



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



In the matter of:)	
)	
)	ISCR Case No. 14-00234
)	
Applicant for Security Clearance)	

Appearances

For Government: James Norman, Esquire, Chief Department Counsel
For Applicant: *Pro se*

01/16/2015

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on June 21, 2013. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on March 14, 2014, detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order 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 For Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR, and he answered it on May 15, 2014. He requested a hearing before an administrative judge with the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on August 21, 2014, and I received the case assignment on August 28, 2014. DOHA issued a first Notice of Hearing on September 12, 2014. On October 14, 2014, Appellant requested a continuance of the hearing scheduled for October 22, 2014 because his work required him to travel out-of-state during the week the hearing had been scheduled. For good cause shown, the request for a continuance was granted in an order dated October 14, 2014. A second Notice of Hearing was mailed on October 16, 2014, and I convened the hearing as scheduled on November 4, 2014. The Government offered exhibits (GE) marked as GE 1 through GE 4, which were received and admitted into evidence without objection. Applicant testified. He submitted one exhibit (AE) marked as AE A, which was received and admitted into evidence without objection. Applicant offered a second document which was marked and received as Hearing Exhibit 1. DOHA received the hearing transcript (Tr.) on November 13, 2014. I held the record open until December 4, 2014, for Applicant to submit additional matters. On December 1, 2014, Applicant requested more time to submit the additional documentation. The Government did not object to his request. Applicant was given until January 5, 2015 to submit the documentation. Applicant timely submitted AE B - AE Q, which were received and admitted without objection. The record closed on January 5, 2015.

Procedural and Evidentiary Rulings

Notice

Applicant received the notice of the date, time and place of the hearing less than 15 days before the hearing. I advised Applicant of his right under ¶ E3.1.8. of the Directive to receive the notice at least 15 days before the hearing. Applicant affirmatively waived this right under the Directive. (Tr. 9.)

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a and 1.b of the SOR. His admissions are incorporated herein as findings of fact. He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 44 years old, works as a network systems engineer for a DOD contractor. His supervisor praises his work skills and ethics. His management also recognized his dedication and team work. Applicant has worked for his current employer since June 2008. He began his employment as a systems engineer with a start-up company in 2000. This company was purchased by his second employer. His second employer was purchased by his current employer in 2008.¹

¹GE 1; AE H; AE J; Tr. 19-20.

Applicant graduated from college in 1992 with a bachelor's degree. He and his first wife married in December 1992 and divorced in September 1998. They have two sons, ages 21 and 17, and a daughter, age 16. Applicant remarried in July 1999. He and his current wife have twin sons, age 14, a daughter, age 12, and a son, age 7. They assumed responsibility for his now 18-year-old niece for one year beginning in September 2008. A long-time friend, who is a licensed social worker, wrote a letter of support on Applicant's behalf. She has knowledge of his financial problems. She also described his and his wife's willingness to open their home to exchange students. She believed Applicant is a person of integrity.²

Applicant received his commission as a second lieutenant in the United States Air Force after he graduated from college. He served on active duty as an officer from January 1993 until March 2000. He received an honorable discharge at the rank of captain. During his years in the military, Applicant successfully completed a number of training programs. He received two Air Force Commendation medals and was selected company grade officer of the quarter at least three times. He was nominated for company grade officer of the year for 1994. He received a number of letters of appreciation for his work and assistance.³

Applicant currently earns \$9,812 a month in gross income plus overtime pay, which varies each payday. His net income varies each pay period because of his overtime earnings. Applicant's earnings statement indicates that he directly pays \$820 a month on a loan from his 401(k) account and \$780 in child support for his three older children. Based on his earnings statement of record, his net monthly income after all deductions averages approximately \$6,100. His monthly expenses include \$2,200 for rent, \$500 for food, \$300 for utilities, \$200 for phone and internet, \$1,000 for credit card debt, \$100 for gas, and \$100 for church. His total monthly expenses are \$4,400. He did not include estimates for clothing for his children or for miscellaneous items, such as cleaning supplies, haircuts, school supplies, and other items for every day living. I estimate these costs at approximately \$500 a month. He pays car insurance twice a year (\$1,000 total) and life insurance quarterly (approximately \$1,000 total). His earnings statement reflects that he puts \$200 a month in a savings account. At the hearing, he estimated that he had approximately \$18,000 in cash and \$8,000 in a bank account. Applicant recently purchased a time share.⁴

The SOR alleges that he owes two debts on a foreclosed property. In 1999, Applicant purchased a house for approximately \$265,000. The mortgage was in his name only. The June 2013 and the August 2014 credit reports indicate that Applicant obtained a mortgage for \$184,700 on this property in January 1999, and he closed the account in November 2003. The credit reports also show that he refinanced his home

²GE 1; AR G; AE I; AE Q; Tr. 19-21.

³GE 1; AE K -AE P; Tr.19.

