



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



In the matter of:)
)
) ISCR Case No. 15-00383
)
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

10/31/2016

Decision

MASON, Paul J., Administrative Judge:

Applicant provided extensive documented information regarding her persistent efforts over the last two years to resolve an investment property. In June 2016, she accepted an offer, and submitted a residential contract for sale. Considering all the evidence of record, she has mitigated the security concerns based on the guideline for financial considerations. Eligibility for access to classified information is granted.

Statement of the Case

On July 3, 2012, Applicant signed and certified an Electronic Questionnaires for Investigations Processing (e-QIP). (Item 3) An investigator from the Office of Personnel Management (OPM) conducted an interview (PSI) of Applicant on May 28, 2013. (Item 4) On September 29, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F). (Item 1) 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 by DOD on September 1, 2006.

Applicant furnished her notarized answer to the SOR on October 30, 2015. A copy of the Government's File of Relevant Material (FORM), the Government's evidence in support of the allegations of the SOR, was sent to Applicant on December 14, 2015. In an attachment to the FORM, Applicant was advised she could object to the information in the FORM or submit additional information in explanation, mitigation, or extenuation. She received the FORM on December 18, 2015, as established by her signature and date located at the bottom of the receipt of acceptance of the FORM. Regarding Item 4 (May 28, 2013 PSI) of the FORM, Applicant was advised that she could make corrections to the interview summary to improve the exhibit's clarity and accuracy. Alternatively, she could object to the entire PSI because it was unauthenticated by the OPM investigator. She did not object to the PSI. On February 12, 2015, Department Counsel interposed no objection to Applicant's response to the FORM. The response generally documented Applicant's ownership history of the investment property, and her efforts to unload the property. On August 5, 2016, Department Counsel forwarded Applicant's second response to the FORM (residential contract of sale) without objection. Both responses were entered into the record. The case was assigned to me on April 11, 2016.

Findings of Fact

The SOR contains four allegations under the guideline for financial considerations. Applicant denied a \$405 cell phone account (SOR ¶ 1a). She admitted a mortgage account that is past due in the amount of \$28,034, with a balance of \$145,423. She denied a medical account of \$115 appearing at SOR ¶ 1.c, and a \$264 cell phone account listed at SOR ¶ 1.d. SOR ¶¶ 1.c and 1.d are resolved in Applicant's favor because the accounts do not appear in the credit reports presented by the Government and the Applicant.

Applicant, 33 years old, is single and never married. She has a six-year-old son. She received some college credits between September 2001 and May 2003. She obtained a bachelor's degree in December 2005. She has been employed as a logistics specialist since March 2006. She has held a security clearance since September 2007. (Item 3 at 13-25)

In an attachment to her answer to the SOR, and in her response to the FORM, Applicant explained how she became past due on her mortgage (SOR ¶ 1.b), the largest debt in the SOR. In March 2009, she purchased a two-bedroom townhouse for \$145,423, as an investment property. The national real estate market then went into a tailspin the same year, with value of properties falling far below their corresponding mortgages. The market remained weaker where Applicant's investment property was located. From approximately 2012 to 2015, Applicant's property at "1319" lost about 45% of its value. The property could not be refinanced and the neighborhood rental

market would not cover her monthly mortgage. She could not qualify for a home loan modification (HLM). The father of Applicant's son was incarcerated and Applicant could no longer rely on him for financial support or to make repairs at the investment property. (Answer to SOR, attachment)

Applicant explained that she was eager to move on from this emotionally distressing investment. She was young when she purchased the property, but she has learned from the maintenance costs and related expenses, that it was a bad investment. As a single mother, she is doing her best to handle her financial obligations by meeting her daily expenses. (Answer to SOR, attachment; Response to FORM)

The Government's July 2013 credit bureau report (CBR) (Item 5) lists five delinquent debts. Two of those debts are SOR ¶¶ 1.a and 1.b. The only delinquent debt in the November 2014 CBR is SOR ¶¶ 1.b. The only delinquent debt in the July 2015 CBR (Item 6) is SOR ¶ 1.b. Applicant's October 2015 CBR identifies SOR ¶¶ 1.a and 1.b as delinquent. There is no record of missed mortgage payments until July 2013, the date of the last payment activity. (Items 5, 6, 7; Response to FORM; October 2015 CBR)

