



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



In the matter of:)	
)	
)	ISCR Case No. 14-00896 ¹
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: Alan K. Hahn, Esq.

November 20, 2014

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline F. Eligibility for access to classified information is granted.

Statement of the Case

On April 24, 2014, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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 (AG) effective September 1, 2006.

Applicant answered the SOR on May 20, 2014 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on July 21, 2014.

¹ The SOR identified the case number as ISCR Case No. 14-00989. It is amended to ISCR Case No. 14-00896 to correct this typographical error.

The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 4, 2014, scheduling the hearing for October 15, 2014. The hearing was convened as scheduled. The Government offered hearing exhibit (HE) I and Exhibits (GE) 1 through 4, which were admitted without objection. Applicant presented Exhibits (AE) A through Q, which were admitted without objection. Applicant testified on his own behalf and called one witness. DOHA received the transcript of the hearing (Tr.) on October 24, 2014.

Procedural Ruling

Request for Administrative Notice

Applicant, through his counsel, submitted a formal request that I take administrative notice of certain facts relating his state's anti-deficiency statute and case law on foreclosure. The request and the attached documents were not admitted into evidence but were included in the record as HE II and administrative notice was taken of HE II.

Findings of Fact

Applicant is a 51-year-old employee of a defense contractor. He has worked for in his position for the past 9 years, for various Government contractors. He served in the Navy for 17 years and achieved the rank of E-8. He received an early retirement with full pension and benefits. He was honorably discharged. He has held a security clearance since 1983, without incident. He is divorced and has two daughters, ages 9 and 15. (GE 1; Tr. 37-44.)

At issue in this case are the primary mortgage (SOR allegation 1.a) and secondary residential mortgage (SOR allegation 1.b) on the same property. Applicant denied both of the debts listed in the SOR subparagraphs, with explanations. His debts are found in the credit reports entered into evidence. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact. (Answer; GE 2; GE 3; GE 4.)

Applicant and his ex-wife purchased their residential property at issue in July 2005 for \$405,000. The title was in both of their names. They financed the purchase with two mortgages. Their primary mortgage was for \$324,000 and they obtained a Home Equity Line of Credit (HELOC) for \$60,750. They used \$28,418.35 of their own money for a deposit and to pay closing costs. Their first mortgage had a variable interest rate. The HELOC has an interest rate of 7.625%. Applicant testified that these were the only loans they qualified for at that time. Applicant and his wife resided in the property. They were able to make their monthly payments for the first seven years that they owned the property. (AE D; AE N; AE O; Tr. 44-48.)

When Applicant's primary mortgage rates adjusted up and their finances got "tight," Applicant realized that he should attempt to modify the home loan. He applied for both loan modifications and refinancing, but his applications were rejected because he

had no equity in the property. The property value had declined by over \$100,000. He owed substantially more on the loan than the property was worth. However, he remained current on both loans. (Tr. 52-54.)

In mid-2012, Applicant and his wife decided they should separate and divorce. Applicant realized that he could not afford to pay spousal support, child support, and still satisfy his home loans. He consulted with four different realtors about his options. He hired a short-sale specialist after consulting with a number of realtors. The specialist informed him that the bank would not consider a short sale until he stopped making payments on his loans. He followed the advice of his realtor and stopped payments in July 2012. The property was placed on the market. Applicant and his wife remained living in the property at that time because they could not afford separate residences, despite not making their mortgage payment. (AE G; Tr. 53-55.)

Their realtor received an offer and was working with the bank to negotiate the sale of the property. However, on February 2, 2013, Applicant was assaulted by his wife, as detailed in a police report in evidence. Applicant obtained a restraining order against her and immediately filed for divorce. Applicant's wife moved out of the residence. She became unwilling to comply with the short sale process and refused to sign any paperwork regarding the sale. Applicant hired an attorney. Their divorce was contentious and halted all efforts to sell the residence. (AE E; AE F; Tr. 55-60.)

Applicant was required by the court to pay \$2,316 in spousal and child support. He was not able to make any further payments on the house. The house was foreclosed upon by the primary lender in December 2013. At the time of foreclosure, he was delinquent in the amount of \$28,034.30 on the primary mortgage. The house was sold for \$280,000. Applicant vacated the house on January 1, 2014. (AE H; AE P; Tr. 48, 58-61, 78-79.)

