



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



In the matter of:)
)
) ISCR Case No. 11-06772
)
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

March 26, 2013

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant defaulted on the mortgages for her residence and her rental property. Both properties were foreclosed upon. She also has an unresolved home-equity line of credit in the amount of \$118,785. Applicant has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

The Department of Defense issued an undated 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) effective on September 1, 2006.

Applicant signed a receipt for the SOR on November 15, 2012. Applicant's Answer to the Statement of Reasons (Answer) was also dated November 15, 2012. In

her Answer, Applicant elected to have the case decided on the written record, in lieu of a hearing. Department Counsel submitted the Government's written case on December 18, 2012. A complete copy of the file of relevant material (FORM) was received by Applicant on January 23, 2013. She was afforded 30 days to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant did submit documents which I have marked Applicant Exhibits (AE) A through F. Department Counsel had no objections to AE A through AE F and they were admitted into the record. The case was assigned to me on March 18, 2013.

Findings of Fact

Applicant is 54 years old. She was naturalized as a U.S. citizen on July 25, 1996. Applicant worked full time from 1997 to 2009 in the private sector. She has been employed with a Government contractor since September 2009. She is divorced and has two adult children. (Item 4.)

The Government alleged that Applicant is ineligible for a clearance because she has made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about her reliability, trustworthiness and ability to protect classified information. The SOR lists two foreclosures and a charged-off home-equity line of credit totaling \$118,785. Applicant admitted each of the debts in her Answer. (Item 3.)

Applicant owned two properties, a rental home and her primary residence. Applicant purchased the rental home in 2005. Its tenants did not pay rent for six months of an undisclosed year. Without the rental payments, Applicant could not afford the mortgage and defaulted on her monthly payments to the lender. Applicant failed to pursue legal action to evict the tenants. The lender foreclosed on the property in August 2008.¹ At the time of the foreclosure, Applicant owed the lender \$210,000. Applicant claimed that the property was resold by the lender for \$235,000 and that the debt was paid in full through the foreclosure process. She failed to produce documentation to support her claim. (Item 5; Item 7; AE C.)

Applicant's primary residence was foreclosed upon in 2008. She purchased the home in 2004 or 2005 for \$555,000. She financed the purchase with an interest-only loan. After three years, the loan's rate adjusted and Applicant's payments increased from \$2,800 per month to \$4,000 per month. Applicant claimed that she was not aware that her loan payments would increase. She could not afford the increase in rates, despite working two jobs. She attempted to refinance the loan. She was advised to take out a home-equity loan in the amount of \$100,000 with another lender, to be used as a payment on the primary mortgage. She followed that advice and took out the home-equity loan. She stated she refinanced \$522,500 with the primary lender. After she refinanced her residence, Applicant still could not afford the monthly payments. The home was foreclosed upon in April 2008. Applicant claimed the home was resold for

¹ The SOR identified this foreclosure as having occurred in 2007, but Applicant's credit report identifies it as having occurred in August 2008.

\$480,000 and that the lender told her she had a “zero balance.” She failed to produce documentation to support her claim.

Applicant is still indebted on the home-equity line of credit in the amount of \$118,785. On February 1, 2013, Applicant wrote a certified letter to this creditor and offered to settle this debt for \$11,857.(\$11,878?) Applicant provided no reply from the creditor by the close of the record. (AE B; AE C.)

Applicant explained her financial problems indicating, she “was caught off guard in the housing market’s boom and bust of the last decade.” Applicant reports her current annual gross salary as \$180,000, with a current net remainder of approximately \$3,970 per month. She has stocks/bonds, savings, and checking accounts worth about \$32,000. Applicant claimed that she researched an on-line credit counseling agency, “but to [her] surprise [she] found none.” (Item 5; Item 6; AE C.)

Applicant has been awarded a number of certificates for her work as a defense contractor. The certificates recognize her for her exceptional and outstanding work on behalf of five different overseas missions. (AE F.)

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 AG ¶ 2(a) describing 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 the 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.” The

applicant has the ultimate burden of persuasion to obtain 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. 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 as to 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.

In 2007 and 2008, Applicant accumulated a significant amount of delinquent debt associated with her two properties. She lost her residence and her rental property in foreclosure actions. Since 2009, when she became a salaried government contractor, she has failed to address her remaining home-equity line of credit, despite the means to satisfy her obligations. Her actions have demonstrated both a history of not addressing her debt and an unwillingness to do so. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations mitigating conditions under AG ¶ 20 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.

The evidence shows that Applicant resolved SOR ¶¶ 1.a and 1.b involuntary, through foreclosure. She failed to meet her burden to produce evidence to show she has responsibly addressed her remaining home-equity line of credit account. Her financial issues are recent and ongoing. AG ¶ 20(a) is not applicable.

AG ¶ 20(b) is not applicable. Applicant explained that the decline in the housing market, her renter's failure to pay rent for six months, and the unanticipated increase in monthly mortgage payments for her primary residence all led to her financial problems. However, these were not circumstances fully beyond her control. It is unclear from the evidence how the decline in the housing market affected her personal financial situation. She failed to take legal steps when her renters defaulted on their monthly obligations and she failed to adequately understand the terms of her primary mortgage when she purchased her residence. She is at least partially culpable for these decisions. Further, to be fully applicable, AG ¶ 20(b) requires that the individual act responsibly under the circumstances. Applicant did not responsibly address her delinquent home-equity line of credit from 2009 to February 2013. In February 2013, she sent the creditor a letter offering to settle the debt for only 10% of the total debt. Further, Applicant failed to produce evidence that indicated she no longer owed anything on her two defaulted properties that were foreclosed upon. I am unable to make a determination that she acted responsibly under the circumstances.

Applicant did not attend financial counseling. She presented no evidence that her financial problems are resolved or are under control. AG ¶ 20(c) does not apply.

Applicant has not made a good-faith effort to pay or resolve her remaining delinquent debt. She only contacted the lender for the home-equity line of credit after receiving the FORM from the Government. It is unclear if her offer to settle the debt for only 10% of her debt will be accepted. AG ¶ 20(d) is not applicable.

Applicant presented no evidence to show that she was in the process of formally disputing any of the debts on the SOR or that she had successfully disputed any of these debts in the past. AG ¶ 20(e) is not applicable.

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 relevant 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. Applicant has received a number of certificates recognizing her significant contributions to U.S. missions overseas. In her position as a Government contractor, she makes a substantial annual income, has more than \$30,000 in savings, and has a net remainder of approximately \$3,970 per month. Despite her wealth, Applicant failed to address her home-equity line of credit or provide sufficient documentation that her foreclosures satisfied her home mortgages. She has not responsibly addressed her delinquent home-equity line of credit since the home was foreclosed upon. Continuation of these circumstances is highly likely, and the potential for coercion, exploitation, or duress remains undiminished. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these

reasons, 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
Subparagraphs 1.a-1.c:	Against 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 grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Jennifer I. Goldstein
Administrative Judge