



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-04395

Appearances

For Government: Brittany Muetzel, Esq., Department Counsel

For Applicant: *Pro se*

10/31/2018

Decision

MURPHY, Braden M., Administrative Judge:

Applicant's mortgage remains significantly past due and in foreclosure. Applicant has not made a mortgage payment in about two years despite steady employment and the means to pay other significant expenses, such as the monthly payment on an expensive luxury auto. She and her husband recently filed for Chapter 13 bankruptcy, but the filing was not completed and is pending dismissal. Applicant has not acted responsibly in attempting to improve her finances. She did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On January 24, 2018, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (Exec. Ord.) 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 *National Security Adjudicative Guidelines* (AG), implemented by the DOD on June 8, 2017.

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Exemption 6 applies

Applicant answered the SOR on March 27, 2018 and requested a hearing. The case was assigned to me on June 27, 2018. On July 27, 2018, a notice of hearing was issued scheduling the hearing for August 23, 2018. The hearing convened as scheduled.

At the hearing, Department Counsel offered Government Exhibits (GE) 1 and 2, which were admitted without objection. Applicant and her husband testified. The three documents Applicant provided with her Answer to the SOR were marked as Applicant's Exhibits (AE) A, B, and C, and admitted without objection. I held the record open until September 7, 2018, to provide Applicant the opportunity to submit additional documents. She timely submitted documents that were marked as AE D and AE E, and admitted without objection.¹ DOHA received the transcript (Tr.) on August 30, 2018. The record closed on September 7, 2018.

Findings of Fact

Applicant admitted all three debts in the SOR (§§ 1.a-1.c). Her admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and the record evidence submitted, I make the following findings of fact.

Applicant is 53 years old. She and her husband have been married since 1987. They have two grown children. She has a bachelor's degree. She served honorably in the United States Navy for 20 years. She retired in 2005 as a petty officer first class (E-6). She was then largely unemployed for about 18 months. Since February 2007, she has worked in the defense industry. She was briefly unemployed in early 2009 after a layoff, and in mid-2012 after being terminated. She has worked for her current employer and clearance sponsor since December 2015. She has held a security clearance since 2009. (GE 1; Tr. 9, 22-25, 58-59)

Applicant submitted a security clearance application (SCA) in December 2015. She disclosed various delinquent debts, including some she said had been satisfied. (GE 1) The three debts alleged in the SOR were a mortgage in foreclosure that was \$19,609 past due, with a total balance due of \$282,416 (SOR § 1.a); a \$348 past-due debt to a phone company (SOR § 1.b); and a \$150 past-due medical debt (SOR § 1.c). (GE 2) Applicant provided proof with her Answer that the two small debts had been paid. (AE B; AE C)

With her Answer, Applicant also provided a document from her mortgage company reflecting that her application to modify her mortgage had been approved as of January 9, 2018. Starting on March 1, 2018, she was to make a monthly payment of \$1,665, with an annual interest rate of 4.125%. She and her husband signed the agreement on January 6, 2018. (AE A; Tr. 40)

¹ AE D is a scheduling order for Applicant's bankruptcy case. AE E is a group exhibit, consisting of eight letters from character references.

Applicant has an annual salary of \$70,000. She also receives \$1,400 a month in retirement pay. Her husband works for an outdoor equipment company. He earns \$43,000 a year. (Tr. 25, 59-60)

In July 2016, Applicant purchased a \$45,000 used luxury automobile. She has a monthly car payment of \$836. Her husband drives a sport utility vehicle. He has a monthly car payment of \$681. He purchased his car earlier this year, after his prior auto was wrecked in an accident during a rainstorm. Applicant and her husband have other monthly expenses, including a student loan payment, utilities and phones, as well as homeowner association fees. (Tr. 51-55, 70-71)

Applicant and her husband began experienced financial problems after he was out of work for a time following knee surgery, in 2013. Applicant also took a lower paying job. They also began having personal problems, and in February 2016, they separated for a period of time. Her husband testified that they had several separations. He also accepted some responsibility for their financial problems. (Tr. 27-36, 60-63)

The mortgage debt in the SOR concerns their marital home. Applicant bought the home in February 2009. She later added her husband onto the deed, but she alone is on the mortgage. She testified that she had to prioritize paying some bills over others. She chose to keep making the car payment because she needed a car to get to work. She fell behind on the mortgage. (Tr. 33-36)

The credit report in the record, from October 2017 (GE 2), shows that Applicant had not made a mortgage payment for 12 months, since October 2016. Applicant testified that she has not made a mortgage payment since then, almost two years ago. At the time of the hearing, she did not have an approved mortgage repayment plan with her lender. She said they wanted to sell the home, but had consulted a lawyer, and were advised to let the home go to foreclosure. At the time of the hearing, Appellant and her husband remained in the home. (Tr. 41-45)

Applicant said she is using the money that should be going to the mortgage to pay other monthly bills, including car payments. She also had funeral expenses after her mother passed away in December 2017. (Tr. 41-42)

Applicant testified that she made repeated attempts to modify the mortgage. She testified that she attempted to comply with the agreement by making the first payment, of \$1,600. The lender kept requesting more information without approving it. AE A is a loan modification agreement Applicant signed in early January 2018. When asked what happened next, Applicant testified that the lender sent it back to her because of problems with her signature, or because it was not notarized. (Tr. 25-27, 35-36, 38) The exact nature of the issue is not clear, because the documentation Applicant received

from the lender is not in the record. It is unclear if Applicant's initial modified payment of \$1,600 was accepted by the lender.

