



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



In the matter of:)
)
) ISCR Case No. 12-10141
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

03/28/2016

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny his eligibility for a security clearance. Applicant has a delinquent mortgage loan for a property that is now in foreclosure. He also deliberately omitted the delinquent mortgage loan from his security clearance application. Clearance is denied.

Statement of the Case

On June 9, 2015, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the financial considerations and personal conduct guidelines.¹ DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant’s security clearance.

¹ This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

Applicant answered the SOR and requested a decision without a hearing.² The Government submitted its written case on August 5, 2015. A complete copy of the file of relevant material (FORM) and the Directive was provided to Applicant. He received the FORM on September 3, 2015, and did not respond. The case was assigned to me on November 10, 2015. The documents appended to the FORM are admitted as Government's Exhibits (GE) 1 through 7, without objection.

Findings of Fact

Applicant, 45, has worked for a federal contractor as a mechanic since 2008. Although he served in the Army Reserve from 1989 to 1994, this is his first application for a security clearance. He completed his security clearance application in May 2012. The ensuing investigation revealed that Applicant owes a mortgage loan on a property that fell delinquent in approximately March 2012. He did not disclose the delinquent mortgage on his security clearance application.³

Applicant purchased a home in 2006. Initially, the home served as his primary residence. Applicant claims that he began having difficulty paying the mortgage in 2007 after experiencing a decrease in income when both he and his wife lost hours at work they had come to rely upon. He lived in the property until 2009, when it became a rental property. At an unspecified time, Applicant discovered that his tenants were not taking care of the property and he evicted them. Without the rental income, Applicant could not afford the mortgage and the loan became delinquent in March 2012. He discussed the property during his June 2012 interview with a background investigator, indicating that he was in the process of executing a short sale on the property. At the time of the interview, Applicant did not have buyer for the property. According to the most recent credit report in the record, dated October 2014, the property has a delinquent balance of \$112,000 and is in foreclosure.⁴

After discussing the details of the property, the investigator asked Applicant about his failure to disclose the delinquent mortgage and \$85,000 in other delinquent accounts⁵ on his security clearance application. Applicant responded that he considered his financial information to be private and he did not feel that he should have to disclose his personal information on the application.⁶

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. These guidelines are not

² GE 3.

³ GE 4-6.

⁴ GE 5-7.

⁵ These debts are not alleged in the SOR.

⁶ GE 7.

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 access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence.

Under Directive ¶ E3.1.14, the Government must 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." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Section 7 of EO 10865 provides that adverse decisions shall be "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

Financial Considerations

Unresolved delinquent debt is a serious security concern because failure to "satisfy debts [or] 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."⁷

The SOR alleges that Applicant owes approximately \$112,000 on a delinquent mortgage loan. Applicant admits that he has struggled to pay the mortgage since at least 2007. The record supports a *prima facie* case that Applicant has a history of not meeting his financial obligations and that he has demonstrated an inability to do so.⁸

None of the financial considerations mitigating conditions apply. Applicant did not provide sufficient evidence to establish that his inability to pay his mortgage was caused by events beyond his control. He reported a decrease in income five years before the property fell delinquent, but very few details about the state of his finances between

⁷ AG ¶ 18.

⁸ AG ¶¶ 19(a) and (c).

2008 and 2012. Applicant also failed to provide evidence that he has made a good-faith effort to resolve his delinquent debt. Although he indicated that he was the process of executing a short sale on the property during his June 2012 interview, his most recent credit report shows that the property is now in foreclosure. Applicant has not offered any information on the current status of the property or the mortgage loan.

Personal Conduct

Conduct involving a lack of candor or dishonesty, particularly, a failure to provide truthful and candid answers during the security process, raises questions about an individual's reliability, trustworthiness, and ability to protect classified information.⁹ The SOR alleges that Applicant deliberately failed to disclose a delinquent mortgage loan on his security clearance application. Proof of omission alone does not establish or prove an applicant's intent or state of mind when he completed the application. Here, the Applicant provided direct evidence of his intent to withhold his derogatory financial information from the government. Applicant admitted that he chose not to disclose his financial information because he considered it private. This is sufficient to support a finding that Applicant deliberately falsified his May 2012 security clearance application.¹⁰

Applicant did not provide any evidence to mitigate the concerns raised by his deliberate omission of facts from his security clearance application. None of the personal conduct mitigating conditions apply.

Accordingly, doubts remain about Applicant's security worthiness. In reaching this decision, I have considered the whole-person factors at AG ¶ 2. Ultimately, Applicant failed to meet his burdens of production and persuasion. Because the security concerns raised in the SOR remain, following *Egan*¹¹ and the clearly-consistent standard, I resolve these doubts in favor of protecting national security.

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, Financial Considerations:	AGAINST APPLICANT
Subparagraphs 1.a:	Against Applicant
Paragraph 2, Personal Conduct:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

⁹ AG ¶ 15.

¹⁰ AG ¶ 16(a).

¹¹ *Navy v. Egan*, 484 U.S. 518 (1988).

Conclusion

Based on the record, 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.

Nichole L. Noel
Administrative Judge