay her other debts. Applicant gave the lawyer authorization to negotiate and correspond with her creditors directly. Already two months behind on her mortgage payment, the law firm advised Applicant not to pay her mortgage during the modification process. During the 20 months Applicant did not pay the mortgage, she stopped using her credit cards. However, she used approximately \$27,000 of the \$34,000 previously earmarked for her mortgage to pay other expenses related to the maintenance of her aging home and the care of her family.⁶

The law firm failed to obtain a mortgage modification. According to the lender, Applicant repeatedly failed to submit the requested documentation. Applicant denies these claims, stating that she verified with her lawyer that the requested documents were sent to and received by the mortgage company. In March 2011, Applicant lost her home of 16 years to foreclosure. In September 2012, Applicant filed a claim with the National Mortgage Settlement, an agreement between the states and federal government, and the five largest mortgage servicers to address claims regarding the irregularities in the foreclosure process. Applicant's claim is still pending.⁷

Of the 12 debts alleged in the SOR, ten remain unresolved. Despite the SOR allegation to the contrary,⁸ Applicant's most recent credit report does not indicate a deficiency balance on Applicant's mortgage. Applicant has also established that the court vacated the judgment of garnishment alleged in ¶ 1.a. However, Applicant's claims that she has been paying \$150 each month toward the debt alleged in ¶ 1.f is not supported by the record. After considering all of her options, Applicant decided to file for Chapter 7 bankruptcy protection. She has retained a law firm and is currently waiting to begin the process.⁹

⁵ Tr. 38-40, 73, 85-88.

⁶ Tr. 40-41, 45-56; AE E, G, J-O, Q-S, V-AA; Answer.

⁷ Tr. 41-44; GE 4; Answer.

⁸ See SOR ¶ 1.n. (alleging that Applicant's mortgage is in foreclosure status and has a past-due balance of \$24,628, with a total balance of \$210,018 outstanding.)

⁹ Tr. 68-72; AE A, G, R; Answer.

Applicant is not making payments on her delinquent debts. Her student loan, which is \$201 each month, is in deferment status until September 2013. As a result, Applicant, who earns \$52,000 annually, is currently able to live within her means. If she does not work overtime, she has less than \$300 in disposable income each month.¹⁰

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.

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.

¹⁰ Tr. 35, 88-90; GE 2.

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

Unresolved delinquent debt is a security concern because “an individual who is financially over extended is at risk of having to engage in illegal acts to generate funds.”¹¹ Financial difficulties have proven to be a significant motivating factor for espionage or attempted espionage.¹² The Government does not have to prove that an applicant poses a clear and present danger to national security,¹³ or that an applicant poses an imminent threat of engaging in criminal acts. Instead, it is sufficient to show that an applicant has a history of unresolved financial difficulties that may make her more vulnerable to financial pressures.¹⁴

Applicant owes over \$81,000 in delinquent debt. The allegations are supported by her admissions and by the credit reports in the record.¹⁵ Applicant has demonstrated an inability to pay her debts as well as a history of not doing so.¹⁶ However, her debt is not the result of frivolous spending or a lavish lifestyle, but the consequences of her choices, however well-intentioned, to remain in her home after her divorce and to allow her ex-husband to pay reduced child support. Applicant has made good-faith efforts over the years to reduce her debts, but none of these efforts have yielded favorable results.¹⁷ Her decision to file for bankruptcy protection is reasonable given her circumstances. While she has paid her attorney’s retainer fee, she has not yet started the bankruptcy process. Accordingly, too much uncertainty remains regarding the status of the SOR debts. Even if Applicant does ultimately file for bankruptcy protection and her delinquent debts are discharged, the underlying cause of her financial problems remains – Applicant’s living expenses, reasonable as they may be, exceed her income. Although Applicant receives the benefit of some mitigating evidence, there is not sufficient evidence in the record to overcome the Government’s *prima facie* case.

¹¹ AG ¶ 18.

¹² ISCR Case No. 96-0454 (App. Bd. Feb. 7, 1997).

¹³ See *Smith v. Schlesinger*, 513 F.2d 463, 476 n. 48 (D.C. Cir. 1975).

¹⁴ See ISCR Case No. 87-1800 (App. Bd. Feb. 14, 1989)

¹⁵ GE 3-4; Answer.

¹⁶ AG ¶¶ 19(a) and (c).

¹⁷ AG ¶¶ 20(c) and (d).

An adverse decision in this case is not a finding that Applicant does not possess the good character required of those with access to classified information. Even good people can pose a security risk because of facts and circumstances not under their control.¹⁸ Nor should this decision be construed as a determination that Applicant cannot or will not attain the type of financial stability necessary to justify the granting of a security clearance. The award of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. A clearance is not recommended due to Applicant's current circumstances. However, in the future, she may well present persuasive evidence of financial rehabilitation and reform.

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
Subparagraphs 1.a, 1.g, 1.m - 1.o:	For Applicant
Subparagraphs 1.b – 1.f, 1.h – 1.i:	Against Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Nichole L. Noel
Administrative Judge

¹⁸ ISCR Case No.01-26893 at 8 (App. Bd. Oct. 16, 2002); *See also Department of Navy v. Egan*, 484 U.S. 518, 527-28 (1988).