Applicant moved in with a roommate and lives frugally. He has incurred no new consumer debt. Applicant's divorce was finalized on April 4, 2014. He is current on his spousal support and child support payments of \$2,000 per month. After his monthly expenses are met, he has a net remainder of \$1,198. (GE 4; AE I; AE L; Tr. 66.)

Within 30 days of the foreclosure, Applicant received a 1099-C from the primary mortgage holder, cancelling his remaining debt of \$25,895.91. (AE J.) Applicant testified that he included the cancellation of this debt on his 2013 Income Tax return. SOR allegation 1.a. is resolved. (AE K; Tr. 62-63, 74.)

Applicant requested a 1099-C from the HELOC holder, but was told that they did not issue those because they were not part of the foreclosure process. However, he formally contested the reporting of the HELOC on his credit report after foreclosure. The entry was deleted from Applicant's credit report as a result of the dispute. SOR allegation 1.b is resolved. (AE K; Tr. 69, 75.)

Applicant is recognized by his supervisor, who testified on behalf of Applicant, for his exceptional work ethic and his high level of responsibility. (Tr. 82-86.) He is also

highly respected by those that wrote character reference letters on his behalf. (AE M.) His Navy performance evaluations recognize Applicant for his professionalism and expertise. They reflect he was a “consummate professional” during his Naval career and he always achieved high ratings. (AE A.) His performance appraisals during his civilian career also reflect that Applicant is an outstanding employee. (AE B.) He presented two letters of appreciation that show Applicant is a vital member of his team and excels in his work performance. (AE C.)

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 and mitigating conditions, 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, administrative judges apply the guidelines 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(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 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, 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 clearance 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 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.

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

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18, as follows:

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 two conditions that could raise security concerns and may be disqualifying in this case:

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

Here, the Government introduced credible evidence showing Applicant was delinquent on two home loans associated with a home purchase. The loans had been delinquent since July 2012. The evidence raises both security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Three apply:

- (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;
- (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
- (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 attorney argued that the state's anti-deficiency statute, set out in HE II and explained in the case law cited in his request for Administrative Notice, precluded the collection of Applicant's debts in the instant matter. The Appeal Board has held: "Even if a delinquent debt is unenforceable under state law, a Judge must consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner."² The facts and circumstances of this matter establish full mitigation under AG ¶ 20(a) and 20(c), as follows.

Applicant's financial delinquencies occurred in a perfect storm of misfortune and are unlikely to recur. Applicant purchased his residence at the height of the market, unbeknownst to him. His home value declined by over \$100,000. However, he responsibly made payments for seven years until he and his wife decided that they must terminate their marriage. After close scrutiny of his options, he hired an expert to help him sell the property. The divorce grew contentious after his wife assaulted him and he was unable to proceed with a sale due to her refusal to participate in the process. At the same time, he incurred the additional costs of spousal support and child support that further prohibited him from working out a resolution on these debts while avoiding any other delinquencies. The divorce is now final. He is able to rent an apartment, with a roommate, and lives frugally. He has money left over at the end of the month after meeting his monthly expenses. Similar financial problems are unlikely to occur. His mortgage delinquencies do not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶ 20(a) applies.

Applicant's financial delinquencies have been resolved. His primary mortgage debt was satisfied through foreclosure and his remaining debt was cancelled. He disputed the HELOC and it was removed from his credit report. He has no other delinquent debt and lives within his means. Applicant's financial problems have been resolved. AG ¶ 20(c) applies to both debts. AG ¶ 20(e) also applies to Applicant's HELOC.

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

² ISCR Case No. 01-09691 at 3 (App. Bd. Mar. 27, 2003).

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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant served honorably in the Navy for 17 years. He has held a security clearance since 1983, without incident. He served as a government contractor for the past 9 years. He is well respected by those that know him. His financial difficulties are attributable to a unique set of misfortunes that are unlikely to recur. He acted reasonably by trying to resolve the delinquencies through refinancing or loan modifications. When those steps were unsuccessful, he attempted a short-sale, but was unable to complete that process due to his contentious divorce and the financial strain placed upon him by that divorce. While he did not repay his delinquencies, they are resolved. No new debts have been incurred. He has sufficient income to insure that there is little likelihood of recurrence.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Financial Considerations security concerns. I conclude the whole-person concept for Applicant.

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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Jennifer I. Goldstein
Administrative Judge