



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



In the matter of:)
)
) ISCR Case No. 17-01728
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

04/11/2018

Decision

LYNCH, Noreen A., Administrative Judge:

This case alleges security concerns raised under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 2, 2016. (Item 3.) On August 9, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) sent her a Statement of Reasons (SOR) alleging security concerns under Guidelines F and E. (Item 1.) The DOD CAF acted 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 answered the SOR on August 15, 2017 (Answer), and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on September 13, 2017. On September 18, 2017, a complete copy of the file of relevant material (FORM) was sent to Applicant, including documents identified as Items 1 through 6. She was given an opportunity to file

objections and submit material to refute, extenuate, or mitigate the Government's evidence. She received the FORM and responded. The case was assigned to me on January 17, 2018.

On June 8, 2017, the DOD implemented new AG.¹ Accordingly, I have applied the June 2017 AG.² However, because the September 2006 AG were in effect on the date the FORM was completed, I have also considered the September 2006 AG. Having considered both versions of the AG, I conclude that my decision would have been the same had I applied the September 2006 AG.

Findings of Fact

Applicant, age 41, divorced in 2012, and remarried in 2014. She has one adult child. She obtained her undergraduate degree in 1999 and her master's degree in 2006. She has worked in the field of engineering for various contractors for about 17 years. Applicant has held a security clearance since 2006. She has worked for her current employer since 2015. (Item 3)

The SOR alleges that Applicant is indebted on a real estate mortgage account in a past-due amount of \$34,229, with an approximate total loan balance of \$386,534. (1.a) The SOR was amended on September 12, 2017, to reflect that Applicant is indebted on another real estate mortgage that has been charged off in the approximate amount of \$92,484. (1.b) Applicant denied the allegations. The SOR further alleged that Applicant deliberately falsified her SCA, when she responded "No" to Section 26-Financial Record. (2.a) Applicant denied the allegation.

Applicant and her second husband purchased a home in 2007 where Applicant lived until 2015. The purchase price for the home was \$495,000. They divorced in 2012, and as part of the property settlement agreement, Applicant and her husband acknowledged that the debt against the property may be greater than the value of the property given the economic conditions at the time. In addition, the agreement provided that each party would be liable in equal shares for the mortgage payments on the property. However Applicant agreed that she would attempt to refinance the marital home debt in her name alone. But if she could not, they would share the cost of the refinancing. If at the end of three years (2014), the husband was still on the mortgage, Applicant and her husband would confer about selling the residence. (Attachments to FORM)

¹ On December 10, 2016, the Security Executive Agent issued Directive 4 (SEAD-4), establishing a "single, common adjudicative criteria for all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position." (SEAD-4 ¶ B, *Purpose*). The SEAD-4 became effective on June 8, 2017 (SEAD-4 ¶ F, *Effective Date*). The National Security Adjudicative Guidelines (AG), which are found at Appendix A to SEAD-4, apply to determine eligibility for initial or continued access to classified national security information. (SEAD-4 ¶ C, *Applicability*).

² ISCR Case No. 02-00305 at 3 (App. Bd. Feb. 12, 2003) (security clearance decisions must be based on current DoD policy and standards).

Applicant purchased her husband's share of the home and maintained the first and second mortgage payments for three years. However, Applicant was unable to refinance the home mortgage loan as the property value had dropped. (Item 5) She tried several times to refinance the loan, but was not successful. The property was valued at about \$440,000 in 2015. Applicant maintained the mortgage payments, but decided the house had to be sold. She had the house on the market from June 2015 through September 2015. She moved out and rented the home. In December 2015, Applicant obtained a real estate broker and told her that she would consider a short sale. Upon the advice of the broker, Applicant stopped making the mortgage payments.

