



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



In the matter of:)
)
) ISCR Case No. 15-08666
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

06/07/2017

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On May 13, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 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 by the DOD on September 1, 2006.

Applicant responded to the SOR on May 28, 2016, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on July 6, 2016. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant responded

with e-mails and attached documents, which I have marked as Applicant's Exhibits (AE) 1 through 5. The case was assigned to me on May 3, 2017. The Government exhibits included in the FORM and AE 1 through 5 are admitted in evidence without objection.

Findings of Fact

Applicant is a 42-year-old employee of a defense contractor. She earned a bachelor's degree in 1999. She is twice divorced, most recently in 2002. She has a minor child.¹

In 2005, Applicant bought a house as her residence in State A for about \$430,000. She bought a condominium in State B in 2006 for about \$325,000. Both purchases were financed through first and second mortgage loans. The plan was for her brother to live in the condominium, pay her rent, and eventually take over the mortgage-loan payments. The plan worked until her brother decided he could not afford the rent and moved out.²

Applicant rented the condominium to someone else in 2008. The condominium homeowners association (HOA) discovered she was renting the unit, which was against the rules. Applicant's petition for a hardship waiver of the rules was denied. The Board of Directors for the HOA determined that there was "no unusual hardship in this situation other than what is expected during hard economic times. In situations like this, the owner usually makes the choice of moving into the unit, leaving it vacant or selling the unit." The housing market crashed, and Applicant's properties were valued at far less than what she owed on the mortgage loans. She could not move into the unit because she was living and working in another state, and she could not evict the tenants because they had a lease. The Board "fined" her a substantial amount for her noncompliance.³

Applicant accepted a job in State C in 2011 at a significantly higher salary. She knew that she would be unable to maintain two properties while living in a third area. Because she was not delinquent on her mortgage-loan payments, the creditors would not grant her relief such as a short sale or deed in lieu of foreclosure. She was concerned about her security clearance, and she discussed the matter with her new employer's security officers before accepting the job. She was informed that her circumstances should not affect her security clearance. She accepted the job, stopped paying her mortgage loans, and allowed the properties to go into foreclosure.⁴

The HOA continued to pursue Applicant, received a default judgment against her, and began garnishing her wages. She filed a Chapter 7 bankruptcy case in February

¹ Items 2, 3; AE 1.

² Items 1-3; AE 1.

³ Items 1-3; AE 1, 2.

⁴ Items 1-3; AE 1.

2016. Under Schedule D, Creditors Holding Secured Claims, the petition listed a \$24,660 auto loan. There were no claims under Schedule E, Creditors Holding Unsecured Priority Claims. Under Schedule F, Creditors Holding Unsecured Nonpriority Claims, the petition listed debts totaling \$153,013. The largest debt of \$134,800 was to the collection company for the condominium HOA. The mortgage loans were not reported under any schedule, likely because they were addressed through the foreclosure process. Only one mortgage loan on the 2015 credit report lists a balance. The 2016 credit report lists the balance on that loan as zero. Neither report lists balances on any other mortgage loans.⁵

The SOR alleges duplicate first and second mortgage loans on the two properties; \$99,128 owed to the HOA; the Chapter 7 bankruptcy case; and a \$716 debt. Applicant stated the \$716 debt was paid in about 2010. The 2015 credit report lists the debt with a zero balance. The debt is not listed on the 2016 credit report.⁶

Applicant received financial counseling as a requirement of her bankruptcy. Her bankruptcy attorney indicated just before the record closed that she anticipated the discharge order would be issued within 45 days. Applicant's finances are otherwise in order. She rents her current home and lives within her means.⁷

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The 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."

⁵ Items 1, 4-6; AE 1.

⁶ Items 1 4, 5.

⁷ Items 1, 4, 5; AE 1, 3, 5.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant had delinquent debts that she was unable or unwilling to pay. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

(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; 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's properties were lost to foreclosure. There is no indication in the most recent credit report of any balances owed on the loans. She filed a Chapter 7 bankruptcy case because of the default judgment awarded to the condominium HOA. Her finances are otherwise in order. She rents her current home and lives within her means. Applicant established that she had a plan to resolve her financial problems, and she took significant action to implement that plan. Her financial issues are 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 the applicant's conduct and all relevant 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations security concerns.

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.i: For Applicant

Conclusion

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

Edward W. Loughran
Administrative Judge