



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



In the matter of:

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ISCR Case No. 11-08386

Applicant for Security Clearance

Appearances

For Government: Allison O’Connell, Esq., Department Counsel

For Applicant: *Pro se*

11/23/2012

Decision

LYNCH, Noreen, A., Administrative Judge:

The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) alleging security concerns arising under Guideline F (Financial Considerations). The SOR was dated June 27, 2012. 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) implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on September 27, 2012. DOHA issued a notice of hearing on October 10, 2012, scheduling the hearing for November 6, 2012. Government Exhibits (GX) 1-4 were admitted into evidence, without objection. Applicant testified, and submitted Applicant Exhibits (AX) A-G, which were admitted without objection. I kept the record open until November 13, 2012 for additional documents. Applicant timely submitted one document, which was marked as (AX H). DOHA received the transcript (Tr.) on November 14, 2012. Based on a review of the

pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In her answer to the SOR, Applicant admitted the factual allegation under Guideline F (Financial Considerations), SOR ¶1a. She denied ¶ 1.b.

Applicant is a 41-year-old employee of a defense contractor. (Tr. 22) She obtained her undergraduate degree in 1996. She has never married and she has no children. Applicant has held a security clearance since May 2001. (GX 1) She has been with her current employer since 2000 (Tr. 23)

Applicant purchased a home for \$121,000 in 2001. At the time, she earned a salary of approximately \$75,000. When she purchased the home, she obtained two home mortgages. In 2004, she decided to refinance the home and took out \$20,000. In 2006, she decided to buy a larger home for \$625,000. She refinanced her home again so that she had a down payment of approximately \$141,000 for the new home. (Tr. 27)

Applicant explained that she could not sell her home before moving into her new home. She believes it was due to the falling real estate market. She also tried a short sale but the bank refused. Applicant rented the home for the year 2006. She was able to pay both mortgages. (Tr.32) The following year (2007) she rented the home, but could not collect sufficient rent to cover both mortgages. She was about \$300 short each month. In 2008, she stopped paying the mortgage as she had no renters. She put the house back on the market but it did not sell. She received two offers, but the bank declined to short-sell the home. (Tr. 37)

In July 2009, the Bank of America foreclosed on the home. Applicant owes approximately \$116,000 due to the home equity loan on the property. She acknowledges this debt. She contacted Bank of America recently (May 2012) to offer a settlement. (AX C-E) On November 7, 2012, she sent a letter offering to pay \$5,385 if they agree to remove late payment or charge-offs from her credit report. (AX H) She has no information as to whether this settlement offer will be accepted.

The Chase loan is \$182,000. Applicant does not believe that she owes this debt. She refers to the fact that it does not appear on her credit reports. (G) In addition, she submitted an IRS form 1099 A that she filed with her taxes. (AX B) The 1099 A does not reflect a cancellation of the debt. The 1099 A concerns the acquisition or abandonment of secured property. The submitted form shows that the borrower (Applicant) is personally liable for repayment of the debt in the amount of \$167,477.76.

Applicant explained that she has never had financial difficulties prior to the home foreclosure. She thought about filing for bankruptcy but could only file for a Chapter 13 wage earners program. She did not want to do this because she would forfeit much of her personal property, including her car, and would have to stop her 401k contributions for five years. (Tr. 18) She contacted a debt relief company to help resolve the issue in

August 2012. She admitted that she wanted to move so that she could live in another location. (Tr. 37) When she bought the larger, more expensive home, she knew that she would not be able to afford both mortgages if she could not sell the first home. (Tr. 37) She acknowledged that she had no emergency plan.

Applicant currently earns approximately \$97,000 a year. She has no other delinquent debts. She pays her bills timely. She has a savings account.

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." ¹ The burden of proof is something less than a preponderance of evidence. ² The ultimate burden of persuasion is on the applicant. ³

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 protect classified information. Such

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that 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.”⁴ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying:

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;
- (c) a history of not meeting financial obligations;

⁴ See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ *Id.*

(d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;

(e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;

(f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern;

(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;

(h) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income; and

(i) compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

Applicant admits to the home foreclosure in 2009 and the resulting debt. She refinanced her first home so that she could put a down payment on a more expensive house. She did this before selling her first home. At the time, she knew she was unable to make both mortgage payments. Applicant has not paid any amount on the second loan. She believes she does not owe anything on the loan. Consequently, the evidence is sufficient to raise disqualifying conditions ¶¶ 19(a), and 19(c).

AG ¶ 20 provides conditions that could mitigate 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 deferred any positive financial actions until very recently. Her \$116,000 debt to the first bank is still outstanding. She submitted a letter offering to settle for \$5,385. (AX H) She has not had a response from the bank. Although she has shown some efforts in the recent past to resolve the issues, the debt is large, remains delinquent, and is outstanding. She has not placed sufficient priority on resolving the delinquent debts even though she was employed for the entire time. I find that Applicant's financial considerations concerns are not mitigated.

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 an applicant's conduct and all the 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is a 41-year-old employee of defense contractor who has held a security clearance since 2000. She refinanced her first home twice so that she could purchase a

larger and more expensive home. She did this without having sold her first home. She used the funds to make a down payment on the second home. She decided not to file a Chapter 13 bankruptcy because of what she perceived to be a negative impact on her financially. She has not done anything until recently to resolve her delinquent mortgages. She claims that she has been absolved from the second mortgage and submitted a 1099 A as proof. This is not evidence to support that claims. Applicant has been steadily employed and has not shown that the circumstances were beyond her control. She has not mitigated the security concerns under the financial considerations guideline.

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.b:	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 Applicant a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge