



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



In the matter of:)	
)	
)	ISCR Case No. 08-09592
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline H. Jeffries, Esquire, Department Counsel
For Applicant: *Pro se*

January 31, 2011

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I deny Applicant's eligibility for access to classified information.

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP) version of a security clearance application (SF-86) on May 6, 2008. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on May 13, 2010 detailing security concerns under Guideline F, Financial Considerations, that provided the basis for its preliminary decision to deny him a security clearance. 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 adjudicative guidelines (AG) implemented on September 1, 2006.

Applicant acknowledged receipt of the SOR on May 19, 2010. He submitted a notarized, written response to the SOR allegations dated June 3, 2010, and requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a File of Relevant Material (FORM) and mailed Applicant a complete copy on November 8, 2010. Applicant received the FORM on November 22, 2010. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not submit a response. DOHA assigned this case to me on January 11, 2011. The Government submitted 13 exhibits, which have been marked as Items 1-13 and admitted into the record. Applicant's response to the SOR has been marked and admitted as Item 2, and the SOR has been marked as Item 1.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in the SOR, although he did not recognize the creditor in SOR ¶ 1.c. He assumed the debt was a mortgage debt and therefore his. His admissions are incorporated herein as findings of fact. He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 45 years old, works as a security engineer for a Department of Defense contractor, a job he has held since October 2009. He previously worked as a senior security analyst for another Department of Defense contractor for six years. He served on active duty in the United States Air Force for 13 years, leaving at the rank of major. Applicant has held a security clearance for 20 years without incident.¹

Applicant married in December 1987. He and his wife have three children, ages 24, 21, and 17. He holds a bachelor's degree and a master's degree.²

After leaving the Air Force, Applicant and his wife decided to reside in the area which had been his last duty station. Except for six months in 2003 when he operated a child care business, Applicant has worked in information technology for government contractors since 2001.³

Applicant's wife worked in the real estate business. Around 2006, they developed a business plan to purchase real estate to use as rental property. After studying the housing needs of the area in which they lived, their plan provided that they would buy and furnish a rental property as well as provide telephone and internet services for

¹Item 1; Response to SOR.

²Item 1.

³*Id.*

prospective tenants. They decided to rent the property to military personnel stationed in the area for short periods of time or to civilians temporarily working in the area, using the federal government per diem as the basis for their rental charge. The rent would pay the mortgage on the properties.⁴

Applicant and his wife purchased several properties in 2006 and 2007 as part of their business plan and established a limited liability corporation. Initially, they succeeded in renting their property as planned. By September 2007, their rental income had declined, and they encountered problems meeting their mortgage payments as well as other financial obligations. They fell behind in their mortgage and credit card payments. Their inability to rent their property arose when the economy had begun to slow down, and because hotel chains built properties in the area that competed for tenants.⁵

In 2008, Applicant worked with the mortgage companies in an effort to resolve his delinquent payments. He allowed two properties to be foreclosed and renegotiated his mortgages on his home and one rental property. In November 2008, Applicant signed mortgage loan modification agreements on the first and second mortgages on his home and one rental property. He submitted documentation, indicating his compliance with his new loan payments on his first mortgage loans through October 2009. He provided no information on the status of the rental property that went into the foreclosure process.⁶

Likewise, in November 2008, Applicant and his wife contacted a debt solutions company and enrolled in this company's program to repay approximately \$20,000 in unsecured debts. This company planned to charge him \$3,000 for its services. After a few months of participation, Applicant and his wife decided to withdraw from this service and use the monthly payment to reduce their debts. The credit reports of record reflect that Applicant has paid several past due credit card accounts which are not listed in the SOR.⁷

Applicant's wife obtained a full-time job in 2008. He submitted a copy of an October 2008 leave and earnings statement for him and his wife. In 2008, his net monthly pay totaled \$4,800, and his wife's net monthly pay totaled \$2,900.⁸ Applicant

⁴Item 4; Item 6; Item 8.

⁵*Id.*

⁶*Id.*; Item 7.

⁷Item 4; Item 6, Items 10-13.