In early April 2018, Applicant was notified that the bank was beginning foreclosure proceedings. At some point thereafter, in about June 2018, Applicant and her husband filed bankruptcy. It was dismissed for lack of a payment plan. They later refiled bankruptcy under Chapter 13. Applicant testified that they then heard from the lender that "now they want to work with us. . . . And they recommend that it's best that you just sell the house." (Tr. 25-32, 39, 85-86)

Applicant was unable to provide details about what debts are listed in the bankruptcy, or how much she and her husband claimed in liabilities. She testified that she and her husband do not keep a budget. She testified that she has not been through financial counseling. (Tr. 47, 50)

Applicant's husband testified that he and his wife filed Chapter 13 bankruptcy jointly. They initially filed in April 2018, but the case was dismissed, either for lack of a payment plan, or because the paperwork was incomplete. Their first filing was without legal counsel. He said they then sought legal counsel and refiled bankruptcy in August 2018. He testified that they took some credit counseling as required. At the time of this hearing, their payment plan had not yet been approved. He said that their mortgage and all of their outstanding debts are listed in the bankruptcy petition. He said they declared about \$400,000 in liabilities. (Tr. 64-73)

After the hearing, Applicant submitted a scheduling order from the bankruptcy court, dated August 22, 2018. Both Applicant and her husband are listed jointly as debtors. The order states that they filed bankruptcy *pro se*. The court set a hearing for September 18, 2018, for the debtors to show cause why their bankruptcy case should not be dismissed for: 1) failure to timely file a Chapter 13 payment plan; and 2) failure to timely file "lists, schedules, and statements." The court also noted that the \$310 of the filing fee remained unpaid. A monthly payment plan (\$115 in September 2018, \$100 in October 2018, and \$95 in November 2018) was ordered. (AE D)

Personal and professional character references attested to Applicant's good moral character and work ethic. She is professional, polite, and respectful of privacy. She is law-abiding, honest, trustworthy, reliable, and has good, "level-headed" judgment. (AE E)

Policies

It is well established that no one has a right to a security clearance.² As the Supreme Court noted in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.”³

The AGs 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 national security eligibility will be resolved in favor of the national security.” Under ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under ¶ 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.

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations 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

² *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”).

³ 484 U.S. at 531.

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. . . .

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

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts, regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators.

Applicant incurred significant delinquent debt in recent years. Her mortgage remains significantly past due, and she has not made a mortgage payment since October 2016, despite remaining gainfully employed and living in the home. AG ¶¶ 19(a) and 19(c) apply. Applicant purchased a luxury car with a large monthly car payment that she could not afford. She chose to prioritize that expense over paying her mortgage, rather than to try to live within her means. AG ¶¶ 19(b) and 19(e) also apply.

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;
- (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, 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 individual has received, or is receiving financial counseling for the problem from a legitimate and credible source, and there are clear indications that the problem is being resolved or is under control; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

SOR debts ¶¶ 1.b and 1.c, debts totaling about \$500, are paid and resolved. Applicant's mortgage delinquency, SOR ¶ 1.a, is large and ongoing. She has not made a mortgage payment in about two years, and remains several thousand dollars behind. She and her husband recently filed Chapter 13 bankruptcy, but they did not pay the full filing fee, and they did not perfect the filing by including schedules or a payment plan. She did not establish that her financial problems are unlikely to recur and do not cast doubt on her current reliability, trustworthiness, or good judgment. AG ¶ 20(a) does not apply.

AG ¶ 20(b) has some application. Applicant has had some brief periods of unemployment. Her husband missed significant work after surgery. They also separated on more than one occasion. These conditions were largely beyond Applicant's control, and they impacted her finances. The first prong of AG ¶ 20(b) applies.

For full effect, however, Applicant must also show that she acted responsibly under the circumstances. Applicant did not provide sufficient evidence to establish that. Applicant fell behind on her mortgage, at least in part, because she prioritized other expenses. As she testified, she needed a car to get to work. That logic is not unreasonable. However, the mitigating effect of this action is significantly minimized by the fact that in mid-2016, she bought a \$45,000 luxury car, with an \$836 monthly payment. In mid-2017, her husband bought an SUV, with a \$681 monthly payment. The combined monthly car payments total over \$1,500. This is almost as much as their modified mortgage payment of \$1,600. Put simply, Applicant and her husband purchased cars that were fancier than they need, and more expensive than they can afford. They have prioritized those payments over their mortgage, and have made no attempts to limit expenses by getting less expensive cars. Applicant and her husband have filed Chapter 13 bankruptcy, but have not even paid the full filing fee of \$310. Applicant has not acted reasonably under the circumstances. AG ¶ 20(b) does not fully apply.

AG ¶¶ 20(c) and 20(d) are also not established. While Applicant attempted to modify her mortgage, she also has not made a mortgage payment in about two years. She has filed for bankruptcy but did not establish that she has participated in credit counseling during the bankruptcy process or otherwise. She and her husband do not have a budget. At the close of the record, their bankruptcy petition is on the verge of being dismissed because their filing was incomplete. AG ¶¶ 20(c) and 20(d) do not apply.

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(c):

(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 with questions and doubts as to Applicant's eligibility for a security clearance. Applicant did not mitigate 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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b-1c:	For Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge