



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



In the matter of:)	
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)	
)	ISCR Case No. 11-11343
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

04/25/2013

Decision

LYNCH, Noreen, A., Administrative Judge:

The Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) alleging security concerns arising under Guideline F (Financial Considerations). The SOR was dated December 20, 2012. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 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 March 21, 2013. A notice of hearing was issued on March 22, 2013, scheduling the hearing for April 9, 2013. Government Exhibits (GX) 1-5 were admitted into evidence, without objection. Applicant testified, and submitted Applicant Exhibits (AX) A-F, which were admitted without objection. I kept the record open until April 16, 2013, for Applicant to submit additional documentation. She timely submitted a packet marked as AX G and entered into the record without objection. The transcript (Tr.) was received on April 17, 2013. Based on

a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Findings of Fact

In her answer to the SOR, Applicant denied the factual allegations under Guideline F (Financial Considerations), with explanations.

Applicant is a 37-year-old mail clerk employed by a defense contractor. She graduated from high school and attended college for two years. She is married and has four children. Applicant has held a security clearance since 2000. (Tr. 29) She has been with her current employer since 2006. However, she has served in the field for more than 20 years with various contractors. (Tr. 31)

The SOR alleges two debts for real estate mortgage accounts. The first account is past due in the approximate amount of \$139,000. The second account is a real estate mortgage account with a total loan balance of \$424,000. (GX 4 and 5)

Applicant purchased her home in January 2000. She obtained a home mortgage loan. She had no difficulty paying her mortgage loan until her husband lost his job in March 2008. (Tr. 33) He had no employment for several years. He now has a part-time job. Applicant immediately sought help through a home modification program. She did not receive any assistance, but was introduced to another program. (Tr. 35) Applicant explained that it took a long time for a remodification due to the requests for paperwork. As of February 2013, Applicant is eligible for a modification. She submitted documentation to establish that she has been accepted into the program on a trial basis. (AX F) Applicant testified that she signed the agreement. She also complied with the terms of the modification that she make three payments to total \$3,788 before a date certain. (AX G) When she makes the payments, Applicant's mortgage will be in a secure status. (Tr. 38) She claimed that she has made two of the three payments. (Tr. 41)

The second account noted on the SOR is for a real estate mortgage loan in the amount of \$424,000. Applicant obtained her credit reports and could not find the account on the report. She does not have any knowledge of this account. She was adamant that it is not her account. She sought help from a company in October 2012 to contact credit bureaus to dispute this account. (AX D)

Applicant reviewed her credit reports and paid four or five accounts that were listed in her credit reports. She submitted documentation before the hearing that the accounts were paid.(GX 2) Applicant also explained that her husband filed Chapter 7 bankruptcy in December 2010. The debts were discharged in July 2011. She denies that they were joint debts. The bankruptcy had no effect on the mortgage account that is listed on the SOR ¶ 1.a.

Applicant's net monthly income is approximately \$2,000. She does not know what her husband earns. She and her husband both pay the household expenses. One

car that they own is now paid. Applicant maintains a separate checking account. She contributes to a 401(k). She has approximately \$20,000 in savings. She believes she has a net monthly remainder of \$600. (Tr. 57)

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

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).

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 relevant:

- (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;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud,

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.*

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 that her home mortgage loan became delinquent when her husband lost his job in 2008. The account was past due in the amount of \$139,000.00. She has no knowledge of the second mortgage account on the SOR. Consequently, the evidence is sufficient to raise disqualifying condition ¶ 19(a) and 19(c). As to the \$424,000 debt, I find for Applicant on SOR 1.b. She has researched this account and could find no information on the account.

AG ¶ 20 provides conditions that could mitigate security concerns. The following are potentially relevant:

(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 became delinquent with her primary mortgage loan when her husband lost his job. She sought help immediately. Applicant was not successful with the first home modification program. She took steps to find a lender who would rehabilitate her home loan. She had no financial difficulties before the loss of her husband's job. Applicant was granted a modification in February 2013. Her current financial status is stable. She has a savings account and a retirement account. Her husband is now employed. She also paid various small accounts before the hearing. She received financial counseling. She has no knowledge of the second mortgage account. She obtained the services of a company to dispute the account. It does not appear on any of her three credit reports. AG ¶¶ 20 (a) through (e) apply.

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 37-year-old employee of defense contractor who has held a security clearance for almost 13 years. She has been employed by defense contractors for almost 20 years. She was candid at the hearing and credible in her testimony. She had

no financial difficulties until her husband lost his job in approximately 2008. She paid small accounts and her car loan is paid in full. She sought assistance through a loan modification program. She persisted until she found one that could help her. She complied with the terms of the agreement by making three monthly payments. She has resolved the issues. Applicant sought the help of a company to help her dispute the other mortgage account. She has no knowledge of the account.

Applicant met her burden of proof in this case. She has rehabilitated her home mortgage loan. Applicant is gainfully employed and stable with her finances. She worked with a company to get information about the other mortgage loan listed on the SOR. She has no knowledge of the account. It is not on her three credit reports.

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: FOR APPLICANT

Subparagraphs 1.a-1.b: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to continue Applicant's security clearance. Clearance is granted.

NOREEN A. LYNCH.
Administrative Judge