In May and July 2014, and December 2015, Applicant submitted a letter to her SOR ¶ 1.b lender, advising him of her plight. She included financial statements with the letter. She supplied more than 26 email exchanges (November 2014 to June 2015) between herself and two short-sale organizations with the objective of short selling, selling, or renting the investment property. During the application process, she completed employment questionnaires, personal financial statements and federal tax transcript requests. (Response to FORM) On June 25, 2016, Applicant and the purchaser executed a residential contract of sale. The settlement date was scheduled for September 23, 2016. (Second response to FORM)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the guidelines in the AG. Each guideline lists potentially disqualifying conditions and mitigating conditions that are useful in evaluating an applicant's eligibility for access to classified information.

The administrative judge's ultimate goal is to reach a fair and impartial decision that is based on sound and prudent judgment. The decision should also include a careful, thorough evaluation of a number of general factors known as the "whole-person concept" that brings together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. Decisions include, by necessity, consideration of the possible risk 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 the potential, rather than actual, risk of compromise of classified information.

Under Directive ¶ E3.I.14., the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.I.15., the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant bears the ultimate burden of persuasion in demonstrating that he warrants a favorable security clearance decision. Because this case is decided on the administrative record, credibility assessments of Applicant are limited to her interview summary, attachment to her answer, and her responses to the FORM.

Analysis

Financial Considerations

The security concern for financial considerations is set forth 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. 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.

Two pertinent disqualifying conditions are potentially applicable: AG ¶ 19(a) (*inability or unwillingness to satisfy debts*); and AG ¶ 19(c) (*a history of not meeting financial obligations*). Four credit reports show that Applicant's most significant debt is the delinquent mortgage listed at SOR ¶ 1.b. Applicant has been unable to pay the mortgage since July 2013, when she realized that a down real estate market prevented her from renting, obtaining an HLM, or selling the parcel. AG ¶¶ 19(a) and 19(c) apply.

Four mitigating conditions are potentially applicable: AG ¶ 20(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 reliability, trustworthiness, and good judgment*); AG ¶ 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*); AG ¶ 20(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*); and AG ¶ 20(d) (*a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Though the mortgage became delinquent in July 2013, she still owes the debt. Due to her problems in unloading ownership to the property at "1319," it is unlikely that

Applicant will be investing in real estate property in the future. Her efforts to resolve the property over the last two years warrant some mitigation under AG ¶ 20 (a)

The real estate market collapse in 2008 had a dramatic effect on the entire country, and lasted longer in some areas than in others. The downturn was unanticipated and clearly outside of Applicant's control. Beginning in May 2014, she initiated the application process for an HLM. Several months later, she executed the appropriate documentation to sell, short-sell, and rent the property. Over the next one and one-half years, she provided documentation showing her attempts to sever her ties to the property. Finally in June 2016, a buyer signed a residential contract for sale of the property. AG ¶ 20(b) applies.

Applicant has had no financial counseling. However, she has exercised good judgment in trying different realty options to resolve her delinquent mortgage. Her largest debt is about to be resolved, as she has put a contract in place for the sale of the property. Because of the perseverance shown in resolving the mortgage, I am confident she will employ the same consistent attention to the cell phone debt that is in collection. On balance, there are clear indications that her debt delinquencies under being brought under control. AG ¶ 20(c) applies.

Whole-Person Concept

I have examined the evidence under the disqualifying and mitigating conditions of the financial considerations guideline. I have also weighed the circumstances within the context of nine variables of the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors listed in 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 the participation was 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 final security clearance decision must be an overall commonsense judgment based upon careful consideration of the specific guidelines, each of which is to be evaluated in the context of the whole person. (AG ¶ 2(c))

Applicant is a 33-year-old single-mother with a six-year-old son. She has been employed at her current job since March 2006, and has held a security clearance since September 2007. She received a bachelor's degree in December 2005. There is no evidence that Applicant ever missed a mortgage payment before July 2013. Less than a year later, she demonstrated good judgment in seeking help to rent or sell the property. Rather than abandon the property altogether, she continued to search for other solutions to her problem. Finally, she obtained a contract for sale in June 2016. Applicant's

evidence in mitigation is sufficient to mitigate the security concerns based on the guideline for financial considerations. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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.d:	For Applicant

Conclusion

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

Paul J. Mason
Administrative Judge