



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



In the matter of:)	
)	
)	ISCR Case No. 08-03134
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard A. Stevens, Esquire, Department Counsel
For Applicant: *Pro Se*

May 7, 2009

Decision

CREAN, Thomas M., Administrative Judge:

Applicant submitted a Questionnaire for Sensitive Position (SF 86) on June 11, 2007. On December 10, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) for Applicant detailing security concerns for financial considerations under Guideline F. 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 acknowledged receipt of the SOR on December 22, 2008.

Applicant answered the SOR in writing on December 30, 2008. He denied two of the allegations under Guideline F but admitted one allegation, that his home was foreclosed in 2004. He provided detailed information on his finances, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on January 28, 2009, and the case was assigned to me on March 11, 2009. DOHA issued a notice of hearing on March 27, 2009, for a hearing on April 15, 2009. I

convened the hearing as scheduled. The government offered six exhibits, marked Government Exhibits (Gov. Ex.) 1 through 6, which were received without objection. Applicant submitted 15 documents, marked Applicant Exhibits (App. Ex.) A through O which were received and admitted to the record without objection. Applicant testified on his behalf. DOHA received the transcript of the hearing (Tr.) on April 30, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural Issues

Department Counsel notified Applicant in early March 2009 that he had his request for hearing and sought Appellant's availability for a hearing. After both parties consulted with me, I issued a Notice of Hearing on March 27, 2009, for a hearing on April 15, 2009. Applicant received the Notice of Hearing on April 7, 2009. Applicant is entitled to 15 days notice of a hearing (Directive, E3.1.8). While Applicant knew of the hearing prior to March 27, 2009, official notice in this case was only about eight days. Applicant specifically waived his rights to the 15 days notice (Tr. 9).

Findings of Fact

After a thorough reviewed of the pleadings, transcript, and exhibits, I make the following essential findings of fact. Applicant admitted one and denied two of the allegations under Guideline F. He provided additional information to support his request for eligibility for a security clearance.

Applicant is 59 years old and has worked as a technician and database administrator for a defense contractor for almost ten years. He has been married for 39 years, and has two grown children. He served almost 22 years on active duty in the Air Force as a technician for missile and communications equipment. He successfully held a security clearance while on active duty. He received an Honorable Discharge in September 1989 (Tr. 10-12; Gov. Ex. 1, Questionnaire for Sensitive Position, dated June 13, 1007; App. Ex. C, DD 214, Retirement Certificate and Retirement Orders, dated September 30, 1989). In response to Interrogatories from security adjudicators, Applicant listed his monthly net salary as \$4,450, with monthly expenses of \$3,504 which includes payments on his debts. Applicant has net monthly disposable or discretionary funds of \$946 (Gov. Ex. 2, Answer to Interrogatories, dated August 19, 2008). Applicant verified at the hearing that this information is still accurate (Tr. 32-34).

Applicant received many awards while on active duty. He received two awards of the Meritorious Service Medal, four awards of the Air Force Commendation Medal (App. Ex. D, Citations, various dates), and five awards of the Air Force Good Conduct Medal (App. Ex. F, Citation, dated October 6, 1982). He was also recognized as Career Non-Commissioned Officer of the Quarter for 1983 (App. Ex. E. Recommendation, dated November 22, 1983). He received numerous Letters of Appreciation for his Air Force work (App. Ex. G, Letters of Appreciation, various dates), and a Letter of Commendation (App Ex. H, Letter of Commendation, April 8, 1980). Applicant has

been recognized by various civic organizations for his volunteer contributions (App. Ex. I, Jaycees certificate, 1989; App. Ex. J, Youth Club Letter of Appreciation, dated April 2, 1986; App. Ex. K, Muscular Dystrophy Association Letters of Appreciation, dated December 11, 1985; App. Ex. L, Special Olympic Appreciation Award, dated October 14, 1985; and App. Ex. M, Girl Scout Service Certificate, dated June 8, 1983).

Applicant has also been commended by his employer for his work. A logistics manager for a defense contractor notes that she worked with Applicant for over ten years. She regards him as professional and dependable and she relies on his insight for their work. She states that he has high ethics and integrity. The contract site manager for his company notes he has known Applicant for over five years. Applicant shows he is an honest man with impeccable character and is a role model for others. He is always trustworthy and a man of his word. The range manager for his company notes the he worked with Applicant for almost ten years and sees him on a daily basis. Applicant always conducts himself professionally and his work ethic and morale integrity are beyond reproach. A co-worker and friend notes Applicant is honest and will go to extremes to help others. When the co-worker became seriously ill, Applicant help ensure that the witness' medical insurance was able to pay for his medical expenses (App. Ex. N, Various Letters, dated in April 2009).

Credit reports show that Applicant had the following delinquent debts; a charged off account on a second mortgage for \$19,735 (SOR 1.a), an account in collection for \$63 (SOR 1.b), and that his house was foreclosed in 2004 (SOR 1.c). Applicant admitted SOR allegation 1.c, but denied both SOR allegations 1.a, and 1.b. There is approximately \$30,000 in other debts listed on the credit reports. All these other debts are listed on the reports as being paid as agreed. He pays more than the minimum at each payment. He owns a 1998 and a 2002 vehicles that are paid (Tr. 34-37; Gov. Ex. 3, Credit Report, dated June 14, 2007; Gov. Ex. 4, Credit Report, dated September 4, 2008).

After retiring from active duty in October 1989, Applicant worked various jobs. In February 1992, he started working for a state agency he had worked for as a youth (App. Ex. B, Employee Action Form, dated January 24, 1992). He purchased a house using a Veteran's Administration mortgage (VA). He also took out a second mortgage to construct an in-ground swimming pool. After working for the state agency for seven years, Applicant was offered a position with a defense contractor in another state working in the same field he worked while on active duty in the Air Force. This necessitated a fast move to a new state. He tried to sell his house in the original state but was unsuccessful. He was successful in renting the house for a year. After a year, he could neither sell the house nor find another renter. He continued to pay the mortgage for at least another year while also paying the mortgage on his new house where he now lived and worked (Tr. 18-19; App. Ex. O, Applicant's statement, undated).

Applicant had difficulty paying two mortgages and also keeping two houses in good repair. He contacted the VA for guidance concerning the original house that was not occupied. They suggested he let the house go to foreclosure. He notified the

holder of both the first and second mortgage of his intent to let the house go to foreclosure so the companies could establish their claim in the foreclosure. Both companies acknowledged receipt of the notification letter (App. Ex. A, Letters, dated March 11, 2003). Both companies were also notified of the foreclosure by the court. The holder of the original or first mortgage established their claim in foreclosure but the second mortgage holder refused to establish a claim or participate in the foreclosure. The first mortgage holder tried to work with Applicant on the debt but the second mortgage holder (SOR 1.a) was uncooperative and continued to "harass" him concerning the loan. He feels that if the second mortgage holder had perfected their claim in the foreclosure, their debt would have been settled. In response to the SOR, Applicant included a summary of complaints from others gathered from the Internet concerning the actions of the second mortgage holder. The house was valued at \$100,000. The first mortgage amount was approximately \$78,000, and the second mortgage was approximately \$20,000 (Tr. 38; App. Ex. O, Statement, undated; See Case file, Response to SOR, dated December 30, 2008).

SOR allegation 1.a is the charged off of the second mortgage by the mortgage holder that did not participate in the foreclosure. SOR allegation 1.c, which Applicant admits, is that the house was foreclosed in 2004. Applicant never heard from the VA concerning the foreclosure, and did not receive any papers from the foreclosure. He has never received correspondence concerning any further debt from the first mortgage holder or the VA. There is no mention of a claim by the first mortgage holder on any credit report. He assumes the first mortgage holder had been satisfied by the foreclosure (Tr. 37-39).

Delinquent debt SOR 1.b is an account in collection for \$63 for an electrical company. Applicant was not aware of any debt owed to an electrical company. He inquired of the collection agency concerning the debt but they refused to provide him any information. He has not been sent a bill concerning electrical service. He never had electrical work done on the house that was foreclosed. Applicant's only explanation for the debt concerns a house he lived in prior to the house that was foreclosed. His sister-in-law lived in this house after him, and the electrical service was still in Applicant's name. When the sister-in-law left the house, the electricity was to be shut off and transferred to new owners or tenants. He is not sure that the transfer was timely and he may have been charged for about one month of electrical use by others. He has never received a bill from the electric utility (Tr. 39-41).

