



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



In the matter of:)
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Applicant for Security Clearance)

ISCR Case No. 11-04457

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: Tori D. Bramble, Esq.

06/03/2013

Decision

O’BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the security concerns raised under the guideline for financial considerations. Her request for a security clearance is granted.

Statement of the Case

On December 20, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) citing security concerns under Guidelines F (financial considerations) of the Adjudicative Guidelines (AG).¹ In her Answer to the SOR, Applicant admitted the six financial allegations, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on April 19, 2013, and I convened the hearing as scheduled on May 15, 2013. I admitted 11 Government exhibits (GE 1-11), and 9 exhibits offered by the

¹ Adjudication of the case is controlled by Executive Order 10865, as amended; DOD Directive 5220.6 (Directive), as amended; and the Adjudicative Guidelines, which supersede the guidelines listed in Enclosure 2 to the Directive. They apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

Applicant (AE A-I). I granted Applicant's request to hold the record open for additional documentation. She timely filed three documents, admitted as AE J through L. Department Counsel's memorandum regarding Applicant's initial post-hearing submission is marked Hearing Exhibit (HE) I. Taken together, Applicant's request for a time extension, and Department Counsel's response, are marked HE II. My Order granting Applicant an extension, and Department Counsel's response, taken together, are marked HE III. DOHA received the transcript on June 3, 2013.

Findings of Fact

Applicant's admissions are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the record evidence, I make the following additional findings of fact.

Applicant is 32 years old, married, and has three children between 5 and 16 years of age. She joined the U.S. Army in 2000, and received her first security clearance that year. She left the service when she had her second child. She was honorably discharged in 2001 at pay grade E-3. She has held administrative positions with federal contractors since 2003. Since January 2009, she has worked for a defense contractor. She began as an administrative assistant and is currently a site security specialist. (GE 1, 2; Tr. 83-84)

Applicant's husband testified. He and Applicant bought a home in July 2007. In 2008, he was unemployed for four months, and fell behind in the mortgage payments. In addition, the value of their home decreased in 2008 because of the housing market crash. He and Applicant requested a loan modification from the lender. In 2009, they were informed that they were not sufficiently delinquent to qualify for a modification. During her December 2010 security interview, Applicant explained that she had been current on her payments when they entered the loan modification process. Under that program, the lender required her to make half payments for three to six months, and the delinquent portion of her loan would be incorporated into the modified loan, when it was approved. Applicant's husband testified that they made partial mortgage payments from late 2009 to January 2011. His November 2010 credit report confirms that they had a partial-payment agreement with the lender as of November 2010. However, the lender denied their loan modification request. Applicant and her husband began making full mortgage payments again in January 2011. (GE 2, 5; Tr. 26-67, 40-43)

Applicant's November 2010 credit report lists 5 delinquent debts, and 31 accounts that are listed as "pays as agreed." One of the past-due accounts was their mortgage loan. On May 6, 2011, Applicant and her husband filed a Chapter 13 bankruptcy petition (Case #1) to ensure that they would be able to keep their home. Applicant's husband testified that their loan is not in foreclosure status because it is included in their bankruptcy petition. The arrearages on their mortgage loan are included in the 60-month bankruptcy plan. Their attorney advised them that bankruptcy law required them to include all of their debts in the petition, whether or not they were

delinquent. They followed their attorney's direction and included all other debts in the petition. (GE 3, 4, 8, 9; AE B-E; Tr. 46-47, 75, 78-80, 83)

In October 2011, Applicant's husband lost his job. Fearing that they would not be able to keep up their Chapter 13 payments, they voluntarily dismissed Case #1 on November 9, 2011. However, Applicant's husband found employment shortly thereafter, and they re-filed the bankruptcy petition (Case #2) on November 18, 2011, nine days after dismissing Case #1. Applicant's husband has been employed steadily since that time. Currently, he is a civilian employee of a military agency. Applicant received financial counseling as part of the bankruptcy process. (GE 2, 6, 7; AE A, B, G; Tr. 44-46, 77)

