



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



In the matter of:)
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[NAME REDACTED]) ISCR Case No. 12-00060
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Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

01/31/2014

Decision

MALONE, Matthew E., Administrative Judge:

Applicant mitigated the security concerns raised by her financial problems. She acted responsibly in addressing her debts, and her current finances are sound. Clearance is granted.

Statement of the Case

On July 16, 2013, Department of Defense (DOD) adjudicators issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the adjudicative guidelines¹ for financial considerations (Guideline F). Applicant timely responded to the SOR (Answer) and requested a hearing. The case was assigned to

¹ The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

me on October 23, 2013, and I convened a hearing on November 20, 2013. Department Counsel presented Government Exhibits (Gx.) 1 - 6, which were admitted without objection. Applicant testified and proffered Applicant's Exhibits (Ax.) A - C, which were admitted without objection. I left the record open after the hearing to receive from Applicant additional relevant information. The record closed on December 9, 2013, when Applicant's timely post-hearing submission was admitted without objection as Ax. D. DOHA received the transcript of hearing (Tr.) on December 3, 2013.

Findings of Fact

Under Guideline F, the Government alleged that Applicant had incurred five delinquent debts totaling \$426,982 (SOR 1.a - 1.e) At the hearing, Department Counsel withdrew the SOR 1.a and 1.e allegations, two medical debts totaling \$167. (Tr. 9 - 10) Applicant admitted, with explanations and supporting documents (Tr. 12 - 13), the remaining allegations, consisting of three delinquent or past-due mortgage accounts. In addition to her admissions, I make the following findings of fact.

Applicant is a 57-year-old employee of a defense contractor. Her husband is employed by the same company at the same facility, but in a different capacity. The facility where they live and work is a remote military base located outside the United States. She has held a security clearance since January 2001. Her clearance is required mainly for base access and exposure to sensitive unclassified information. (Gx. 1 - 3; Tr. 32 - 34, 53 - 56)

Applicant and her husband have been married since 1977, and have two children, ages 23 and 25. Applicant and her family moved to her current work site after being hired in October 2000, when their children were 8 and 10. Before being hired by her current employer, Applicant worked as a town clerk in a northeastern U.S. city. (Gx. 1; Ax. A; Tr. 32)

Base housing is provided at Applicant's work site for a nominal rent, and Applicant's children attended school there. However, when the children reached 18 years of age, they were no longer considered dependents and were required to leave base housing. As with most children there, Applicant's children left to attend college in the United States. Applicant's older child left for college in 2006. The other left home in 2008 and attended college for a time before enlisting in the military. (Gx. 2; Gx. 3; Tr. 36, 40)

In 2005, Applicant and her husband were concerned that the contract on which they were working would not be renewed. They decided to buy a house in the United States as a possible residence should they have to relocate. Initially, they used that house as a rental property. The market in that area was strong and they were able to cover their mortgage and expenses with ease. Home values were steadily increasing, and it looked like a good investment for them. In 2006, based on the success of their first rental property, and as their older child was preparing to go to college, Applicant and her husband decided to incorporate, hire a property management firm, and buy

additional homes as rental properties. In 2006 and 2007, using about \$40,000 remaining from the proceeds of the sale of a house when they moved to their current job site in 2000, they bought three single-family homes. They also converted their first property to a primary residence for use by their children. (Gx. 2; Gx. 3; Tr. 37, 46, 57, 62 - 64, 83 - 84)

Applicant and her husband were quickly able to lease their three rentals for rents that slightly exceeded the monthly mortgage payments. The goal was to cover the mortgages, realize tax breaks from mortgage interest and deduction of costs, and eventually sell the houses for a profit. Two of the houses remained occupied until May 2008, when one tenant became ill and had to break the lease. Not long after, another tenant abandoned the lease without notice. The third lease ended in April 2010, but the house could not be re-leased. Also in 2008, both the job and housing markets in that area went into a free fall, the effects of which are still being felt. The values of each property plummeted and Applicant could not find new tenants. In essence, she and her husband were stuck with three properties they could not sell. (Gx. 2; Gx. 3; Tr. 65 - 69)

Throughout 2009, Applicant and her husband covered two of the three mortgages using their own incomes and savings for as long as they could. However, by 2010, when the third house became vacant, they were relying on credit cards to cover other personal expenses for them and their children. They contacted their mortgage lenders at least eight times between August and November 2008. However, the lenders were non-responsive because they were overwhelmed with delinquent properties and could not process Applicant's requests for mortgage modifications or proposed short sales. As alleged in SOR 1.b - 1.d, all three homes went into foreclosure and became bank-owned properties by 2011. (Answer; Gx. 2; Gx. 3; Tr. 37 - 39, 69 - 72)

Available information also shows that Applicant and her husband have no remaining obligations under any of the mortgages. After receiving 1099-C notices from the Internal Revenue Service, Applicant and her husband consulted tax advisors about the potential that the remaining unpaid mortgage balances would be reported as income; however, it does not appear that has happened. (Answer; Ax. B; Ax. C; Tr. 45 - 47, 68)

Applicant and her husband have remained current with the mortgage for their primary residence, as well as with all of their other obligations. They also arranged to repay their credit card balances before they became delinquent. Three of their credit card accounts have been paid and closed. They are currently paying about \$350 each month to their remaining accounts. They have not opened any new credit accounts or incurred additional unpaid or past-due debts. Aside from the foreclosures of their three rental properties, Applicant and her husband have had no financial problems. They meet all other financial obligations, have filed their tax returns on time, and they have lived within their means. After paying their regular expenses each month, they have sufficient positive cash flow to contribute to retirement savings and to handle unforeseen expenses. However, most of their money currently is devoted to resolving

the remainder of their credit card debt. (Answer; Gx. 4 - 6; Ax. B; Ax. D; Tr. 39, 56, 74 - 75, 80 - 82)

Applicant has an excellent reputation at work and has been recognized several times for outstanding performance. She and her husband are well-known in their community for their trustworthiness and volunteer work. (Answer; Ax. A; Tr. 42)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,² and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole-person” concept, those factors are:

- (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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest³ 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 burden of persuasion.⁴

² See Directive. 6.3.

³ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁴ See *Egan*, 484 U.S. at 528, 531.

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

Analysis

Financial Considerations

The Government’s information is sufficient to support the remaining SOR allegations. The facts established raise a security concern about Applicant’s finances that is addressed at AG ¶ 18, as follows:

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. 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.

More specifically, available information requires application of the disqualifying conditions at AG ¶¶ 19(a) (*inability or unwillingness to satisfy debts*) and (c) (*a history of not meeting financial obligations*). Applicant incurred significant unpaid debt between 2008 and 2010 in the form of three delinquent mortgages. They were only resolved through foreclosure and resale.

By contrast, the record also requires application of the following AG ¶ 20 mitigating conditions:

(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

⁵ See *Egan*; AG ¶ 2(b).

downturn, unexpected medical emergency, or a death, divorce or 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 will not likely enter the real estate investment market again. In hindsight, it is clear that Applicant and her husband assumed a degree of risk in buying three rental properties. Those are risks for which the investor generally should be held accountable. However, Applicant and her husband could not have foreseen the scope of what transpired in the housing and job markets two years after their venture began. Also, Applicant and her husband received no response to their timely requests for loan modifications, and short sales were not a feasible remedy at the time. Applicant has not tried to shirk her responsibilities in this regard. Nonetheless, she has no ongoing obligations for any of the delinquent mortgages. Her finances have otherwise been handled prudently, and she has incurred no new unpaid debts in more than three years. Applicant and her husband acted responsibly under the circumstances, she is unlikely to incur new financial problems, and her past financial problems do not reflect adversely on her current judgment and reliability. The security concerns raised by the Government's information are mitigated.

Whole-Person Concept

I have evaluated the facts and have applied the appropriate adjudicative factors under Guideline F. I also have reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is 57 years old and presumed to be a mature, responsible adult. Her record in the workplace, in her personal life, and in her community all support such a presumption. Applicant did not incur her financial problems through any misconduct or irresponsible behavior. She has been candid and forthright about her finances at all times during the current investigation and adjudication of her clearance suitability. The circumstances surrounding the adverse information in her background is not likely to recur, and she acted promptly and to the best of her abilities to address her financial problems long before the SOR was issued. A fair and commonsense assessment of all available information shows the Government's security concerns have been satisfied.

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:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a and 1.e:	Withdrawn
Subparagraphs 1.b - 1.d:	For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

MATTHEW E. MALONE
Administrative Judge