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 over-arching 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.

Analysis

Financial Consideration:

Under financial considerations, 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 ¶ 18). Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations. The delinquent debts for a second mortgage and an unpaid utility bill as listed on the credit reports are a security concern raising Financial Consideration 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).

I considered the Financial Considerations Mitigating Conditions (FC MC) raised by Applicant's testimony. 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. While the mortgage foreclosure took place in 2004, the second mortgage still has not been satisfied. Also, the electrical debt from 2002 still has not been paid. While these are current debts, they arose under unusual circumstances. His house was foreclosed and the creditors notified. One creditor participated in the foreclosure and was paid. The other creditor did not participate and was not paid. He has been current on mortgage payments for his present residence for over ten years. The circumstances around the electrical utility debt are unknown. These two debts are not likely to recur since he is current on his present mortgage and his utility bills. All present debts are paid as agreed. The debts do not cast doubt on his current reliability, trustworthiness, or good judgment. Applicant is solidly employed and his debts are under control. His financial problems should not recur.

FC MC ¶ 20(b) (the conditions that resulted in the financial problems 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) applies. Applicant encountered financial problem when he moved to another location for a new job and could not sell his house. He rented the house for a year and continued to pay the mortgage for another year. When he could no longer afford to pay two mortgages, he consulted the mortgage guarantor for advice how to proceed. He was told to go to foreclosure. He notified the mortgage holders of the foreclosure. One mortgage holder participated and was paid. The other mortgage holder did not participate and has not been paid. The house appears to be valued at a sufficient price to satisfy both mortgage holders. He inquired about the electrical utility debt but was not provided any information by the utility or collection agency. Applicant acted responsibly under the circumstances to control and manage his debts.

FC MC ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts) applies. For FC MC ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. A systematic, concrete method of handling debts is needed.

Applicant has the ability to pay the debts, has shown a strong desire to pay them, and has shown a good-faith effort to pay them. Applicant notified the second mortgage holder of the foreclosure action but that creditor decided not to participate in the foreclosure. The second mortgage holder was not paid in the foreclosure since they did not participate. It appears the sale of the house would have generated sufficient funds to cover this creditor. The creditor was not paid through their actions and not a refusal by Applicant to pay the mortgage. The creditor and collection agent for the electrical utility debt refused to provide Applicant sufficient information to pay the debt. Applicant has not incurred additional delinquent debts and all of his debts are paid as agreed. Applicant acted responsibly towards his debts, and established his good-faith efforts to resolve his debts. He mitigated security concerns for his financial situation.

“Whole Person” Analysis

Under the whole person concept, the Administrative Judge must evaluate an applicant’s security eligibility by considering the totality of the applicant’s conduct and all the circumstances. An 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 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. I considered Applicant's 22 years of active duty and honorable retirement from the Air force. I considered he successfully held a security clearance while on active duty. I considered his awards and decorations for military service. I also considered the opinion of his supervisors and coworkers as to his professionalism, honesty, reliability, trustworthiness, and judgment. I considered his excellent and extensive civil volunteerism. Applicant encountered mortgage problems when he took a new position in another state and tried to sell his house. He could not sell it but continued to either rent it or pay the mortgage for two years. When he could no longer afford to pay two mortgages, he received guidance from the mortgage guarantor to go to foreclosure. He notified the mortgage holders of the foreclosure. One participated in the foreclosure and that debt was satisfied. The other refused to participate and that debt is not satisfied. Applicant did all he could to satisfy and clear the mortgages on this house. He paid the mortgage for two years after moving and

followed the advice of the mortgage guarantor about going to foreclosure. He is unaware of a debt to an electrical utility and the collection agency refused to provide information for him to understand and pay the debt. Applicant lives within his means and meets his personal financial obligations. All of his present debts are paid as agreed. His actions do not indicate poor self control, lack of judgment, or unwillingness to abide by rules and regulations. He is not financially overextended, and his finances do not create a security concern. Overall, on balance the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from 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

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. Eligibility for access to classified information is granted.

THOMAS M. CREAN
Administrative Judge