A short sale was approved in June 2016, stating the sale price was \$435,000. Both mortgagees approved the short sale in August 2016, but the property was foreclosed by the first lienholder on August 26, 2016. (Documents submitted in response to FORM). Both Applicant's lawyer and broker tried to stop the foreclosure proceeding, but they were not successful. The second mortgagee or lienholder cancelled the short sale on September 21, 2016, and charged off the remaining debt owed to them. The 2017 credit bureau report shows balance due is "zero". (Item 6)

During the short sale process, Applicant had no idea that the first lienholder would suddenly foreclose on the home. She submitted documentation from the firm handling her short sale that confirms she diligently followed everything that was asked of her in good faith with her lenders. (Attachments to Answer)

Applicant's overall credit is excellent. Her credit reports show that she has always paid her accounts as agreed. The only derogatory information on the 2017 credit report is the past-due amount of \$34,229 for the first lienholder. Interestingly enough, that same credit report, dated April 2017 does not indicate any "foreclosure" under the public records section. (Item 6)

As to the allegation in SOR 2.a that Applicant falsified material facts on her January 2, 2016 SCA, when she answered "No" to Section 26-Financial Record, Applicant denied the allegation. When she completed the SCA, Applicant was following her broker's advice with regard to her mortgage loans. She had no foreclosure and no idea that the short sale process would fail. In fact, she did not receive a Notice of Default until May 2016. Applicant's credit reports reflect that she had no delinquent accounts. She did not falsify her SCA.

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 (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. 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 potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of EO 10865, "Any determination under this order adverse to an applicant shall be a determination 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 concern under this guideline is set out in AG ¶ 18:

Failure 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 or sensitive information. Financial distress can also be

caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's two home mortgage loans were past-due at a point in time. This establishes two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"), and AG ¶ 19(c) ("a history of not meeting financial obligations").

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

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;

AG ¶ 20(b): the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) is established. Applicant's home loan accounts were the result of the inability to continue with the short sale process that she was advised about and the inability to refinance her home loans after her divorce. She has shown financial diligence and responsibility with all other accounts.

AG ¶ 20(b) is partially established. Applicant's divorce created the situation with the marital home loans. She was able to maintain the loans for three years and then she sought advice and acted responsibly in every manner. The surprise foreclosure after

she had approval for the short sale was a total surprise. She followed all requirements that were asked of her. She acted in good-faith.

AG ¶ 20(c) and 20(d) are established. Applicant responded to the FORM and the record demonstrate her efforts to resolve her mortgage accounts. She sought advice regarding the issues of the home loans, tried to refinance several times, and took the advice of her broker to stop making payments on her mortgages. She rented the house, followed through on a short sale, but was upended by the bank's sudden foreclosure. She has always resolved her accounts in a timely fashion.

Applicant met her burden to mitigate the financial concerns set out in the SOR. For these reasons, I find SOR ¶¶ 1.a and 1.b. for Applicant.

Guideline E, Personal Conduct

The concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

- (a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

- (b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

Applicant completed her security clearance application in October 2015, and updated it in January 2016. Her responses to Section 26 were consistent and factual. She had no foreclosure or defaults when she submitted her January 2016 SCA. Applicant provided frank answers on her SCA.

AG ¶ 16 (a): deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine

employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant denied intentionally falsifying her SCA. When a falsification allegation is controverted, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission.³ An applicant's level of education and experience are relevant to determining whether a failure to disclose relevant information was deliberate.⁴

In this instance, it is clear from Applicant's comments that she was in the process of following her broker and the bank concerning the home mortgage loans. She was doing everything that she was supposed to do. She was trying to sell the property, rented it, and then asked for a short sale. She received approval for the short sale. She had no default or foreclosure at the time of the SCA. Given these facts, I find substantial evidence of no intent by Applicant to omit, conceal, or falsify facts from and on her SCA. Therefore, AG ¶ 16(a) is not established.

The personal conduct security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors in AG ¶ 17:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

(f) the information was unsubstantiated or from a source of questionable reliability; and

After considering the mitigating conditions outlined above, all of them would apply. However, Applicant did not intentionally falsify her SCA. She hid nothing and had no lapse in judgement. Further, she took responsibility for her actions. She has provided sufficient information in this record to demonstrate that she has met her burden of proof for her personal conduct.

³ See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004).

⁴ ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall common sense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guidelines F and E in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guidelines F and E, and evaluating all the evidence in the context of the whole person, including Applicant's many years of service and history of financial stability and responsibility. I conclude that Applicant did not deliberately falsify her SCA, and has mitigated the security concern. Accordingly, Applicant has carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a – 1.b: For Applicant

Paragraph 2, Guideline E (Personal Conduct): FOR APPLICANT

Subparagraph 2.a: For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to continue Applicant's eligibility for access to classified information. Clearance is granted.

Noreen A. Lynch
Administrative Judge