



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



In the matter of:)	
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)	ISCR Case No. 11-08119
)	
Applicant for Security Clearance)	

Appearances

For Government:
Melvin A. Howry, Esq., Department Counsel

For Applicant:
Pro se

May 22, 2013

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP) on December 22, 2010. (Government Exhibit 4.) On August 3, 2012, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial Considerations). The action was taken under Executive Order 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 within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on August 21, 2012, and requested a hearing before an administrative judge. (Answer.) Department Counsel was prepared to proceed on October 30, 2012. This case was assigned to me on November 7, 2012. DOHA issued a notice of hearing on December 5, 2012. I convened the hearing as

scheduled on January 16, 2013. The Government offered Government Exhibits 1 through 10, which were received without objection. Applicant testified on her own behalf, and submitted Applicant Exhibits A through I, which were also received without objection. Applicant asked that the record remain open until February 1, 2013, for the receipt of additional documents. Applicant submitted Applicant Exhibits J and K on January 23, 2013, which were admitted without objection. DOHA received the transcript (Tr.) of the hearing on January 24, 2013. The record closed on February 1, 2013. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is 37 and married to her second husband. She is employed by a defense contractor and seeks to retain a security clearance in connection with her employment.

Guideline F, Financial Considerations

The Government alleges that Applicant is ineligible for clearance because she is financially overextended and, therefore, at risk of having to engage in illegal acts to generate funds. Applicant admitted the two factual allegations in the SOR. Those admissions are findings of fact. She also submitted additional information to support her request for a security clearance.

The two debts contained in the SOR are the second (1.a) and first (1.b) mortgages of what was Applicant's house before it was sold at a foreclosure sale. The SOR alleges total delinquencies of approximately \$313,534. Both debts are supported by credit reports of October 11, 2008; and February 18, 2010. (Government Exhibits 2 and 3.) The first mortgage debt, in the amount of \$220,000, is also supported by credit reports of January 12, 2011; April 23, 2012; and January 9, 2013. (Government Exhibits 5, 7, and 10.) Two credit reports supplied by Applicant dated August 1, 2012; and two more dated December 19, 2012, also support the existence of the debts. (Applicant Exhibit A at Attachments 2, 3; Exhibits C and D.)

Applicant and her husband bought the house at issue in 2004. They did this using an "80/20" loan. In other words, the first mortgage covered 80% of the purchase price and the second mortgage the remaining 20%. The first mortgage was an adjustable rate mortgage (ARM). Beginning in 2007 Applicant tried to refinance both loans. At that time the housing market was beginning to collapse in the state where the house was located. Applicant's house was underwater and they were unable to refinance. (Tr. 38, 102-104.)

Applicant's husband began suffering from a chronic illness in 2007. He quickly found himself unable to work full or part time and their household income plummeted, making it impossible for them to maintain payments on the house and pay their other debts. He has not worked since February 2011. (Tr. 38, 92-98, 113-118.) As a result of

continuing financial pressures, in 2008 Applicant began trying to sell her house. Unfortunately, the house was located in a very depressed area, which was hard hit during the financial crisis, and she was unable to sell the house. Several attempts to complete a short sale of the property failed. (Applicant Exhibit A at Attachment 4; Tr. 39-41.)

Due to the inability to complete a short sale of the house, Applicant next began the process of loan modification with her lender. This process took a considerable period of time, starting in 2009 and extending into April 2011.¹ (Tr. 41-46, 98-102, 104-106.) Simultaneously, the first mortgage holder also began foreclosure proceedings against Applicant. A trustee sale date was set for May 2, 2011. (Applicant Exhibit A at Enclosure 1, page 7.) Applicant received a loan modification package from their lender on approximately April 28, 2011. Applicant needed to respond in writing to the loan modification offer by May 3, 2011. This response required them to provide \$6,500 in certified funds, in addition to various other documents. (Applicant Exhibit A at Enclosure 1, pages 5-6.) Applicant successfully did what the bank wanted, but it was too late. The house was sold on May 2, 2011, and Applicant and her husband were forced to vacate the premises by the new owner. (Applicant Exhibit A at Enclosure 1, page 7.) Applicant subsequently received a Form 1099 from the mortgage company. (Applicant Exhibit J; Tr. 107-108.)

Applicant and her husband responded to the bank's conduct by filing a law suit on or about May 25, 2011. The law suit was settled in May 2012 when the bank paid Applicant \$20,000. (Government Exhibit 8 at 21-24; Applicant Exhibit A at Enclosure 6, Exhibit B; Tr. 46-59.) The law suit was subsequently dismissed in accordance with the settlement agreement.

