



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



In the matter of:)
)
-----) ISCR Case No. 18-00241
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

02/28/2019

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to revoke his eligibility for access to classified information. He provided sufficient evidence to explain and mitigate the financial problems he encountered with a residential investment property, which resulted in a past-due mortgage loan that was eventually resolved by a foreclosure sale in September 2018. Accordingly, this case is decided for Applicant.

Statement of the Case

Applicant completed and submitted a Standard Form (SF) 86, Questionnaire for National Security Positions, the official form used for personnel security investigations, on January 25, 2017.¹ This document is commonly known as a security clearance application. Thereafter, on February 13, 2018, after reviewing the application and the information gathered during a background investigation, the Department of Defense Consolidated Adjudications Facility, Fort Meade, Maryland, sent Applicant a statement

¹ Exhibit 1.

of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant his eligibility for access to classified information. The SOR is similar to a complaint. It detailed the factual reasons for the action under the security guideline known as Guideline F for financial considerations.

Applicant answered the SOR on March 26, 2018. He admitted the sole allegation in the SOR, which concerned a past-due mortgage loan in the amount of about \$18,000 for a residential investment property known herein as the Lincoln Street property. He also requested a hearing before an administrative judge.

The case was assigned to me August 3, 2018. The hearing took place as scheduled on October 10, 2018. Applicant appeared without counsel. Department Counsel offered documentary exhibits, which were admitted as Exhibits 1-6. Applicant's documentary exhibits were admitted as Exhibits A-C. No witnesses were called other than Applicant. The hearing transcript (Tr.) was received October 19, 2018.

The record was kept open to allow Applicant to submit additional matters. After multiple extensions of time, the record closed December 31, 2018. The e-mails from both Applicant and Department Counsel as well as Applicant's post-hearing exhibits are admitted as Exhibits D-H.

Findings of Fact

Applicant is a 57-year-old employee who is seeking to retain a security clearance. He is employed as an information system security officer. He has worked for the same company since 2016. He was unemployed for a four-month period during 2016, but has otherwise been continuously employed as a federal contractor since at least 2005. He is divorced with two teenage children who live with their mother in another state. He owned and occupied a residential property during 1997-2009, and he has since rented or leased a residence.

Applicant does not dispute a past-due mortgage loan and subsequent foreclosure sale of the Lincoln Street property. It was one of five residential investment properties he bought in about 2005 or 2006. All five were located in the same large, urban city. Some properties he bought for cash at relatively low purchase prices (e.g., \$12,000 and \$14,000), while he financed the purchase of others. He purchased the Lincoln Street property, a one-unit four-bedroom townhouse, with a mortgage loan of about \$75,000.

The value of all five properties fell due to the historic bursting of the housing bubble.² A new mortgage lender acquired the mortgage loan for the Lincoln Street property, and Applicant sought a loan modification without success in 2010.³ Applicant hoped the market would improve to allow a sale of the property, but its market value fell

² It is well known that the bursting of a real-estate bubble and the resulting credit crisis were important factors in the 2007-2009 recession in the United States.

³ Tr. 28.

to about \$50,000 and he could not find a buyer, so he decided to rent it.⁴ The property was rented for about 2 years during an 11-year-period, although every rental arrangement ended in eviction of the tenant.⁵ In the meantime, he kept paying on the mortgage loan and was unable to obtain assistance regarding a loan modification from the mortgage lender.⁶

The situation with the Lincoln Street property became more difficult in 2016, when Applicant lost his job and was unemployed for several months.⁷ As a result, he was unable to make the monthly mortgage loan payment, and a foreclosure action was commenced via a judicial proceeding in December 2016.⁸ Over the next 21 months or so a loan modification, short sale, and deed-in-lieu of foreclosure were attempted without success.⁹ The Lincoln Street property was sold in a foreclosure sale for \$39,500 in September 2018. The report of sale filed with the court and other paperwork does not reflect a deficiency balance.¹⁰ At the hearing, Applicant was unaware of a deficiency balance, but thought he may owe real estate taxes on the property for the nine months he owned it in 2018.¹¹ In post-hearing submissions, he stated that he was told by the mortgage lender that he will receive a Form 1099 in January 2019.¹²

In addition to the Lincoln Street property, Applicant had another problematic residential investment property known herein as the Washington Street property.¹³ It was not alleged in the SOR, but Applicant had an opportunity to discuss it during the hearing and he provided relevant documentation as well.¹⁴ He bought the house for cash for about \$12,000 to \$14,000 in 2005.¹⁵ The property was never occupied

⁴ Tr. 29.