⁴AE B; AE C; Tr. 66.

through another lender in November 2003 for \$177,000 and closed this account in October 2006. The credit reports reflect that he timely paid these mortgages. Applicant testified that he refinanced to a 15-year loan in 2003.⁵

Applicant decided to refinance his home a second time in October 2006. He obtained a primary mortgage of \$265,000 for 30 years at a fixed rate. About six months later, he received a home-equity loan for \$163,000. He used \$57,000 of the equity loan to pay debts and to improve his home. He invested the remaining money in a large bank, which he thought was a safe investment. During the economic downturn, the bank where he invested money failed. Applicant later applied to refinance his house with his latest mortgage lender. He sought to combine the mortgage and equity loan into one mortgage. The mortgage lender declined to combine the two loans and suggested he return in six months. Six months later, Applicant again applied to combine the two loans. The mortgage lender again declined, advising that his house was “underwater”, meaning that the house was worth less than his loans. During this process, Applicant timely paid his mortgages.⁶

Applicant testified that he wanted to combine the mortgages into one monthly payment because the interest rates were low. He learned that if he wished to modify his mortgage and home equity loans, he needed to stop paying the loans. He decided to do so as a negotiating tactic in early 2009. He then moved his family to a rental home, which reduced his monthly payments from \$4,200 to \$1,800. At this time, he traveled most of the time for his job, and he was incurring credit card debt because of his business travel.⁷ His employer repaid his travel expenses very slowly. Applicant used the monetary difference between his rent and mortgage payment to pay his credit card debts.⁸

In August 2009, the mortgage lender contacted Applicant about a loan modification which would combine both loans. Applicant completed the hardship form and submitted the necessary documentation within a month. The mortgage lender approved his request for a loan modification and placed him on a three-month trial payment plan. Under this plan, he paid \$2,300 a month. Applicant made the first two payments. He, however, decided not to pay the third payment and to allow the house to go to foreclosure. In making this decision, he weighed the cost of moving back into his home against the cost of breaking his lease on the rental property and the impact on his family. He made a decision that he believed at the time was the best for his family.⁹

⁵GE 2; GE 3; Tr. 21-22.

⁶GE 2; GE 3; Tr. 22-25, 44-54.

⁷His credit reports reflect that he had credit cards with high limits, which have been paid and closed. GE 2; GE 4.

⁸Tr. 25-27.

⁹GE 2; GE 3; AE A; Tr. 27-33, 62-64.

Applicant understands that his house sold at foreclosure, leaving a balance of approximately \$20,000 on his first mortgage. The mortgage lender filed a lawsuit against Applicant seeking to recover the equity loan. Applicant did not defend the lawsuit, which resulted in a default judgment against him in the amount of \$190,000 in September 2012. The mortgage lender's attorney filed a judgment lien on January 22, 2013, which he is trying to enforce. Applicant received an e-mail from the attorney for his current bank on October 1, 2014, advising that the attorney for the mortgage lender had filed a notice of garnishment on Applicant's bank accounts. As a result, Applicant contacted an attorney to work with him to resolve this matter. Through counsel, Applicant made a settlement offer, terms unknown. The mortgage lender's counsel requested a written offer to settle the judgment for \$150,000 with an initial payment of \$40,000 and the other terms are not known. Applicant discussed a written offer of \$35,000 with his attorney. He later submitted a hardship form to the mortgage lender's attorney. At the hearing, Applicant stated that he would make a cash offer between \$20,000 and \$40,000 plus a monthly payment of \$800 to \$1,200 a month for two years.¹⁰

Applicant and his family moved to another state at the end of their rental lease and have moved again. Under the state anti-deficiency law where Applicant owned this house, he does not owe any money on the original mortgage. As for the home-equity loan, the lender has a judgment it is now trying to enforce. Applicant acknowledged that he made poor decisions related to these mortgages. He has not received financial counseling. Outside of the two mortgage debts in the SOR, the credit reports reflect that Applicant pays his bills in a timely manner and has not defaulted on any other debts.¹¹

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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 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,

¹⁰GE 4; AE D -AE F; Tr. 27-28, 37-43, 65.

¹¹HE 1 is a copy of a 2012 case submitted by Applicant which discusses liability on two mortgages held by the same lender in the state where the judgment was obtained. It is unclear from the facts in this case if Applicant's home-equity loan is covered by the decision in this case. At this point, the mortgage lender has a judgment against Applicant.

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 contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” An applicant has the ultimate burden of persuasion for obtaining 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 an 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.

Section 7 of Executive Order 10865 provides that 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

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in 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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

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

Applicant developed financial problems when he defaulted on the mortgage and home-equity loan on his house. His debts have not been resolved. These two disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through ¶ 20(f), and the following are potentially applicable:

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

Applicant experienced problems with his employer reimbursing his travel expenses, which created increased costs for him on his credit cards. Other than this, Applicant has provided no evidence by his testimony or documents which indicates that circumstances beyond his control created a problem with his ability to pay his mortgages when he defaulted on the mortgages in 2009. He failed to defend the civil suit filed on his home-equity loan, which resulted in a default judgment against him. He made no effort to pay or negotiate a settlement of this judgment until the attorney for his mortgage lender filed a garnishment on his bank accounts. After reviewing the evidence of record and his testimony, I concluded that none of the financial considerations mitigating conditions 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 an 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant pays his bills and lives within his financial means. He supports his family, and he pays his child support obligations. Overall, his finances are well-managed. When he was unsuccessful in obtaining a consolidation of his mortgage loan and his home-equity loan, he decided to default on his loans in an effort to negotiate with the lender on a loan consolidation. His decision resulted in the lender agreeing to a trial payment plan which achieved his goal of loan consolidation. He made two payments, but not the third payment. At this point, he decided to allow his house to go to foreclosure. He had the financial resources to continue the payments and accept a reasonable modified loan agreement. His decision on his mortgages reflected poor judgment. Under state law, he does not owe any money on his primary mortgage. Until his bank accounts were threatened with garnishment, he took no action to resolve the judgment against him. Following this threat, he recently initiated steps to negotiate a resolution of the judgment, which remains unresolved. His actions concerning the two mortgages reflect poor judgment and show a lack of responsibility, which raises a security concern about his handling of classified information.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his finances under Guideline F.

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
Subparagraph 1.b:	For 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.

MARY E. HENRY
Administrative Judge