The arrearages that accrued while Applicant and her husband stopped their mortgage payments, or were making partial payments, total \$42,676. They pay the arrearages through their bankruptcy plan. The Chapter 13 bankruptcy payment of \$519.69 is automatically deducted from Applicant's husband's pay bi-weekly. Of the monthly bankruptcy payment, \$711 is applied to the mortgage arrearage; the remaining \$415 per month is applied to the other debts in the petition. Applicant provided evidence that deductions of \$519.69 were also made from her husband's pay at his previous employment between December 2011 and May 2013. The payments made in that time period total \$16,976. (AE C, D, J, K; Tr.48, 62-66, 95-96)

Since 2011, Applicant and her husband have been making full payments on their mortgage loan. They pay the non-arrearage mortgage payment outside of the bankruptcy via cashier's check. Applicant provided evidence of her husband's April 2013 payment of \$2,595, payable to the lender listed in allegation 1.d. She also provided evidence of their history of mortgage payments from February 2012 through May 2013. (AE I, L; Tr. 46, 59, 80-82)

SOR Allegations 1.a, 1.b, and 1.d refer to the bankruptcy and Applicant's mortgage loan, discussed previously.² Applicant's debts appear in her credit reports of November 2010, and October and March 2012. The SOR also includes the following three allegations. (GE 3-5)

Allegation 1.c – Garnishment.

Applicant pays child support to the father of her 16-year-old son, who is the custodial parent. She is current on her obligation of \$472 monthly. Applicant provided evidence that the support is deducted from her pay. At her security interview in 2010, she

² The Government offered evidence that, on February 15, 2013, the trustee for Case #2 moved to dismiss Applicant's bankruptcy petition for "unreasonable delay." The May 29, 2013 motion hearing had not occurred as of the date of Applicant's security clearance hearing. Applicant was unaware of the motion to dismiss. Applicant's husband testified he thought the issue had been resolved, and would speak with his attorney. As the record contains evidence of Applicant's payments for the previous 18 months, until five days before the hearing, and no other information regarding dismissal, there is insufficient information on which to draw conclusions about the motion to dismiss. (GE 10, 11; Tr. 48-56, 82)

characterized it as a garnishment. However, at the hearing, she testified that, during the custody hearing, she chose to pay the support by having it deducted automatically from her pay, and it is not an involuntary garnishment but a voluntary deduction. (GE 2; AE F, H; Tr. 84-87, 96)

Allegations 1.e (\$838); 1.f (\$1,794) - Student loan; credit card. Applicant testified that she included these debts in her Chapter 13 bankruptcy, as advised by her bankruptcy attorney. Her attorney included all the debts listed in her credit report at the time of the bankruptcy petition. (Tr. 78-80, 82, 95)

Applicant's facility security officer testified on her behalf. He is her direct supervisor. Previously, he was a criminal investigator while serving in the Marine Corps for 23 years. He hired Applicant and has supervised her for more than one-and-one-half years. She informed him of her financial problems. He considers her reliable and an excellent worker. In his experience working with her, he has had no reason to believe that she would mishandle classified information. He noted that he and Applicant handle classified material daily, and that he trusts her completely. (Tr. 67-73)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.³ Decisions must also reflect consideration of the "whole-person" factors listed in ¶ 2(a) of the guidelines.

The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the adjudicative factors addressed under Guideline F (financial considerations).

A security clearance decision is intended only to resolve the questions of whether it is clearly consistent with the national interest⁴ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy

³ Directive. 6.3.

⁴ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

burden of persuasion.⁵ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interest as her or his 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.⁶

Analysis

Guideline F, Financial Considerations

AG ¶18 expresses the security concern pertaining to financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. . .

In about 2008, when Applicant's husband lost his job, their loan payments became delinquent. Applicant's house had also lost value in the market crash. In order to save their home, they tried to obtain a loan modification, but were denied. Ultimately, they filed for Chapter 13 bankruptcy protection. AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) applies. The record contains no evidence of other disqualifying conditions such as frivolous spending, or debts related to alcoholism, gambling, or deceptive practices.