⁵ Tr. 29.

⁶ Tr. 30.

⁷ Tr. 30.

⁸ Exhibit 6.

⁹ Tr. 30-35.

¹⁰ Exhibit D.

¹¹ Tr. 35-36.

¹² Exhibits E, F, and G.

¹³ Exhibits A, B, and 5.

¹⁴ Because the Washington Street property was not alleged in the SOR, I did not consider it for disqualification purposes. But I have considered it for two limited purposes: (1) it is part of the circumstances surrounding Applicant's investment portfolio, which was the source of his financial difficulties; and (2) in evaluating the presence or absence of Applicant's evidence in mitigation.

¹⁵ Tr. 42; Attachment to Answer to SOR.

(Applicant said “it is just a shell”),¹⁶ and he worked over the years and spent more than \$120,000 to rehabilitate the property in order to obtain a use-and-occupancy permit from the city.¹⁷ His intention now is to sell the property.

Going back to 2009, the city brought an action seeking an injunction, which resulted in a consent judgment against him for a vacant building notice on the Washington Street property.¹⁸ In 2012, he was found in contempt of court and a fine in the amount of \$14,400 was entered against him personally as the owner. Under that state’s law, a money judgment constitutes a lien on the judgment debtor’s interest in land located in the county in which the judgment was entered. That meant the multiple properties he owned in the same city were encumbered by the lien.

In 2012, Applicant spoke with a representative of the city about a possible reduction of the fine upon obtaining a new use-and-occupancy permit for the Washington Street property.¹⁹ In 2013, he applied for six permits, none of which had final inspections. Several years later in August 2018, Applicant spoke to the city to resolve the matter. The city proposed the following offer: once the Washington Street property passes inspection and is issued a new use-and-occupancy permit, the city will agree to accept half of the original contempt fine (\$7,200) as payment and, upon receipt of payment, the city will submit a notice of satisfaction to the court. After further work and difficulties, Applicant met the terms of the city’s offer, and the case was resolved as reflected in an order of satisfaction of judgment filed by the city with the court on December 28, 2018.²⁰

Other than the matters discussed above, Applicant’s current financial situation appears to be stable. A January 2018 credit report lists the past-due mortgage loan for the Lincoln Street property, but otherwise lists no derogatory financial accounts.²¹ At the hearing, Applicant stated that he had about \$26,000 in checking and savings accounts.²² He earns an annual salary of about \$150,000.²³

¹⁶ Attachment to Answer to SOR.

¹⁷ Tr. 42-43.

¹⁸ Exhibit A.

¹⁹ Exhibit B.

²⁰ Exhibits E, F, and G.

²¹ Exhibit 3.

²² Tr. 65-66.

²³ Tr. 64.

Law and Policies

This case is adjudicated under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective June 8, 2017.²⁴

It is well-established law that no one has a right to a security clearance.²⁵ As noted by the Supreme Court in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”²⁶ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security. In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.²⁷ The Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.²⁸

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.²⁹ An unfavorable clearance decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.³⁰

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.³¹ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.³² An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate

²⁴ The 2017 AG are available at <http://ogc.osd.mil/doha>.

²⁵ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

²⁶ 484 U.S. at 531.

²⁷ 484 U.S. at 531.

²⁸ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

²⁹ Directive, ¶ 3.2.

³⁰ Directive, ¶ 3.2.

³¹ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

³² Directive, Enclosure 3, ¶ E3.1.14.

facts that have been admitted or proven.³³ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.³⁴

Discussion

Under Guideline F for financial considerations, the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness or financial problems or difficulties. The overall concern is:

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 or sensitive information. . .³⁵

The concern is broader than the possibility that a person might knowingly compromise classified or sensitive information to obtain money or something else of value. It encompasses concerns about a person's self-control, judgment, and other important qualities. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified or sensitive information.

