



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



In the matter of:)	
)	
)	ISCR Case No. 14-01877
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

01/15/2015

Decision

DUFFY, James F., Administrative Judge:

Applicant mitigated the security concerns arising under Guideline F, financial considerations. Eligibility for access to classified information is granted.

Statement of the Case

On June 18, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. DOD CAF took that action 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) implemented on September 1, 2006.

On July 3, 2014, Applicant answered the SOR and requested a hearing. This case was assigned to me on September 4, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 11, 2014, and the hearing was convened as scheduled on September 25, 2014. At the hearing, Department Counsel offered Government's Exhibits (GE) 1 through 5 that were admitted into

evidence without objection. Applicant testified and offered no exhibits. The record was left open until October 9, 2014, to provide Applicant the opportunity to submit written matters. He timely submitted documents that were marked as Applicant's Exhibits (AE) A through P and admitted into evidence without objection. Department Counsel's emails forwarding Applicant's post-hearing submission were marked as Hearing Exhibit (HE) 1. DOHA received the hearing transcript (Tr.) on October 3, 2014.

Procedural Issue

At the hearing, Applicant affirmatively waived the 15-day notice requirement in Paragraph E3.1.8 of the Directive.¹

Department Counsel moved to withdraw the allegation in SOR ¶ 1.b because it was a duplicate of the allegation in SOR ¶ 1.c. Applicant had no objection to the motion. The motion was granted and the allegation in SOR ¶ 1.b was withdrawn.²

Findings of Fact

Background Information

Applicant is a 61-year-old employee of a defense contractor. He has worked for his current employer since January 2013. He earned an associate's degree in the administration of justice in 1978. He served in the military from 1970 to 2012; the majority of his service was as an aircraft pilot in an active reserve status. He retired from the U.S. Army Reserve in the grade of chief warrant officer five (CW5). He served as a state law enforcement officer from about 1974 to 2003. He has been married three times. His current marriage began in July 2001. He has two adult children. From approximately the early 1970's to present, he held a security clearance without incident.³

Applicant and his wife have purchased a number of real estate properties over the years. While working and residing in State A, they purchased a home for about \$260,000 in 2000. They resided in this home until they moved to their current location in State B in 2007. They still own the home in State A, now rent it, and estimated its current value is about \$500,000. In about 2004, they also purchased a rental property in State A for about \$203,000 that they still own. They estimated the current value of this second rental property is about the same as when they purchased it.⁴

In about 2004, Applicant and his wife purchased an investment property in State C that consisted of four rental units. They purchased this property from a real estate

¹ Tr. at 10.

² Tr. at 59-60.

³ Tr. at 6-7, 21-25; GE 1, 2.

⁴ Tr. at 26-29, 32.

broker and never visited the property. In 2006, they sold this property and broke even on its sale. In about 2004, Applicant and his wife purchased an investment property in State D for about \$155,000. They still own the home in State D and estimated its current value is about \$200,000. Applicant indicated that they may live in the home in State D at some later point. Furthermore, they own a home in State B in which they currently reside.⁵

Applicant and his wife have employed property managers to oversee each of their investment properties. They plan to retain these properties until they retire. Upon retirement, they might sell the properties to augment their retirement savings.⁶

SOR Allegations

Excluding the withdrawn allegation, the SOR alleged that Applicant had three delinquent debts that were past due in amounts totaling \$103,237 and had loan balances totaling \$273,373. In his Answer to the SOR, Applicant admitted the remaining allegations. His admissions are incorporated as findings of fact.⁷

In 2007, Applicant and his wife purchased four single-family homes in State E as investment properties. They purchased these properties with the assistance of the real estate broker they used to purchase the property in State C. At the time of this latest purchase, the real estate market was booming, and Applicant estimated his former residence in State A was then worth about \$700,000. They never visited the properties in State E. The area where these properties are located was believed to be a prime location for the next phase of the real-estate boom. The properties were moderately priced, ranging in price from about \$100,000 to \$160,000. They made 10% down payments on each property and took out first and second mortgages to finance the remainder. At the time of the purchases, these homes were about one to three years old. One property was already rented when purchased, while the others were vacant.⁸

The properties in State E initially rented for between \$800 and \$1,200 per month. Those rents were a little bit below the breakeven point for the mortgage payments, but that deficiency did not create any financial concerns for Applicant or his wife. However, as the real estate market collapsed in 2008 and 2009, they encountered difficulties in renting the properties. Prevailing rents decreased by 25 to 30%. The rent on at least one of the properties dropped to \$550 per month. Renters turned over frequently, which resulted in not only loss of rent but also in other turnover expenses. For example, it might cost \$2,000 to repair and replace items after a property was vacated before it

⁵ Tr. at 27, 29-30, 32-35.

⁶ Tr. at 35.

⁷ Applicant's Answer to the SOR.

⁸ Tr. at 25-26, 35-44; GE 1, 5.

would be available to rent again. Due to the economic downturn, Applicant and his wife experienced what they described as financial “bleeding” due to the rental properties.⁹

Applicant and his wife consulted with a financial advisor and tax advisor about this financial downturn. Applicant and his wife paid off each of the second mortgages in cash to lower their monthly payments and enhance the possibility of resolving the situation through deeds in lieu of foreclosure. Applicant indicated that the banks refused to work with them in an attempt to resolve the situation. Their financial and tax advisors recommended that they strategically default on the mortgages. They followed that advice and decided to walk away from these financial obligations in June 2010 even though they could still afford to pay the mortgages.¹⁰

One of the properties has been foreclosed. At the time of this hearing, Applicant’s wife was serving in the military on terminal leave. In the past, she has deployed to war zones. Given her military status, protections afforded military members under the Servicemembers Civil Relief Act (50 U.S.C. App. ¶¶ 501-597b) may have delayed the foreclosure process on the other properties.¹¹

Applicant viewed the mortgage defaults as an investment decision. He knew the defaults would adversely impact his credit rating, but did not think about the potential consequences such actions might have on his security clearance eligibility:

I had no idea this would impact my security clearance. That never crossed my mind. I guarantee you, had someone even said, Hey you stand a chance of, you know, harming your security clearance if you do this, we’d have found a way to work this out.¹²

He advised his employer of the defaults in January 2013 and disclosed them. At the time of the hearing, he still had no intention of paying the defaulted mortgages. He has no other delinquent debts and his financial situation is otherwise stable. I found Applicant to be a straightforward and credible witness.¹³

In his post-hearing submission, Applicant presented an Internal Revenue Service (IRS) Form 1099-A for the foreclosed property. It reflected that the property was

⁹ Tr. at 43-44, 55-58.

¹⁰ Tr. at 39-46, 55; GE 5. As used here, the term “strategically default” refers to a situation in which the borrower stops paying on a debt or contractual obligation even though he or she has the financial means to make the payments. See ISCR Case No. 11-07747 (App. Bd. Feb 27, 2013); ISCR Case No. 11-08271 (App. Bd. May 30, 2013); ISCR Case No. 11-03623 (May 31, 2012); ISCR Case No. 11-02128 (Jan. 20, 2012); and ISCR Case No. 10-10627 (Jan 20, 2012) for cases involving strategic defaults. Three of the paid-off second mortgages are reflected in GE 5.

¹¹ Tr. at 45-47, 50-51; GE 5; AE E.

¹² Tr. at 57.

¹³ Tr. at 55-58; GE 3.

acquired by the lender or was abandoned on May 4, 2012, had an outstanding principal balance of \$127,932, and had a fair market value of \$150,304. Because the fair market value of the property was greater than the outstanding balance, the default on this mortgage resulted in no monetary loss to the lender. From a review of the Applicant's most recent credit report, it appears that this foreclosed mortgage was not one of the debts alleged in the SOR. Credit report entries reflected the foreclosed mortgage had a zero balance and zero past-due amount.¹⁴

Character Evidence

Applicant indicated that he deployed to Iraq two times and Afghanistan five times. For his military service, he was awarded the Legion of Merit, Meritorious Service Medal, Joint Service Commendation Medal, three Air Medals, Army Commendation Medal, Army Achievement Medal, Good Conduct Medal, and a number of expeditionary and unit awards. His Officer Evaluation Reports (OER) reflected that he was in the "Best Qualified" rating category. His latest OER reflected that he was "in the top 1% of Aviation Warrant Officers in the Army."¹⁵

In his current job, Applicant deploys to Afghanistan for 60 days and then returns to the United States for 60 days. He presented letters of reference from friends, including former military members. In general, these letters describe him as an outstanding person whose integrity, ethics, and personal standards are beyond reproach.¹⁶

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 that 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 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."¹⁷ The administrative judge must consider all

¹⁴ Tr. at 47-50; GE 5; AE E.

¹⁵ Tr. at 24-25; AE F-N.

¹⁶ Tr. at 24-25; AE B, C, D, O, P.

¹⁷ 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):

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 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations and Whole-Person Concept

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

(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.

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 guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant defaulted on four mortgages in 2010. Three of the mortgages remain unresolved. These were "strategic defaults" that reflect an unwillingness to satisfy debts. The above disqualifying conditions apply.

In this case, two financial considerations mitigating conditions under AG ¶ 20 merit consideration:

(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; and

(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.

Applicant paid off the second mortgages on the properties in an attempt to work with the lenders in resolving his financial problem. The lenders declined to work with him. He made an investment decision to default on the four mortgages. One of the defaulted mortgages was foreclosed. The IRS 1099-A form for that foreclosure reflected that the lender suffered no monetary loss from Applicant's default on that mortgage. It is yet to be determined whether the three remaining mortgages will ultimately result in monetary losses for the lenders. Nevertheless, Applicant's failure to meet his financial obligations under the mortgages has resulted in the lenders not receiving monthly payments as agreed. His decision to walk away from the mortgages demonstrates a financial irresponsibility that creates a security concern.

The resulting security concern must be viewed in light of the record evidence as a whole. Applicant is financially stable and has no other delinquent debts. He relied on the advice of a financial advisor and tax advisor when deciding to default on the mortgages. He indicated that he did not consider the implications that the mortgage defaults would have on his security clearance and had he done so he might have done things differently. Now that he is aware of the potential security clearance implications, further defaults are unlikely to recur. AG ¶¶ 20(a) and 20(c) partially apply.

Applicant served over 29 years as a state law enforcement officer. He served over 42 years in the military. By all accounts, he was a top-notch military officer. He has held a security clearance for many years without incident. He has deployed to combat zones on a number of occasions. He is willing to deploy to combat zones in the future as part of his current job. He is highly regarded as a person of integrity.

In examining the security concern resulting from his default on the mortgages in light of the entire record, including the whole-person concept, I find that the favorable evidence far outweighs the unfavorable. Applicant has a long history of faithful service to the United States. He was a credible witness who accepts responsibility for his actions. His mortgage defaults were thoughtful decisions. No evidence in this case suggests that he might be unconcerned or negligent in his handling and safeguarding of classified information. See ISCR Case No. 11-05365 (App. Bd. May 1, 2012). On the contrary, the record as a whole establishes that Applicant is a reliable and trustworthy person who can be trusted to handle classified information in an appropriate manner.

Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns under the financial considerations guideline.

Formal Findings

Formal findings 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:	Withdrawn
Subparagraphs 1.c – 1.d:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

James F. Duffy
Administrative Judge