⁸Applicant indicated that his wife's net monthly income was \$3,500 a month on his personal financial statement. Her leave and earnings statement shows \$2,900. He has not submitted any evidence of additional income for his wife; thus, the amount shown on her leave and earnings statement is more reliable and controls. Item 6, Attachments 9 and 10.

included \$1,500 a month in rental income on his personal financial statement for a total household income of \$9,200. His monthly expenses totaled \$6,651 and included \$3,592 in first and second mortgage payments and \$358 for the debt solutions company, leaving a balance of \$2,549 each month to pay his debts.⁹

The SOR identified 11 purportedly continuing delinquencies as reflected by credit reports from 2008, 2009, and 2010, totaling approximately \$740,000. Some accounts have been transferred, reassigned, or sold to other creditors or collection agents. Other accounts are referenced repeatedly in all of the credit reports, in many instances duplicating other accounts listed, either under the same creditor or collection agency name or under a different creditor or collection agency name. Some accounts are identified by complete account numbers, while others are identified by partial account numbers, in some instances eliminating the last four digits and in others eliminating other digits.¹⁰

The May 9, 2008 credit report indicates that the debts listed in SOR ¶¶ 1.h and 1.k are properties in foreclosure, meaning that the mortgagor has obtained the property and title to the property. The September 10, 2009, March 16, 2010 and September 10, 2010 credit reports show a zero balance on both of these mortgage debts. Based on these credit reports, I find that Applicant does not owe any money to the mortgagor on these debts.¹¹

The \$97,000 mortgage debt in SOR ¶ 1.j is listed on the May 9, 2008 credit report as a charge off and closed account. This debt does not appear on the remaining credit reports in the record. SOR ¶ 1.c identifies an unpaid debt of almost \$89,000, which is listed only on the September 10, 2010 credit report. The original creditor and account number are not shown. Applicant did not recognize the debt, but has assumed it is a mortgage and admitted the debt. These two debts may be the same, but this determination cannot be made on the information in this record. These debts are not resolved.¹²

Applicant has not paid his monthly payments on his two second mortgages, stating that he does not have sufficient funds to make his payments. His job changed in 2009, but he has not provided a new financial statement. He has not provided any information showing a negative change in his finances. He has not given a reason for his inability to continue with his agreed upon payments and his failure to pay his

⁹Item 6.

¹⁰Items 10-13.

¹¹*Id.*

¹²*Id.*

remaining debts. Applicant has not provided updated information on the status of his efforts to resolve the debts listed in the SOR.¹³

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, which are 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, 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 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, 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. . . ." An applicant has the ultimate burden of persuasion for 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 an 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.

¹³Response to SOR.

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.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and especially the following:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant developed significant financial problems when economic and business changes impeded the ability of Applicant and his wife to obtain tenants for their rental property. He incurred significant unpaid debt, some of which remains unresolved. These two disqualifying conditions apply.

The Financial Considerations guideline also includes conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through 20(f), and especially the following:

- (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;
- (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;

(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

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial problems began with the economic downturn in 2007. He lost income from his rental properties, making it difficult for him to meet his financial obligations. He renegotiated two of his four mortgages and his wife started working full-time at a salaried position. He paid some of his credit card debt through payment plans. Because two of his properties went into foreclosure, and since he has not complied with his agreement to pay his renegotiated second mortgages, only partial application of AG ¶ 20(b) is warranted.

Applicant contacted and retained the services of a debt solutions company in 2008. He made his required payments for several months until he realized that he could use this money to resolve his debts on his own. He resolved several of his credit card debts, but other debts remain unpaid. He does not owe money on the mortgages listed in SOR ¶¶ 1.h and 1.k. AG ¶ 20(c) is partially applicable. The remaining mitigating conditions are not applicable in this case.

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 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. 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 all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. When the economic downturn impacted his finances, Applicant took positive steps to work out his financial problems. He renegotiated two mortgages; he hired a debt resolution company; he paid several of his credit card debts; and his wife accepted a full-time salaried job. He provided information on all that he had done in 2008 and 2009. However, he has not complied with his agreement to pay his renegotiated second mortgages, even though these payments are included as part of his monthly living expenses. He has not explained why he cannot resolve the smaller debts listed in the SOR, given the \$2,500 he has each month after payment of his living expenses. He has not provided information showing a change in his circumstances since 2009, leaving a void of information in the record about his current finances. He has not provided any reason as to why he continues to have these financial problems. Applicant's lack of explanation about his current finances and efforts to resolve his debts leaves me no option, but to deny his request for a security clearance.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his finances under Guideline F.

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:	AGAINST APPLICANT
Subparagraphs 1.a-1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

MARY E. HENRY
Administrative Judge