In analyzing the facts of this case, I considered the following disqualifying and mitigating conditions as most pertinent:

AG ¶ 19(a) inability to satisfy debts;

AG ¶ 19(b) unwillingness to satisfy debts regardless of the ability to do so;

AG ¶ 19(c) a history of not meeting financial obligations;

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; and

³³ Directive, Enclosure 3, ¶ E3.1.15

³⁴ Directive, Enclosure 3, ¶ E3.1.15.

³⁵ AG ¶ 18.

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

The evidence supports a conclusion that Applicant has a history of financial problems or difficulties that is sufficient to raise a security concern under Guideline F. In reaching this conclusion, I considered the circumstances surrounding Applicant's history of financial problems. Obviously, the most significant circumstance was his investment portfolio consisting of multiple residential properties acquired during 2005 or 2006. In short, it appears Applicant bit off more than he could chew. He became financially overextended due to the decrease in value of the properties and the various expenses associated with ownership of multiple properties. Those matters were the source of his financial distress as opposed to a more typical financial case where an applicant's delinquent debts resulted from consistent spending beyond one's means or frivolous or irresponsible spending.

Concerning mitigating conditions, Applicant receives credit under AG ¶ 20(a), because his financial problems originated under usual circumstances (e.g., the bursting of the real-estate bubble) that are unlikely to recur. Because he resolved the delinquencies on both the Lincoln and Washington Street properties, his history of financial problems does not cast doubt on his current reliability, trustworthiness, or good judgment.

Applicant receives credit under AG ¶ 20(b), because the financial problems were caused, at least in part, by circumstances largely beyond his control. He bought the properties in 2005 or 2006, which was near the peak of the then real-estate bubble. Shortly thereafter the real-estate bubble burst and he suffered the consequences of owning multiple properties that were declining in market value. The decline in value resulted in difficulties in refinancing or modifying loans, and some of the properties were difficult to rent or sat vacant as he worked to make them suitable for rental. In addition, he acted responsibly under difficult circumstances. He did not walk away from the properties or declare bankruptcy. He held onto the properties and worked over a period of years to salvage his investment, which is evidence of long-term commitment and responsible behavior.

AG ¶ 20(d) is also applicable in Applicant's favor. He presented reliable documentation showing the past-due mortgage loan on the Lincoln Street property, which is alleged in the SOR, was resolved by a foreclosure sale in September 2018, shortly before the hearing in this case. He expects to receive a Form 1099-C in January 2019, which is a record of a tax liability stemming from any cancellation of indebtedness by the mortgage lender. Given his salary and cash reserves, he should have no difficulty in paying an income tax obligation, assuming one exists.

Likewise, he presented reliable documentation showing satisfaction of the judgment in December 2018 stemming from the fine imposed on him in 2012 for the Washington Street property. This matter was not alleged in the SOR. Obviously, Applicant took far too long to resolve this matter, which began in 2009 with the filing of the consent judgment. But it is noted that Applicant was working with the city on this

matter in both 2012 and 2013, the property required various repairs and improvements along with inspections and permits, and he had to pay the associated expenses from his normal cash flow as opposed to relying on an unlimited source of funding. These things take both time and effort to accomplish.

Concerning the good-faith standard in AG ¶ 20(d), I am mindful of the copious Appeal Board caselaw on post-SOR remedial actions in financial cases. While it's true that Applicant resolved both the past-due mortgage loan and the unpaid judgment after issuance of the SOR, it's also true that he worked on an on-again, off-again basis to resolve the issues with these two properties over a period of years that preceded the SOR. In other words, this is not a case where Applicant was engaged in massive procrastination or simply ignored the problem and only took action upon receipt of the SOR. Given the totality of facts and circumstances, I am satisfied that the totality of his remedial efforts were made in good faith and were not done simply in response to the SOR.

Following *Egan* and the clearly consistent standard, I have no doubts or concerns about Applicant's reliability, trustworthiness, good judgment, and ability to protect classified or sensitive information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also considered the whole-person concept. I conclude that he has met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

The formal findings on the SOR allegations are:

Paragraph 1, Guideline F: For Applicant

Subparagraph 1.a: For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant access to classified information. Eligibility granted.

Michael H. Leonard
Administrative Judge