



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



In the matter of:)	
)	
)	ISCR Case No. 14-01421
)	
Applicant for Security Clearance)	

Appearances

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

04/08/2015

Decision

LYNCH, Noreen A., Administrative Judge:

On June 4, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant listing security concerns arising under Guideline F (Financial Considerations). The action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a decision based on the written record in lieu of a hearing. Department Counsel submitted a File of Relevant Material (FORM), dated February 9, 2015.¹ Applicant received the FORM on February 13, 2015. He submitted additional information for the record. (Applicant EX 1) I received the case assignment on April 2, 2015. Based on a review of the case file, I find Applicant has mitigated the security concerns raised. Eligibility for a clearance is granted.

¹The Government submitted three items in support of its case.

Findings of Fact

In his answer to the SOR, Applicant admitted the allegations under Guideline F, ¶¶ 1.a with explanations. (Item 1) .

Applicant is 64 years old. He obtained an undergraduate degree in 1980. (Item 3) He is an employee of a defense contractor. Applicant is married and has one child. He has been employed with his current employer since 2000. This is Applicant's first request for a security clearance. On October 7, 2013, he completed a security clearance application. (Item 3)

The SOR alleges a past-due mortgage loan in the amount of approximately \$37,839, with a total loan balance of approximately \$160,703.

Applicant and his wife purchased a property in state X in 2006. The purchase price was \$222,664.89. Applicant made a down payment of about \$48,000. The loan amount was \$177,482. Applicant intended to move to state X for his work. However, the request for transfer was denied. At that point, Applicant decided to rent the home. In 2007, Applicant signed an agreement with a property management agent. Applicant paid the home owner's fees. The rent from the tenant covered most of the monthly mortgage loan. Applicant believes he paid an additional \$300 a month to cover the loan payments.

It is not clear from the record as to when, but at some point, due to declining housing market prices, Applicant could not find acceptable tenants. This put a financial strain on him. He could not afford the property in state X and his residence. He contacted the bank and tried to refinance. After an appraisal, it was determined that the value of the house was about \$110,000 on which he owed approximately \$160,000. The bank denied the refinance. Applicant's property manager worked with Applicant to sell the house. The house would probably not sell for more than \$120,000. Applicant was candid that this was not an ideal situation. A foreclosure agency advised Applicant that foreclosure would be the best route. In August 2011, Applicant stopped making payments on the house. The bank originally had an auction scheduled for 2012. For various reasons, the case was dismissed in 2013, but reopened in 2014. A foreclosure auction was held on September 28, 2014, and the home sold. As of December 11, 2014, the bank closed the loan. Applicant submitted a letter from the bank stating that the loan has been paid in full. (Attachment L)

Applicant now realizes the full ramifications of his decision to follow through with a foreclosure on the property. At the time, it seemed like all other options had been exhausted. He states that this is an isolated incident. A review of his financial records show that all debts he acquired were paid on time.

Applicant's program manager attests to his character, judgment, and trustworthiness. He has known Applicant for 20 years. He is an outstanding employee. Applicant is a trusted and valued employee. (Attachment M)

Applicant submitted a favorable letter of reference from a principal engineer in the company who has known Applicant for 28 years. He finds Applicant to be conscientious and always willing to do extra work. (Attachment N)

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The Government must present evidence to establish controverted facts alleged in the SOR. 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. . . ." ² The burden of proof is something less than a preponderance of evidence. ³ The ultimate burden of persuasion is on the applicant. ⁴

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

applicant concerned.”⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to classified information must be resolved in favor of protecting such information.⁷ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a security clearance.

Analysis

Guideline F, Financial Considerations

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

Failure or an 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.”

Applicant admitted that he had a past-due mortgage loan account in the amount of \$37,839 and a total loan balance of about \$160,703. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

The nature, frequency, and relative recency of Applicant’s financial difficulties make it difficult to conclude that it occurred “so long ago.” “An unpaid debt is a continuing course of conduct for the purposes of DOHA adjudications.” ISCR Case No. 10-11083 at 2 (App. Bd. Dec. 17, 2012). Applicant bought a home in 2006 and due to market economy he could not keep renters in the home. He bought it in anticipation of being transferred to the state for work. However, the transfer was denied. There is no record of any other delinquent debts. The bank acknowledged nothing is owed on the loan. The matter has been resolved. Consequently, Financial Considerations Mitigating Condition (FC MC) 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) applies.

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

FC MC AG ¶ 20(b) (the conditions that resulted in the behavior 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) partially applies. Applicant's financial difficulties occurred because he did not receive a work transfer to state x and he could not keep renters in the home. He tried to sell the home and to refinance it, but he was not successful. He took the advice of a foreclosure agency and let the house go to foreclosure, which he thought was the best option at the time.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Applicant submitted documentation that the bank considers the mortgage loan paid in full. He did not present evidence that he received financial counseling. AG ¶ 20(c) (the person has received or is receiving counseling for the problem) does not 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 the 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 64 years old. He has worked for his present company since 2000. He bought a home with the expectation that he could transfer to that state for work. However, that was denied. He rented the home, tried to sell it, and tried to refinance it. It went to foreclosure. He understands the ramifications of his actions. At the time, he did not have a security clearance.

Applicant suffered a sizeable loss in this transaction. He put \$48,000 down on the house, and made his monthly mortgage payments from 2006 through 2011. His

