



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



In the matter of:)	
)	
)	ISCR Case No. 12-08101
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: John Bayard Glendon, Esquire, Department Counsel
For Applicant: *Pro se*

02/20/2015

Decision

WHITE, David M., Administrative Judge:

Applicant stopped making payments on his second mortgage in 2009 and on his first mortgage in 2011, resulting in about \$100,000 of delinquent debt. He demonstrated neither the means nor reasonable efforts to resolve either obligation. He denied having delinquent debts on his security clearance application. The evidence is insufficient to mitigate resulting security concerns. Based upon a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SF 86) on March 16, 2012. On August 6, 2014, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The action was taken under Executive Order 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 *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in an undated written response (AR)¹ and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on October 29, 2014. The case was assigned to me on October 30, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Video Teleconference Hearing on November 18, 2014, and I convened the hearing, as scheduled, on December 1, 2014.² Applicant and the court reporter attended the hearing in person. Department Counsel participated from DOHA Headquarters by video teleconference. The Government offered Exhibits (GE) 1 through 5, which were admitted without objection. Applicant testified on his own behalf, and I granted Applicant's request to leave the record open until December 15, 2014, for submission of documentary evidence. DOHA received the transcript of the hearing (Tr.) on December 9, 2014. Applicant timely submitted exhibit (AE) A, which was admitted without objection and the record closed.

Findings of Fact

Applicant is a 58-year-old employee of a defense contractor, where he has worked since February 2012. He is married, with four adult children. He is a high school graduate, and has taken some college classes. From 1979 until he retired in 2012, he served various periods on active duty in the Air Force, and as an active reservist and civilian employee in the National Guard. He has held a security clearance since 1979. (GE 1; Tr. 6-8, 36-41.)

Applicant admitted the allegations set forth in the SOR with some explanations. (AR.) Applicant's admissions, including those contained in his response to DoD CAF interrogatories (GE 3), are incorporated in the following findings.

Applicant's credit bureau reports substantiate the existence of the two delinquent mortgage debts alleged in the SOR. In 2001 he bought the home in which he continues to live, with a \$189,000 first mortgage loan. In March 2005, he refinanced the first mortgage with a loan for \$183,000. The record evidence does not establish how much home equity was withdrawn by this transaction. In October 2006, he refinanced the first mortgage again, with a loan for \$226,598. He then took out a second mortgage loan of \$55,000 in June 2007. He said that he made some home improvements, but did not otherwise explain what he did with more than \$98,000 in combined proceeds from these equity loans. Although he was inaccurate in testimony about when he stopped paying his second mortgage, Applicant said that he stopped making payments toward these debts because he could not afford the increased monthly total of \$2,253 associated with the higher loan principals. The record credit reports indicate that his last payment

¹The attestation page of AR was apparently mislaid before I received the case file. See Tr. 15-17.

²Applicant confirmed that he received actual notice of the hearing date more than 15 days in advance, and that he was ready to proceed without needing any additional time to prepare. He requested, and I granted him, an additional 14 days to submit evidence. (Tr. 12-13, 86-87.)

toward his second mortgage was in January 2009, and toward his first mortgage was in February 2011. (AR; GE 2; GE 3; GE 4; GE 5; Tr. 67.)

Applicant claimed that, from mid-2008 to late-2010, he assumed responsibility for about \$3,000 per month in medical care expenses for his mother-in-law. He reported on his SF 86 that she was born in 1925, which would have made her 83 to 85 years old during that period. He provided neither documentation to corroborate these payments nor an explanation why the expenses were not covered by Medicare or other insurance. He has not made any subsequent payments toward either of his home mortgage loans. He claimed that he has set aside about \$10,000 during the years he has been living in his home without making the roughly \$100,000 in mortgage payments that he owed over that time. (GE 1; GE 3; Tr. 44-46, 54-57, 67.)

Applicant said that he worked to arrange a short sale of his home after falling behind to the point that he could not afford catch up on the past-due loan balances. Under the proposed sale, the buyer would pay \$169,000 for the property on which Applicant owed \$256,164 on the first mortgage loan, and \$53,825 on the second mortgage loan. All short sale proceeds would go toward the first mortgage debt, but the lender rejected this offer because it was conditioned on Applicant's being permitted to continue living in the home while paying only \$1,100 per month in rent. Applicant said that, after rejection of the proposed short sale, he resumed negotiations concerning a possible loan modification. He said that he could provide no correspondence or other documentation concerning these resumed negotiations because all communications were conducted by telephone. (Tr. 57-61, 75-76.)

