



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-15321
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert E. Coacher, Esquire, Department Counsel
For Applicant: Pro Se

January 30, 2009

Remand Decision

ABLARD, Charles D., Administrative Judge:

Applicant mitigated security concerns regarding Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted his Security Clearance Application (SF 86), on January 18, 2006. On April 23, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns for Applicant under Guidelines F (Financial Considerations). The action was taken under Executive Order 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on April 29, 2008 and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on May 22, 2008. I received the case assignment on May 28, 2008. DOHA issued a notice of hearing on June 6, 2008, for a hearing on June 17, 2008. I convened the hearing as scheduled.

At the hearing, the government offered five exhibits (Exhs 1-5) that were admitted in evidence without objection. Applicant submitted four exhibits (Exhs. A-D) that were admitted without objection. He testified on his own behalf. DOHA received the transcript of the hearing (Tr1) on July 1, 2008. I granted Applicant's request to keep the record open until July 17, 2008, to submit additional evidence. A set of documents (Exhs. E-Q) was received three days after the conclusion of the hearing. The documents were admitted in evidence without objection. I issued a decision denying him a security clearance on August 26, 2008.

In a letter dated October 1, 2008, Applicant, through his counsel, submitted new evidence to me in support of his case. Under DOHA rules of procedure, I could not consider the evidence since I had issued a decision in the case a month earlier. Applicant filed an appeal with the DOHA Appeal Board. The Board had vacated a default on an earlier appeal, and set a date for re-filing the appeal that was timely filed. The Board considered the appeal, and issued its decision on December 15, 2008. The Board noted that, it, too, under Directive ¶ E3.1.29. could not consider the new evidence. However, the Board remanded the matter to me concluding that my denial of a security clearance was not sustainable for failure to properly evaluate the case under the whole person analysis.

In following the guidance provided by the Board, I re-opened the hearing by video teleconference on January 12, 2009. Applicant offered five additional documents (Exhs. R-V) in evidence and testified on his own behalf. The documents were accepted in evidence without objection. The transcript of the re-opened hearing was received on January 26, 2009.

Procedural Rulings

The hearing notice was dated less than 15 days before the hearing date. I advised Applicant of his right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. Applicant affirmatively waived his right to the 15 days notice and indicated he was ready to proceed (Tr1. 8).

Findings of Fact

Applicant is a 35-year-old employee of a government contractor working as an operations commander of a security service company since August 2005. He supervises the facility security personnel at a small Navy base. He holds a second job as a police officer for a municipality.

In his Answer, Applicant admitted the four allegations in the SOR relating to approximately \$139,000 in delinquent debts arising from his purchase of three rental properties in June 2005. He paid \$238,000 for one and \$170,000 for each of the other two for a total of \$578,000. He bought each property with a \$1,000 investment for each.

In addition, the seller also paid a total of \$10,000 to facilitate the purchases of all three properties. The seller did not expect to be re-paid nor did he take a second mortgage on the properties. Apparently the profit to him came from the mortgage company that sold the mortgages to another company. This was a practice followed by other sellers involved in similar schemes (Exh. O, p. 2).

Applicant and at least seven or other persons were the victims of a scam perpetrated by the person who sold the properties to him and the others who were involved in the operation. The properties were all over-valued by appraisers who were working with the mortgage company and the seller. The mortgages with inflated values were sold to other companies leaving Applicant and others with mortgages to pay on properties worth much less than the mortgages for which they were responsible.

The tenants in the three properties were receiving low-income rental payments from the Department of Housing and Urban Development (HUD) The rents of \$1,500 per month for all three properties were paid to Applicant by HUD (Tr. 31). The funds were then sent each month to the mortgagor as mortgage payments for six months until January 2006. At that time the entire complex of which the two lower priced properties were a part was condemned. As a result, there was insufficient rental income to make payments on the mortgages. When Applicant stopped making payments, the properties were foreclosed in 2006. All three were later sold to be rehabilitated at much lower prices than what Applicant and other purchasers had paid. It is the difference in the sales price less the mortgage payments made by Applicant, and the remaining amount of the mortgage that constitutes the delinquent debts that are the basis of the allegations (SOR ¶¶ 1.a., 1.b., and 1.c.).

When Applicant became fully aware of what had happened with the appraisals, he wrote a letter in April 2006 to the attorney general of the state where the transactions took place. Copies of the letter were sent to other state officials responsible for regulating real estate and appraisals urging that action taken against the perpetrators of the scheme (Exh. C). No responses were received by Applicant from any of the officials. At the time of the hearing in this matter, Applicant had obtained very little information and documentation in the two years since he concluded that he had been a victim of fraud. The record was held open for 30 days for additional submissions. I encouraged him to make contact with prosecutors and others involved in related matters. Most of the cited material in my first decision was submitted post-hearing. The additional material submitted in the re-opened hearing also has been cited in this opinion.

The events following the transactions concerning the persons involved indicates that the person who sold the properties to Applicant was found with a single bullet wound to the head in 2006. Authorities determined that he either was murdered or

committed suicide. The mortgage company and the appraiser were soon thereafter out of business. One person, an employee of the mortgage company that initially held Applicant's mortgage, has pled guilty to a fraudulent transaction, and has been sentenced in federal court.

The scheme has been the subject of press commentary involving several similar operations in at least three southern states. Applicant and the other victims, who describe their involvement in the record (Exhs. G and H), have engaged counsel in their state (Exh. F) to obtain relief on their credit reports (Exhs. J and K) and take action against the perpetrators. No definitive results have been forthcoming since the seller, the mortgage company, and the appraisers involved have either closed their operations or are deceased.

Applicant has been in contact with the company that purchased the mortgage from the original mortgagor in an effort to work out a payment program or settle the matter. However, the company insisted on full payment of all three debts at the time of the initial hearing (Tr1. 14). However, at the re-opened hearing, he offered evidence that the debts on the SOR for two properties were no longer on his credit report (Exh. R, p.4), and that he had reason to believe based on advice he received from the first holder that the mortgages had been sold to another company that decided not to pursue collection. The third property still showed a delinquent debt listed as an amount due of \$14,000 on a total debt of \$59,000. Another document in the record from the original mortgagor shows lower figures (Exh. V). He has been in contact with the mortgagor and has made a conscientious effort to settle or pay the outstanding amount (Exhs. T. U and V). So far, this has not been successful but he continues to pursue resolution of the matter. He insists that the debt will be resolved if it is not forgiven or dropped as the others have been.

Applicant is divorced and has a five-year-old son for whom he is responsible. He served as an enlisted person in the Army between 1993 and 1996. He also served briefly as an officer in the Army National Guard in 2001 and 2002 (Exh. 1).

Applicant's annual salary from his principal employment is approximately \$65,000. For his second job he is paid approximately \$18,000 per annum. He is highly regarded by his employer for his work (Exhs. A and B). He has savings of approximately \$30,000 (Exh. D) although over half of that amount is in an education account for his son. He has no other financial difficulties and is current with all his other accounts.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 common sense 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to 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 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 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.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations may raise security concerns." Applicant accumulated the delinquent debts cited in the SOR and has been unwilling to make payments to the purchaser of his mortgages for several years since he believed he had been the victim of a fraudulent scheme. Thus, the evidence clearly raises these potentially disqualifying conditions.

While the initial down payment by Applicant of only \$1,000 and the fact that the seller was willing to pay \$10,000 more to facilitate the scheme should have raised red flags to him, he was inexperienced in real estate, and had no specific reason to believe that the events would turn out as they did. From information provided about other investors in similar schemes facilitated by the same operators, many others have been taken in by this and similar operations (Exhs O and P). It is only one piece of the mortgage crisis we now see across the country compounded by fraudulent operators.

The guideline also includes examples of mitigating conditions (MC) that could mitigate security concerns arising from financial considerations. Under AG ¶ 20(b), the security concern may be mitigating where 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. Applicant entered into the transaction to purchase the properties as long term investments. There was no guarantee that rents would continue to be paid. When the investments did not develop as planned, he ceased making the mortgage payments. When he concluded that he had been defrauded, he wrote a letter to the authorities which produced no results. However it is now known that several other persons were victimized by the same operators and that criminal investigations are being pursued by the U.S. Attorney's office. This mitigating condition is applicable.

Under AG ¶ 20(e) the security concern may be mitigated when the individual has a reasonable basis to dispute the legitimacy of the past-due debt that 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. While he may have a legal obligation to pay the debts, he has provided evidence of a reasonable basis for disputing the debts and has taken, and continues to take, action to resolve the issues. This mitigating condition is also applicable.

I conclude that Applicant has established the facts and modus operandi of the fraud committed on him, others similarly situated, and on the purchasers of the inflated value mortgages. He made payments on the mortgages up to the time the properties

were foreclosed or condemned. One debt (SOR ¶ 1.c.) was charged off at the time of the first hearing, and now a second has been charged off. He continues to work on the third. He does not have the financial ability to pay the full amount of the mortgage deficiencies for which he has been assessed but has the ability to make payments on the debt as a reasonable lump sum payment.

Applicant has taken steps to have the debts removed from his credit reports. He has had discussions with the original holder of the mortgage in an effort to compromise the amount of the debt or be relieved of it. He is in contact with purchaser of the mortgage. While, he continues to be legally responsible for the debts he is taking steps to resolve the situation. While there were fraudulent transactions involved in this scheme, Applicant was not as diligent in pursuing the problem as he might have been until the SOR was issued. However, he has taken adequate steps since that time to resolve the financial issues raised by the government.

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 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense 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 the facts and circumstances surrounding this case.

Applicant is a mature adult with significant responsibility in his two jobs and for his minor child. He is acting responsibly to make certain that he provides for his family. He has not had any other financial problems and is not incurring any further financial delinquencies. He was offered a real estate package that was too good to be true and it turned out that it wasn't. He was completely inexperienced in real estate investment and was taken in by the scheme in the belief that he could be a property owner with rental income to pay the mortgages from very little money invested. While his actions may have been naive, he did not act recklessly. He has taken steps to resolve the delinquent debts

with the mortgage holder with some success. He has learned his lesson about investing in matters about which he knows little (TR2 p. 28).

The evidence adduced at the second hearing convinces me that based on an analysis of the whole person that he has mitigated the security concerns arising from these financial considerations.

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

Subparagraph 1.c.: For Applicant

Subparagraph 1.d.: For Applicant

Conclusion

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

CHARLES D. ABLARD
Administrative Judge