Turning to the second mortgage for \$93,534. Once the market turned bad, and Applicant's husband was unable to work full-time because of his illness, they were unable to pay this debt. Applicant was in frequent contact with this creditor starting in 2009. The original creditor charged off and sold the loan in 2010. (Applicant Exhibit A at Enclosure 9; Tr. 60-61.)

Applicant was contacted by the successor in interest, a collection agency, beginning in approximately July 2010. Applicant and her husband corresponded with the collection agency several times in 2010 in writing in an attempt to resolve the debt. (Government Exhibit 1 at 25-33.) First the collection agency offered a settlement Applicant was not then in a position to pay. Then the agency sent Applicant a copy of the original loan documents. The collection agency has not contacted Applicant since August 2010. The debt is not found on any credit reports after 2010. Applicant and her husband are ready and willing to resolve this remaining debt, as soon as someone will talk to them. (Tr. 61-66.)

¹Applicant filed a law suit in December 2009, during the pendency of the loan modification. This case was dismissed without prejudice. (Applicant Exhibit A at Enclosures 5, 8 and 9.)

Applicant states that other than this house problem she had excellent credit. Credit reports provided by the Government and Applicant show this fact to be true. Applicant submitted an updated Personal Financial Statement at the hearing, which shows that she is able to maintain her current debts without difficulty. (Applicant Exhibits H and I; Tr. 35-37, 66-68, 78-79, 119-122.)

Mitigation

Applicant is a well respected person and employee who works in the security area. She submitted letters of recommendation from her supervisors. These security supervisors state that Applicant was very pro-active in informing her employers of the financial situation as it developed. They also state, "The management team has received numerous accolades of appreciation for [Applicant] from internal and external customers." She is described as a person who exceeds expectations, is extremely loyal to her job, has been identified as an "Outstanding Performer" and has been promoted in her job. (Applicant Exhibit A at Enclosure 8, page 34; Exhibits E and F.)

Applicant provided various certificates of appreciation she has received. (Applicant Exhibit G.) She also provided her performance reviews for the years 2010 through 2012. These reports describe Applicant as someone who "consistently exceeds established job responsibilities and goals within job level." (Applicant Exhibit K.) (Emphasis in original.)

Policies

Security clearance decisions are not made in a vacuum. 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 as appropriate 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, these guidelines are applied 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, "Any 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. 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, and has the ultimate burden of persuasion as to obtaining 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. Security clearance decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to protect or 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination 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(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant, by her own admission, and supported by the documentary evidence, had two mortgages that she could not resolve. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), disqualifying conditions may be mitigated where “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.” In addition, AG ¶ 20(b) states that disqualifying conditions may be mitigated where “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.”

The evidence shows that both of the above mitigating conditions apply to Applicant. Her financial situation was caused by a drop in her income, due to her husband’s medical condition, along with the financial crisis. There is no evidence of poor judgment on her part. Her home was foreclosed on by the bank after a four year effort to refinance the mortgage, arrange a short sale, or modify the loan. To add insult to injury the bank sold the house at a foreclosure sale the day before Applicant was supposed to submit modification documents to the bank. This resulted in a law suit. The location of her foreclosed house is in a state that was extremely hard hit by the housing crisis. She and her husband have repeatedly attempted to resolve the second mortgage, without success. Based on the particular facts of this case, I find that she has “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” as required by AG ¶ 20(d).

Applicant has not received financial counseling. However, as found above, her current financial situation is stable. I find that “there are clear indications that the problem is being resolved or is under control,” as required by AG ¶ 20(c). In addition, Applicant and her husband have been proactive in contacting her remaining creditor, and attempting to resolve that second mortgage debt. Their actions bring them under the orbit of AG ¶ 20(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.”

Applicant has acted in a way that shows good judgment, making the best she could out of a difficult situation. All of these mitigating conditions apply to the facts of this case.

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 the relevant circumstances. 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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. Applicant's financial difficulties were not a result of poor judgment on her part. Rather, they were brought about by the turmoil in the real estate market in 2008 and 2009, and the unexpected loss of income by Applicant and her husband. Under AG ¶ 2(a)(2), I have considered the facts of Applicant's debt history. As stated above, this situation concerning the foreclosed house is an aberration, and not indicative of her usual conduct. Based on the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is a low likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from her financial situation. Accordingly, the evidence supports granting her request for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge