



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



In the matter of:)	
)	
)	ISCR Case No. 14-02348
)	
Applicant for Security Clearance)	

Appearances

For Government: Stephanie C. Hess, Esq., Department Counsel
For Applicant: *Pro se*

03/31/2016

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant defaulted on a mortgage loan and on a home-improvement loan after he relocated for his employment. The loans were satisfied through a sale of the home in late March 2015. Clearance is granted.

Statement of the Case

On October 9, 2014, Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, Financial Considerations, and explaining why it was unable to find it clearly consistent with the national interest to grant or continue his security clearance eligibility. The DOD CAF took the action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

On October 16, 2014, Applicant answered the SOR allegations, and he requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On October 9, 2015, the case was assigned to me to conduct a hearing to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.¹ On October 26, 2015, I scheduled the hearing for November 19, 2015.

At the hearing, three Government exhibits (GEs 1-3) and 14 Applicant exhibits (AEs A-N) were admitted into evidence without objection. The letter forwarding discovery from Department Counsel to Applicant was incorporated in the record as a hearing exhibit (HE 1) but not admitted as an evidentiary exhibit. Applicant testified, as reflected in a transcript (Tr.) received on December 2, 2015.

Findings of Fact

The SOR alleges that Applicant was delinquent on two accounts as of the date of the SOR in that he owed a \$31,400 charged-off balance (SOR ¶ 1.a) and was over 120 days past due on an account with a \$189,369 balance (SOR ¶ 1.b). When he answered the SOR, Applicant admitted that he owed the debt in SOR ¶ 1.a, which was for an in-ground swimming pool at a home that he then had to “abandon” when he relocated for his present job. Applicant denied that he owed \$189,369 to the creditor in SOR ¶ 1.b in that the lender offered a settlement of \$24,979. After considering the pleadings, exhibits, and transcript, I make the following findings of fact:

Applicant is a 57-year-old manufacturing engineer who has a master’s degree awarded in 1994. He has worked for his current employer, a defense contractor, since January 1997. He transferred to his current location in September 2012. Applicant served in the U.S. military in the inactive reserve from July 1976 to July 1982, when he was honorably discharged. He has held a DOD secret clearance since July 2004. (GE 1.) He requires a security clearance for his present position. (AE A.)

Previously twice married and divorced, Applicant has been married to his current spouse since September 1993. Applicant has three children, a daughter age 26 and two sons, now ages 23 and 15. (GE 1.)

Applicant and his current wife lived in state X from approximately April 1998 to September 2012. They rented initially until February 2001, when they bought a single-family home in a large subdivision for \$161,189. (AEs B, C; Tr. 37.) They had a mortgage loan of \$162,000, which they had paid on time as of its transfer in October 2014. As of January 2005 (SOR ¶ 1.b), their mortgage payment became \$1,515, an increase of \$100 per month over their previous payment. (GE 3.)

In late April 2005, Applicant and his spouse opened a home-improvement loan of \$33,881 (SOR ¶ 1.a) to install an in-ground swimming pool and pay for some landscaping

¹ It is unclear what led to the delay in case assignment.

in their backyard. Repayment was at a fixed rate of \$291 per month for 245 months. (GE 3; AE G; Tr. 41.) The loan was secured by a deed of trust. (AE G.)

On August 24, 2012, Applicant accepted an offer of a second-shift management position with his employer, which required him to relocate across the country at his expense. (AE A; Tr. 19.) His previous job was “basically terminating in [state X].” (Tr. 38.) Before Applicant and his spouse moved on September 27, 2012, they attempted unsuccessfully to refinance the mortgage loan on their home in state X for a new loan that would include the balance of the home-improvement loan. Their mortgage lender refused to accept any short sale. (GE 1; Tr. 39-40.) Property values for single-family homes in the area had decreased on average 8.8% from 2011, and Applicant and his spouse owed more on the mortgage than their home was worth. (GE 3.) The property was valued at \$194,100 in 2011 but only at \$178,500 in 2012. (AE C.)

After Applicant and his family relocated for his job, their home in state X stayed vacant. Applicant’s daughter, who lived in a nearby city in state X, checked the home periodically for any signs of vandalism. (Tr. 42.) Applicant and his spouse made no payments on their mortgage or home-improvement loans after October 2012. (GE 3.)

With a further decline of 3.35% in the market value of single-family homes from 2012 to 2013 (AE D), Applicant and his spouse’s home in state X was valued at \$165,100 in 2013. (AE C.) Applicant did not list the home with a realtor in state X because of the surplus of homes for sale in the area. (Tr. 41-42.)

On February 13, 2013, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86). He indicated that he did not have enough equity on his home in state X to pay the loan for the pool, and that his mortgage lender would not allow him to proceed with the sale of the home. He disclosed that he was over 120 days delinquent on balances of \$189,369 for the mortgage and \$28,362 for the home-improvement loan. (GE 1.)

A check of Applicant’s credit on April 10, 2013, revealed that the creditor in SOR ¶ 1.b now held the mortgage, which was \$12,134 past due. The home-improvement loan was \$1,751 past due on a balance of \$29,796. (GE 3.) Around May 2013, the home-improvement loan was charged off for \$31,406. (GE 2.) In December 2013, the creditor holding the mortgage loan billed Applicant \$24,915 to cover unpaid escrow, principal and interest, and late charges.² (AE E.) Applicant made no payments. As of April 9, 2014, Equifax was reporting no progress toward repaying the mortgage or home-improvement loans. Applicant was making timely payments on his other accounts, including automobile loan balances of \$8,075 and \$2,081 opened respectively in March 2011 and August 2008. (GE 2.)

² Applicant had mistakenly assumed that the December 2013 billing for \$24,915 (AE E) was a settlement offer for the mortgage. (Answer.) The evidence indicates that the \$24,915 was the amount to bring the mortgage current at the time. (Tr. 47-48.)

Applicant and his spouse had stopped paying their monthly homeowners'-association fee of \$45 or \$46 per month on their house in state X. (AE L; Tr. 49.) According to Applicant, he heard nothing from the homeowners' association. His strategy was for the homeowners' association to initiate the sale of the house to collect his and his spouse's past-due fees. (Tr. 54.) On February 25, 2014, the homeowners' association obtained a \$2,434.82 default judgment (not alleged in SOR) against Applicant and his spouse. (AE L; Tr. 50.) On April 3, 2014, the judgment collector demanded that Applicant pay the judgment in full or execute a voluntary wage assignment for 25% of his non-exempt pay every payday until the judgment was satisfied. (AE M.) The judgment collector obtained a writ of garnishment on January 7, 2015, and \$804 was garnished from Applicant's wages for the pay period ending July 16, 2015. (GE H.) Applicant satisfied the judgment by payment of \$4,912 on January 26, 2015 (AE I; Tr. 30), and the writ of garnishment was released on January 29, 2015. (AEs J, K.)

Property values in the subdivision in state X appreciated in 2014 and again in 2015. Applicant's and his spouse's house was valued at \$186,800 in 2014 and \$230,000 in 2015. (AE C.) Applicant contacted a realtor in state X in early 2015 because houses were selling. (Tr. 44.) On March 31, 2015, Applicant and his spouse sold their property in state X for \$261,000. (AE N; Tr. 47.) They had to contribute \$8,000 to the buyer (AE N; Tr. 34-35), but both the delinquent mortgage and home-improvement loans on the property were satisfied through the sale. The mortgage holder received \$227,048, and the bank holding the home-improvement loan received \$25,000. (AEs F, G, N; Tr. 48.) The bank holding the home-improvement loan accepted less than the full balance in settlement. (Tr. 46.) Applicant and his spouse had apparently not paid any real estate taxes after they "abandoned" the property in state X, but they had also not been contacted about any past-due property taxes. (Tr. 58.) The settlement statement for the home in state X shows that Applicant and his spouse split county taxes for the first quarter of 2015 with the buyer. Applicant and his spouse paid \$969 to the county for taxes owed for the second half of 2014. (AE N.)

As of January 2015, Applicant's base pay with his employer was \$3,752 biweekly. (AE H.) He and his spouse rent their present residence. (Tr. 43.) She is employed (Tr. 59), although Applicant did not elaborate about her occupation or her income.

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain 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 that 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 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 about financial considerations is articulated 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.

The Guideline F concerns are established by the delinquent mortgage and home-improvement loans. Applicant and his spouse made no payments on either loan after October 2012. Disqualifying conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” are implicated.

Mitigating condition AG ¶ 20(a), “the behavior happened so long ago, was so infrequent, or occurred under circumstances that it is unlikely to recur and does not cast doubt on the individual’s current, reliability, or good judgment,” applies in that the loan defaults were situational and not typical of Applicant’s handling of his financial affairs generally. However, the loans were still delinquent as of the issuance of the SOR in October 2014 with no evidence of payment for two years. As evidence of ongoing financial irresponsibility, the loan delinquencies raise legitimate doubts about Applicant’s security worthiness.

Citing the decline in home values, Applicant and his spouse chose not to continue to make their mortgage and home-improvement loan payments after their mortgage lender would not agree to a short sale. They were unable to obtain a mortgage that would also cover the balance of the home-improvement loan. Mitigating condition AG ¶ 20(b) partially applies in that Applicant had no control over the decline in real estate values in 2012 and 2013 that left Applicant and his spouse owing more on their mortgage than their home in state X was worth. Additionally, while it was Applicant’s choice to accept a new position with his longtime employer that required him to relocate across the country, Applicant testified credibly that his previous job was being terminated in state X. AG ¶ 20(b) provides:

(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.

Even so, Applicant had an obligation to continue to work with his lenders toward acceptable resolutions after he moved in September 2012. He admits that he did little apart from checking to see whether properties were selling in his previous locale. It is difficult to find that Applicant acted fully responsibly in 2013 and 2014 when he was making no payments on either loan. There is no evidence that he responded to the December 2013 billing statement from his mortgage lender for \$24,915.

Applicant has a stronger case in mitigation under AG ¶ 20(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 AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” With the appreciation in the value of his and his spouse’s property in state X to \$230,000 in 2015, and with homes starting to sell in the area, Applicant contacted a realtor in January 2015. Both loans were satisfied in the sale of the property in late March 2015. In addition, Applicant paid \$4,912 to satisfy in full the judgment for unpaid homeowners’-association fees. It also appears that outstanding county taxes were paid in the sale of the home. There is no evidence that Applicant and his spouse owe any outstanding local real estate taxes associated with the property, or that Applicant is currently delinquent on any debt or living expense. The financial considerations concerns are fully mitigated.

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 his conduct and all the 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.

My analysis under Guideline F is incorporated in the whole-person assessment of Applicant's security clearance eligibility, but some factors warrant additional comment. Applicant has worked for his employer since 1997. While one can appreciate the difficult situation in which Applicant found himself in September 2012 because of the decline in home values, he exercised poor financial judgment when he chose to walk away from the property. His decisions to stop paying the loans and homeowners'-association monthly fee are inconsistent with the sound judgment that is required of persons with security clearance eligibility. His candor about the debts on his SF 86 does not relieve him of his obligation to his creditors.

At the same time, 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 the evidence to determine if a nexus exists between established facts and a legitimate security concern. Albeit prompted by more favorable real-estate-market conditions and by the homeowners'-association judgment, Applicant has alleviated through the sale the security concerns that arose from \$220,775 in delinquent loans. He exhibits no ongoing financial mismanagement. After considering all the evidence, I conclude that it is clearly consistent with the national interest to continue Applicant's security clearance eligibility.

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

Subparagraphs 1.a.-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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Elizabeth M. Matchinski
Administrative Judge