



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



In the matter of:)	
)	
REDACTED)	ISCR Case No. 14-06629
)	
Applicant for Security Clearance)	

Appearances

For Government: David F. Hayes, Esq., Department Counsel
 For Applicant: Mercedes Culpepper, Esq.
 Richard Morris, Esq.

10/27/2015

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated security concerns raised by her past financial trouble. She lost her job and her home during the recent recession. She responsibly addressed her past-due debts and her financial situation is under control. Clearance is granted.

Statement of the Case

On January 21, 2015, the Department of Defense (DOD) sent Applicant a Statement of Reasons (SOR), alleging that her circumstances raised security concerns under the financial considerations guideline.¹ Applicant answered the SOR and requested a hearing to establish her eligibility for access to classified information (Answer). With her Answer, Applicant submitted eight exhibits (Ax. 1 – 8).

¹ This 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 implemented by DOD on September 1, 2006.

On May 2, 2015, Department Counsel notified the Hearing Office that the Government was ready to proceed. Applicant's hearing was scheduled, with the agreement of the parties, for July 30, 2015. The hearing was convened as scheduled.

At hearing, Department Counsel offered six exhibits (Gx. 1 – 6). Applicant testified, called witnesses, and offered additional exhibits beyond those attached to her Answer (Ax. A – T). She requested additional time post-hearing to submit further documentary evidence. I granted her request, and she timely submitted Ax. U. All exhibits were admitted into evidence without objection. The hearing transcript (Tr.) was received on August 13, 2015, and the record closed on August 14, 2015.

Findings of Fact

Applicant, a first generation American, is married with an infant child. She started working at 15, when she was eligible for a work permit. She continued working while going to college and earned a bachelor's degree in psychology. She is currently pursuing a master's degree and her husband is completing a certification in information technology (IT). Their 2013 tax return reflects a combined annual income of \$52,000. According to their 2014 tax return, their combined income increased to \$84,000. Applicant started working for her current employer in June 2014, and anticipates her husband will be able to secure a better paying job once he receives his IT certification.²

In 2007, Applicant purchased a second home as an investment property. At the time, Applicant was working as a loan officer for a large realty company and was earning substantial compensation for her work. Applicant's second home appraised for over \$70,000 more than the purchase price. Applicant was able to rent the home and the rental income was more than sufficient to cover the mortgage, as well as related expenses. Real estate professionals provided their opinion that, at the time, Applicant's purchase of the property was financially sound.³

A few months after Applicant closed on the property, the U.S. housing market collapsed and the economy went into recession. Applicant and her tenants lost their jobs due to the recession. Applicant's tenants stopped paying their rent. Applicant paid the mortgages on both her homes and her customary living expenses for nearly a year by using her savings, working part-time jobs, and securing a home equity loan on her primary residence. She attempted to negotiate with the lender on her second home to resolve the mortgage, but those efforts failed. She then tried to sell the home, but her lender refused a short sale offer of \$200,000. The lender eventually sold the property after foreclosure for approximately \$130,000. Applicant's financial troubles were further exacerbated by a former close friend's fraudulent use of her credit card.⁴

² Tr. at 44-49, 60-63; Gx. 1, Ax. J – K.

³ Tr. at 37-39, 65-72; Gx. 1.

⁴ Tr. at 27-30, 40-43, 49-57; Ax. 3 – 5; Ax. T.

Applicant regained her financial footing when she secured full-time employment as a middle school teacher in about August or September 2010. She started resolving the past-due debts that she had incurred after losing her job as a loan officer. She submitted documentary proof that SOR debts 1.a – 1.c, which total over \$110,000, have been resolved. The only potential remaining debt is the supposed deficiency balance owed following the foreclosure sale of her second home in 2009. This purported debt is listed at SOR 1.d. Applicant’s former lender sold the debt to a collection company. The original lender and other creditors in interest did not seek or secure a judgment or lien regarding the purported debt. Applicant was advised by a bankruptcy attorney that the state’s five-year statute of limitations has passed and any potential liability following the foreclosure sale is unenforceable. Applicant disputed the debt with the credit reporting agencies and it is no longer listed on her current credit report. Notwithstanding the likelihood that the purported deficiency balance debt is unenforceable, Applicant has contacted the creditor to negotiate a payment plan to resolve the matter.⁵

Applicant has not accrued other delinquent debt since regaining full-time employment. She disclosed her past financial problems on her security clearance application. She timely pays the mortgage on the home she purchased ten years ago. She has received informal financial counseling through her work, friends, and consultation with a bankruptcy firm. Her recent credit report reflects favorably on her current financial situation. She testified and provided corroboration that she frugally manages her family’s finances with the aid of a written monthly budget. Applicant’s budget reflects that, after paying monthly expenses, she has about \$980 a month in discretionary income to pay unexpected expenses and other debts.⁶ Numerous individuals, some of who have known Applicant since high school, testified or submitted character letters attesting to her reliability, trustworthiness, and good judgment.⁷ One of Applicant’s current co-workers testified that Applicant has a good reputation at work and with the Government regarding the manner in which she handles sensitive information.⁸

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are eligible for access to classified information “only upon a finding that it is clearly consistent with the national interest” to authorize such access. E.O. 10865, § 2.