I have considered the mitigating factors under AG ¶ 20 of the Financial Considerations guideline, and the following potentially apply:

(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

⁵ See *Egan*, 484 U.S. at 528, 531.

⁶ See *Egan*; Administrative Guidelines, ¶ 2(b).

separation), and the individual acted responsibly under the circumstances; and

(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.

Applicant's husband's unexpected job loss in 2008 affected Applicant's ability to make her mortgage payments, and the loan became delinquent. The market crash also devalued their home. Other than one month in 2011, Applicant's husband has been steadily employed since then, and it is unlikely these circumstances will recur. Applicant has paid consistently on her Chapter 13 payment plan. Moreover, her supervisor, the facility security officer for her company, attested to her trustworthiness and reliability. AG ¶ 20(a) applies.

During the stock market crash of 2008, Applicant's husband lost his job. Neither the crash nor the job loss was foreseeable or within Applicant's control. When her mortgage payments became delinquent, she feared that she would lose her home. She applied for a loan modification. In order to qualify for the modification, the lender required her to make partial payments so that her loan would become delinquent. The lender's requirement to allow her loan to become delinquent was beyond her control. Ultimately, the loan modification was denied. Applicant filed for Chapter 13 bankruptcy protection, which enabled her to save her home. Applicant acted responsibly when she worked with the lender to obtain a loan modification, complied with the lender's requirements, and finally filed Chapter 13 to protect her home. AG ¶ 20(b) applies.

Applicant filed a Chapter 13 bankruptcy petition in 2011, and has been meeting the payment obligations consistently. She received financial counseling as part of the bankruptcy process. She voluntarily dismissed her petition in November 2011 when her husband was unemployed because she thought she would be unable to meet the payment schedule. However, she promptly re-filed the petition nine days later, when her husband found employment. She provided evidence of her history of meeting the payments on her mortgage, and of meeting the payments on her bankruptcy plan. The mortgage arrearages, which developed when the lender required her to become delinquent, have been consistently paid through her bankruptcy plan. She was required to include all her debts in her plan, and the two small debts listed in the SOR are included. The garnishment cited in the SOR is not an involuntary garnishment of her pay, but reflects her decision to have her child custody payments voluntarily deducted from her pay. Applicant's finances are under control. AG ¶ 20(c) applies.

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate the applicant's security eligibility by considering the totality of an applicant's conduct and all the circumstances. An administrative judge considers 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.

AG ¶ 2(c) requires an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept. Under the cited guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

The record shows that Applicant's home loan delinquency did not result from irresponsible actions. Other than her home, she was able to keep her financial obligations under control, and her credit report shows that the vast majority of her accounts have been paid on time. However, when her husband was unemployed for several months, and her house lost value because of the real estate market crash, she feared losing her home, and filed for Chapter 13 protection to save it. Other than a brief period of nine days, Applicant's plan has been in place since May 2011 and she has been diligent in paying it for two years. She pays both the mortgage loan and the arrearages, which built up as a result of the lender's requirement that she make partial payments for an extended period to qualify for the loan modification.

Applicant has demonstrated commitment to resolving her financial obligation. Given her persistence in meeting her bankruptcy plan payments, I conclude she will complete the bankruptcy plan. Applicant served in the U.S. Army and has held a security clearance since 2000 without incident. She has provided service to federal contractors for more than 10 years. Her facility security officer testified in her behalf, and based on his experience and observations, he opined that she is completely reliable and trustworthy.

A fair and commonsense assessment of the available information shows Applicant has satisfied the doubts raised about her suitability for a security clearance. For these reasons, I conclude she has mitigated the security concerns arising from the cited adjudicative guideline.

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1, Guideline F:

FOR APPLICANT

Subparagraphs 1.a – 1.f

For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is granted.

RITA C. O'BRIEN
Administrative Judge