



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 16-00753
)
Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
Michelle Tilford, Esq., Department Counsel
For Applicant: *Pro se*

12/15/2017

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted. Applicant presented sufficient information to mitigate financial considerations security concerns.

Statement of the Case

On August 2, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for a position with a defense contractor. The Department of Defense (DOD) could not make the affirmative findings required to grant a security clearance. DOD issued to Applicant a Statement of Reasons (SOR), dated June 24, 2016, detailing security concerns for financial considerations under Guideline F. The action was taken under Executive Order (E.O.) 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 in the DOD on September 1, 2006.

Applicant answered the SOR on July 27, 2016. She admitted the facts of the two financial allegations under Guideline F, but denied that the allegations were a security concern. Department Counsel was prepared to proceed on September 30, 2016, and I was assigned the case on February 15, 2017. DOD issued a notice of hearing on August 10, 2017, for a hearing on September 20, 2017. I convened the hearing as scheduled. The Government's four exhibits (GX 1-4) were admitted into the record without objection. Applicant testified, and presented seven exhibits (AX A – AX G) which were admitted into the record without objection. I received the transcript of the hearing (Tr.) on September 29, 2017.

While this case was pending a decision, the Director of National Intelligence issued Security Executive Agent Directive 4, establishing *National Security Adjudicative Guidelines for Determining Eligibility for access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), which he made applicable to all individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The new AGs supersede the September 1, 2006 AGs and are effective on or after June 8, 2017. Accordingly, I have evaluated Applicant's security clearance eligibility under the new AGs.¹

Findings of Fact

After a thorough review of the record, I make the following findings of fact. Applicant is 47 years old. She graduated from high school in June 1988, and received a bachelor's degree in August 1994. She served in the Marine Corps Reserves from April 1991 until December 1993. She has been eligible for access to classified information since 1991. There is no evidence of any security violations.

Applicant first married in April 1992, and divorced in September 2001. She married her present husband in July 2006. She has one child and two step-children. Applicant has worked in marketing and business development for defense contractors since February 1994. She served in various capacities as an officer for defense contractors since June 2007. She is presently a program director for a defense contractor. Her present yearly salary is \$146,000. Her husband works for a house builder and his yearly salary is approximately \$58,000. The balance in Applicant's savings and retirement accounts is approximately \$90,000. She contributes the maximum authorized to her retirement account. She also provided evidence that she is current or a month ahead making car loan and house mortgage payments. Her credit score is in excess of 700. (Tr. 22-2, 48-52; GX 1, e-QIP, dated August 8, 2014; AX A, Prepayment Notice, dated September 5, 2017; AX G, Credit Score, dated September 19, 2017)

The SOR lists, and credit reports (GX 2, dated June 15, 2016; GX 3, dated September 5, 2014; GX 4, dated September 15, 2017) confirm the following delinquent

¹ I considered Applicant's case under both the September 1, 2006 AGs, and the June 8, 2017 AGs. My decision would be the same under both AGs.

debts for Applicant: a mortgage past due for \$8,486 with a balance of \$249,357 (SOR 1.a); and a foreclosed mortgage with an approximate balance of \$28,385 (SOR 1.b).

Applicant attributes her financial problems to a Chapter 13 bankruptcy filed by her husband, and confusion by the mortgage company crediting Applicant with payments made on the mortgage for her house reflected in SOR 1.a. The mortgage company for the property at SOR 1.b also refused to accept payments from the bankruptcy trustee for the property at SOR 1.b. (Tr. 13-14)

Applicant's husband works as a designer for a house builder. His pay is intermittent because he is paid only when a house is sold. Her husband's income dropped approximately 70% in 2008. In approximately 2012, Applicant's husband filed a Chapter 13 bankruptcy for his debts only and any debts held jointly with Applicant. This included the mortgage for the property reflected in SOR 1.b. The bankruptcy was completed and debts discharged in May 2017. (AX B, bankruptcy discharge, May 16, 2017)

The debt at SOR 1.a pertains to the mortgage on Applicant's townhouse purchased in 2008. When her husband filed the bankruptcy petition, the original mortgage company turned servicing of the loan over to another loan service company specializing in mortgage involved bankruptcy. Applicant received notification of the transfer but not payment instructions. Applicant's income was not affected by her husband's bankruptcy so she was still making mortgage payments to the original mortgage company. Since the loan was being serviced by a different service company, Applicant did not receive credit for the payments. As far as Applicant was concerned, she was sending checks and her mortgage payments were timely and the mortgage was current. (AX C, account information, date September 20, 2017)