When evaluating an applicant’s eligibility, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an

⁵ Tr. at 84-90; Gx. 3; Ax. 6; Ax. A – E; Ax. U.

⁶ Tr. at 58-60, 63-65, 90-93; Gx. 1; Ax. 1 (as of September 2014 credit score in mid 600s); Ax. H (budget), Ax. I (as of the hearing, credit score had increased to over 700).

⁷ Tr. at 26-43, 58-60; Ax. L – S.

⁸ Tr. at 26-31.

administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

The Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, an 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.” Directive ¶ E3.1.15. An applicant has the ultimate burden of persuasion to establish their eligibility.

In resolving the ultimate question regarding an applicant’s eligibility, an administrative judge must resolve “[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security.” AG ¶ 2(b). Moreover, recognizing the paramount importance of protecting national security in all suitability determinations, the Supreme Court has held that “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531. See also ISCR Case No. 07-16511 at 3 (App. Bd. Dec. 4, 2009) (“Once a concern arises regarding an Applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance.”).

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. 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 an 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.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” E.O. 10865 § 7. Thus, a decision to deny a security clearance amounts to a finding that an applicant, at the time the decision was rendered, did not meet the strict guidelines established for determining eligibility for access to classified information.

Analysis

Guideline F, Financial Considerations

The potential security concern under this guideline is explained at 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. . . .

Applicant's past financial problems raise the financial considerations concern. The record evidence also raises the disqualifying conditions at AG ¶¶ 19(a), "inability or unwillingness to satisfy debts;" and 19(c), "a history of not meeting financial obligations."

The following mitigating conditions were potentially raised by the evidence:

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, or a death, divorce or separation), 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): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's past financial problems were due to the recession, which resulted in the loss of her well-paying job and eventually the foreclosure of her second home. Her financial situation was exacerbated by a former close friend's fraudulent use of her credit card. Applicant did not ignore her financial obligations. Instead, she attempted to negotiate with her lender to modify the mortgage on her second home and, once those efforts failed, tried to sale the home to resolve her debts. After regaining her financial footing, Applicant contacted her creditors and made a concerted effort to resolve her debts. She submitted documentary proof that SOR debts 1.a – 1.c, which total over \$110,000, have been resolved. Notwithstanding that any potential liability owed after the foreclosure sale of her second home is likely unenforceable, Applicant contacted the creditor to resolve the matter. Applicant lives within her means, and her financial situation is under control and continues to improve. AG ¶¶ 20(a) through 20(d) apply.

Individuals applying for a security clearance are not required to be debt free, nor are they required to resolve all past-due debts simultaneously or even resolve the delinquent debts listed in the SOR first. However, they are expected to present documentation to refute, explain, or mitigate security concerns raised by their circumstances, to include the accumulation of delinquent debt. Moreover, they bear the burden of showing that they manage their finances in a manner expected of clearance holders.⁹ Applicant met her burden.

⁹ ISCR Case 07-10310 at 2 (App. Bd. Jul. 30, 2008).

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of all the relevant circumstances, to include the nine factors listed at AG ¶ 2(a). I hereby incorporate my comments under Guideline F, and note some additional whole-person factors. Applicant has been upfront and candid about her financial situation since the start of the security clearance process. Furthermore, she has properly handled and safeguarded sensitive information at her current job for over a year. This favorable record evidence, when coupled with Applicant's responsible action in addressing her financial situation, mitigates the security concerns raised by her past financial problems.

A security clearance determination is not intended to punish an individual for past conduct or circumstances. Instead, these decisions serve as predictive judgments regarding an individual's security suitability, where the individual's past conduct is the best indicator of future behavior.¹⁰ Here, Applicant has demonstrated through the manner in which she responsibly addressed her past financial problems that she possesses the requisite good judgment, reliability, and trustworthiness to be entrusted with classified information. Overall, the record evidence leaves me with no doubts about Applicant's eligibility for a security clearance.

Formal Findings

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

Paragraph 1, Guideline F (Financial Considerations) FOR APPLICANT

Subparagraphs 1.a – 1.d: For Applicant

Conclusion

In light of the record evidence and for the foregoing reasons, it is clearly consistent with the national interest to grant Applicant access to classified information. Applicant's request for a security clearance is granted.

Francisco Mendez
Administrative Judge

¹⁰ ISCR Case No. 11-13626 at 3-4 (App. Bd. Nov. 7, 2013). See also, ISCR Case No. 01-25941 at 5 (App. Bd. May 7, 2004) ("Security clearance determinations are not an exact science, but rather predicative judgments about a person's security suitability in light of that person's past conduct and present circumstances.") (citing, *Egan*, 484 U.S. at 528-529).