



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



In the matter of:)
)
XXXXXXXXXXXXXXXXXXXXXXX) ISCR Case No. 14-05478
)
Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Esquire, Department Counsel
For Applicant: *Pro Se*

08/19/2016

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ Applicant's clearance is granted.

On 18 March 2015, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations.² Applicant timely answered the SOR, requesting a hearing before the Defense Office of Hearings and Appeals (DOHA). DOHA assigned the case to me 17 September 2015 and I convened a hearing 5 November 2015. DOHA received the transcript 17 November 2015.

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-5, Hearing exhibit (HE I), and Applicant exhibits (AE) A-E. AE E was timely received post hearing. The record in this case closed 10 December 2015, the day Department Counsel stated no objection to Applicant's post-hearing exhibit.

²DoD acted 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) effective within the DoD on 1 September 2006.

Findings of Fact

Applicant denied the SOR financial allegations. She is a 56 year-old engagement consultant employed by a defense contractor since October 1998. She has not previously held a clearance. Her current job does not require a clearance, but her employer sponsored her for one because there are other job opportunities with the company that would be open to her if she held a clearance. She has been married since March 1997, and has two children, ages 16 and 14.

The SOR alleges, and Government exhibits (GE 3-5) substantiate, five delinquent accounts totaling over \$104,000. Applicant's evidence documents both that SOR debts 1.c. and 1.e are the same debt, and that a settlement was negotiated and paid in January 2015 (Answer, Attachment D). Applicant also documented that she settled SOR debt 1.d with the collection agent for the creditor, with a payment plan beginning in September 2010 (Tr. 31; AE E).³ Nevertheless, the delinquent debt at issue is still nearly \$104,000. The bulk of the debt is for delinquent first and second mortgages, where she is nearly \$100,000 delinquent on mortgages totaling nearly \$550,000 (SOR 1.a and 1.b).

Applicant traces the beginning of her financial problems to 2010, when her employer imposed a 20% company-wide pay cut, reducing her annual salary from \$98,000 to \$93,000. Not until 2012 did she fully recoup that pay cut. Her finances were further compromised in May 2012, when her grandfather died and her husband lost his job. His income was approximately \$3,600 monthly (AE E). Applicant had to help her parents with her grandfather's funeral expenses, and her husband remained unemployed for over a year, until he started his own business in the fitness industry (Tr. 28).

The record reflects that Applicant was in communication with her mortgage lenders shortly after her husband lost his job. In July 2012, Applicant's first mortgage lender (SOR 1.a) requested documentation from her to support a loan modification request, which she provided in February 2013 (AE E). In June 2013, the lender told Applicant that it would not accept partial payments and that the account was currently nearly \$33,000 past due (Answer, Attachment A). AE A, C, and E contain copies of numerous emails between Applicant and her mortgage lenders throughout the process.

In April 2013, the lender requested additional documentation from Applicant (AE E). In March 2014, the lender assigned a new point-of-contact, who requested still more documentation in August 2014. Finally, in October 2014, the lender offered Applicant a trial plan, to begin with \$2,800 monthly payments in December 2014, January 2015, and February 2015. The plan was extended to include payments in March 2015 and April 2015. In April 2015, the plan was extended again to include a sixth payment in May

³Although Applicant did not document receiving a confirmation letter from the collection agent, AE E documents \$100 monthly payments from September 2010 through January 2010, totaling \$500.

2015, because the lender had to resolve some outstanding title issues (Answer, Attachment B).

In August 2015, the lender approved her loan modification (AE A). At the time of the modification, the unpaid balance on the original \$422,700 mortgage was \$401,682.33 (the amount alleged in the SOR), of which \$43,542.27 was unpaid principal. Separately, there were \$76,962.43 unpaid arrearages. The modification restructured the \$478,644.76 total debt into a \$358,140.05 new original 30-year mortgage and a \$120,504.70 subordinate note (\$43,542.27 unpaid principal + \$76,962.43 unpaid arrearages). The subordinate note was payment and interest-free, and due 1) when the property was sold, 2) the first mortgage was paid, or 3) May 2045. The modification also waived \$5,770.35 late fees. The resulting monthly payment was \$2,745.77 beginning October 2015 (AE B). All the requisite signatures to execute the modification were obtained in September 2015 (AE E).

Concurrent with modification of her first mortgage, Applicant received similar concessions on her second mortgage (SOR 1.b)(AE D). Unpaid interest and fees of \$20,786.65 were forgiven. The remaining \$147,897.21 unpaid principal (the SOR 1.b balance) was restructured from a 30-year mortgage into a new 20-year second mortgage, reducing the original \$602.48 monthly payment to \$499.89. The restructured loan required a \$72,816 lump-sum payment at the end of the 20 years, for total payments of \$193,289.85 on the second mortgage.

Applicant did not otherwise receive financial or credit counseling. She did not present a budget. She currently earns \$116,000 annually, substantially more than she earned at her employer when her husband lost his job in May 2012. (Tr. 39).

Policies

The adjudicative guidelines (AG) list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline F (Financial Considerations).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their 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.⁴

Analysis

The Government established a case for disqualification under Guideline F, but Applicant mitigated the security concerns. Applicant’s 2010 pay cut caused her some minor financial problems, which became more serious when her grandfather died and her husband lost his job in May 2012. Applicant was eventually nearly \$100,000 past due on her first and second mortgages.⁵

However, Applicant began addressing her mortgages almost immediately after her husband lost his job. By July 2012, she was communicating with her lenders about a loan modification. She had already settled a credit card debt in January 2011. She settled a second credit card debt in January 2015, before the SOR was issued. She was well into her trial payment plan on her first mortgage when the SOR was issued. All these things occurred before the SOR was issued. That all these things were not resolved until just before the hearing is no indication of Applicant’s dereliction.

The mitigating factors for financial considerations give Applicant substantial aid. While her financial difficulties were recent, the most significant debts were limited to her mortgages. Applicant’s husband has been successfully self-employed since 2013, and Applicant now earns substantially more than when he first lost his job. While the loan modification process was long and arduous, the process is now complete; so the circumstances that caused her financial problems are less likely to recur.⁶ Further, her financial problems were largely due to circumstances beyond her control—her pay cut in 2010, family issues, and her husband’s job loss in May 2012. I note that Applicant began addressing her financial problems both when her pay was cut and when her husband lost his job. She continued to pursue loan modifications since then.⁷ While there is no evidence that Applicant has had any financial counseling, she has clearly

⁴See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵¶ 19 (a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations;

⁶¶ 20 (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

⁷¶ 20 (b) the conditions that resulted in the financial problem were largely beyond the person’s control . . . and the individual acted responsibly under the circumstances;

acted responsibly to get her finances under control.⁸ All the SOR debts were either paid before the SOR was issued or in the process (now completed) of modification.. Overall, substantial progress has been made addressing her financial issues.⁹

The Appeal Board has stated that an Applicant need not have paid every debt alleged in the SOR, need not pay the SOR debts first, and need not be paying on all debts simultaneously. Applicant need only establish that there is a credible and realistic plan to resolve the financial problems, accompanied by significant actions to implement the plan.¹⁰ Applicant's efforts to date constitute such a plan, and modifications of her mortgages reflect significant actions. I conclude Guideline F for Applicant.

Formal Findings

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraphs a-e: For Applicant

Conclusion

Under the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

JOHN GRATTAN METZ, JR.
Administrative Judge

⁸¶ 20 (c) the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;

⁹¶ 20 (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

¹⁰ISCR Case No. 07-06482 (App. Bd. 21 May 2008).