Applicant provided a personal financial statement in February 2014 reporting \$5,771 in net monthly income; \$1,670 in monthly living expenses; and \$2,740 in monthly debt payments toward his first and second home mortgages and a Visa card. Despite Applicant's resulting net monthly remainder of \$1,360; and \$10,000 in claimed bank savings; he documented no payments toward his delinquencies. (GE 3.) On December 15, 2014, he submitted an amended personal monthly budget showing \$5,369 in monthly income; \$7,747 in monthly expenses (including \$2,423 in first and second mortgage payments that he hasn't been making); with a resulting monthly deficit of \$2,378. (AE A; Tr. 67-70.)

Applicant denied having any delinquent debts on his SF 86. When interviewed by an investigator for the Office of Personnel Management (OPM) on April 30, 2012, Applicant at first confirmed that this denial was accurate. When confronted with information from his credit report showing that he was more than \$20,000 delinquent on his first mortgage loan at that point, he provided an elaborate explanation of the situation. When he was informed that his credit report also revealed that he was more than \$22,000 delinquent on his second mortgage, he explained that he stopped making payments toward that loan because he could not afford them and had no intention to pay the past-due amount. He said that he did not know why he did not disclose these debts, but thought that he did not think about them because the house was being sold. (GE 1; GE 3; Tr. 61-63.)

Applicant provided no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He submitted no character references describing his judgment, trustworthiness, integrity, or reliability. His attempt to justify falsifying his SF 86 was not credible.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), which are to be used 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), 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 that "[a]ny doubt concerning personnel being considered for access to classified information 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he 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." Section 7 of Executive Order 10865 provides: "[a]ny 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."

A person applying for access to classified information seeks to enter 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 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 information.

Analysis

Guideline F, Financial Considerations

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The record evidence potentially raises security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

Applicant accrued about \$100,000 in delinquent mortgage debts over the past six years, and demonstrated neither the means nor a reasonable effort to resolve them. This evidence raised security concerns under DCs 19(a) and (c), thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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), and the individual acted responsibly under the circumstances;
- (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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's substantial delinquent mortgage debts are recent and ongoing, without indication that the circumstances under which they arose have changed. He therefore failed to establish substantial mitigation under MC 20(a).

Applicant also offered insufficient evidence to support significant mitigation under MC 20(b). He said he assumed some medical payments for his mother-in-law, but did not explain their nature or his reason for doing so. He has been fully employed during the period he incurred substantial delinquent debts, and has not taken reasonable steps to resolve them. This is not responsible action under the circumstances.

Applicant did not undergo financial counseling. He neither documented any substantially effective effort to resolve the SOR-listed delinquent debts, nor asserted any legitimate basis to dispute their validity. He could not, and can not, afford the payments toward the refinanced first and second mortgages on his home after withdrawing about \$100,000 in equity from 2005 to 2007. These facts preclude mitigation under MC 20(c), (d), or (e).

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes a condition that could raise security concerns and may be disqualifying with relation to the allegations in this case:

(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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

There is substantial evidence showing that Applicant's denial of his two significant delinquent mortgage debts on his SF 86 was a deliberate falsification with intent to conceal information that he knew to be relevant to his eligibility for a security clearance. When asked about debts by the OPM investigator, he attempted to perpetuate this concealment until confronted by the facts. His attempt to justify these falsifications during the hearing was not credible. Security concerns under DC 16(a) were established.

AG ¶ 17 provides conditions that could mitigate security concerns under this guideline. Two have potential applicability under the facts in this case:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(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.

Applicant did not attempt to correct his SF 86 falsification until confronted with the facts by the OPM investigator. This falsification involved his most recent application to renew his long-held clearance, and was deliberate. He demonstrated no basis to conclude that it does not reflect adversely on his current reliability, trustworthiness, and judgment. Accordingly, mitigation was not established under MC 17(a) or 17(c).

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(a):

(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 pertinent facts and circumstances surrounding this case. Applicant incurred substantial delinquent indebtedness on two home mortgages over the past six years that he has made no effort to repay. These debts remain outstanding, creating the ongoing potential for pressure and duress. The evidence does not support a finding that continuation or recurrence are unlikely, or that behavioral changes demonstrate rehabilitation. He is a mature and experienced individual who is accountable for his choices and financial irresponsibility. He attempted to conceal these debts in connection with his application to renew his security clearance, and offered insufficient justification for doing so. Overall, the record evidence creates ongoing doubt as to Applicant's present eligibility and suitability for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant

Conclusion

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

DAVID M. WHITE
Administrative Judge