Applicant did not know her house mortgage was not current until she was notified during the process to renew her security clearance. The mortgage account statement showed a past due amount of approximately \$7,294. (AX D, mortgage statement). To resolve the matter and not fall further behind on her mortgage while waiting for the mortgage company to credit her account, Applicant paid the full amount owed to bring the mortgage account current. When the payments are resolved by the mortgage company, Applicant will be reimbursed. (AX E, check dated June 12, 2017). The mortgage at SOR 1.a is current and resolved. (AX F, mortgage statement, dated July 1, 2017) Future mortgage payments will be taken directly from her bank account. (Tr. 14-39, 49-52)

SOR 1.b is a mortgage on an unimproved property purchased by Applicant and her husband for approximately \$28,385 in October 2007. The monthly mortgage payments were \$450. Applicant and her husband decided not to build on the property because of the cost but they still wanted to keep possession of the land for future use. Even though the property was unimproved, the yearly taxes were high and paid separately from the mortgage. The mortgage debt was included in the Chapter 13 bankruptcy Applicant's husband filed in 2011 and which discharged in 2017. Even though Applicant's husband made his Chapter 13 payments to the trustee, the

mortgage holder on this property would not accept the payments from the trustee. The trustee then used the funds originally intended for the property to pay other debts. Available evidence shows the mortgage holder foreclosed on the property. The debt was also discharged in the bankruptcy. Applicant and her husband have no mortgage debt responsibility for the property because of the foreclosure of the property at SOR 1.b. (Tr. 51-59)

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 must be considered 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, these guidelines are applied 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 national security eligibility will be resolved in favor of the 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.

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 applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion in seeking 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

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 a person's reliability, trustworthiness, and ability to protect classified or sensitive information. (AG ¶ 18) The financial security concern is broader than the possibility that an individual might knowingly compromise classified information to raise money. It encompasses concerns about an individual's responsibility, trustworthiness, and good judgment. Security clearance adjudications are based on an evaluation of an individual's reliability and trustworthiness. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with her creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to meet her financial obligations. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is required to manage his or her finances in such a way as to meet financial obligations.

Credit reports reveal that Applicant has two delinquent mortgage accounts, one for her house and the other for an unimproved property. The evidence is sufficient to raise the following security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19:

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

The available evidence shows there was confusion in making and accepting mortgage payments because Applicant's husband filed a Chapter 13 bankruptcy. The past-due mortgages raises issues about Applicant's ability to meet her financial obligations. Once the Government has established an adverse financial issue, the Applicant has the responsibility to refute or mitigate the issue.

I considered the following Financial Consideration Mitigating Conditions under 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 current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problems were largely beyond the person's control (e.g. loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counselling service, and there are clear indications that the problem is being resolved or is under control; and

(d) the individual has initiated and is adhering to a good-faith effort to repay the overdue creditors or otherwise resolve debts.

The mitigating conditions apply. Applicant's has two mortgage debts that are recent and incurred under circumstances making recurrence unlikely. Applicant's information establishes that she acted in good-faith towards her debts. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. Applicant presented sufficient credible information to establish that she incurred the two debts because of issues raised by her husband filing a bankruptcy petition. The mortgage payments were made but not credited to the proper accounts. She now has no responsibility for one mortgage because of the foreclosure of the property, and the mortgage on her house is current and being paid. Applicant is gainfully employed with sufficient income and savings to meet all of her financial responsibilities. Applicant presented no evidence that she received financial counseling, thus AG¶ 20(c) does not apply to these SOR debts.

Applicant has shown sufficient action to resolve her delinquent debts. Applicant provided enough details and sufficient documentation to show progress resolving debts. She presented proof of payments and correspondence to establish maintenance of contact. There is sufficient evidence to establish Applicant made progress resolving her debts. There is sufficient assurance that her financial problems are resolved, under control, and will not recur in the future. She has shown a good-faith effort to resolve these debts. Her reasonable and responsible actions towards her finances is a strong indication that she will protect and safeguard classified or sensitive information. Under all these circumstances, Applicant mitigated financial security concerns.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information 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(d):

(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 access to classified information must be an overall common-sense 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 considered Applicant's service in the Marine Corps and that she has many years with eligibility for access to classified information with no security issues. Applicant established that she took reasonable and responsible action to resolve her financial obligations concerning two mortgages. Applicant demonstrated appropriate management of her finances and showed a record of action to resolve financial issues. Overall, the record evidence leaves me without questions and doubts concerning Applicant's judgment, reliability, and trustworthiness. She has established her suitability for access to classified information. For all these reasons, I conclude Applicant mitigated the security concerns arising from her financial situation.

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
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Subparagraphs 1.a – 1.b:	For Applicant
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Conclusion

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

THOMAS M. CREAN
Administrative Judge