



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 08-07615
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric N. Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

December 31, 2009

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 15 May 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (Financial Considerations).¹ Applicant answered the SOR 7 July 2009, requesting a hearing. DOHA assigned the case to me 31 August 2009, and I convened a hearing 6 October 2009. DOHA received the transcript (Tr.) 14 October 2009.

Findings of Fact

Applicant admitted the SOR allegations. He is a 31-year-old access control manager employed by a defense contractor since September 2007. He seeks to retain the clearance he obtained in December 2002.

¹DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (RAG) effective within DoD on September 1, 2006.

The SOR alleges, government exhibits confirm, and Applicant admits, four delinquent accounts totaling over \$1.2 million.² Three accounts (SOR 1.b., 1.c., and 1.d.) are for first and second mortgages on two properties Applicant bought through an investment program that turned out to be a Ponzi scheme. The fourth account (SOR 1.a.) is a \$200 electric bill for one of the properties that Applicant has since paid. This debt was incurred by tenants living in the property who were responsible for paying the electric bill. He was unaware of this bill until the Ponzi scheme began to unravel.

Applicant received his undergraduate degree in May 2002. He has been employed by a series of defense contractors since September 2002, and obtained his first clearance in December 2002. He has never had a security violation or had his clearance suspended. He bought his own home in December 2005, and his first and second mortgages on this home have never been delinquent. His credit reports show that the vast majority of his credit accounts are current or paid satisfactorily. His net monthly income is approximately \$4,400. He lives within his means.

The debts alleged in the SOR arose when Applicant was led into what he believed was a legitimate investment opportunity through more seasoned and experienced colleagues at work and at his church. Applicant was raised to respect the judgment of his elders, and in this case the elders themselves believed the program was a legitimate enterprise. Broadly described, the program involved Applicant (and others) buying houses in his name with the assistance of the company, and then hiring the company to manage the properties for five years—at which point the properties would conceivably be sold at a profit that Applicant and the company would share. Applicant bought two properties, in May and June 2007.

The program turned out to be a Ponzi scheme, the kind that generates news headlines and criminal charges against the proponents. The scheme began to fall apart in August 2007, when state agencies acted to shut down the program and pursue securities violations and investment fraud charges against the program's principals. The assets of the company have been seized, but the "investors" are stuck with mortgages on properties that they generally cannot pay.

In Applicant's case, his two properties were foreclosed, and he has attempted with varying degrees of success to work with the lenders and real estate agents to resolve the debts through short sales. The final disposition of the properties remains unsettled, but it is unlikely Applicant can pay any deficiency remaining after the properties are sold. It is also unlikely that the creditors will pursue any deficiency. There is the possibility of individual suits or class action suits against the perpetrators. However, any recovery is unlikely to be enough to cover any remaining debt on the properties.

²The amounts alleged in the SOR are the totals of the three outstanding mortgages, not all of which are delinquent. Nevertheless, the houses were foreclosed and Applicant lacks the means to satisfy the mortgages.

Policies

The Revised Adjudicative Guidelines (RAG) list factors to be considered in evaluating an applicant's suitability for access to classified information. Administrative judges must assess both disqualifying and mitigating conditions under each issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial commonsense consideration of the whole-person factors listed in RAG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not determinative for or against applicant. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline F (Financial Considerations).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, an applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the government.

Analysis

The government established a case for disqualification under Guideline F. On paper, Applicant owes an enormous amount of money that he cannot repay. However, this inability, not unwillingness, to pay does not constitute a history of financial problems.³ Applicant's personal finances have been, and remain, solid. He was the victim of a Ponzi scheme that left him solely responsible for debts on two properties that he never reasonably expected to bear. He entered the scheme on the recommendation of more seasoned and experienced colleagues, who themselves appear to have been victimized by the scheme.

Applicant satisfies important aspects of the mitigating factors for financial concerns. While his financial difficulties were both recent and multiple, they were confined to a relatively short period. They certainly occurred under circumstances not

³¶ 19.(a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations.

likely to recur.⁴ The debts were largely due to circumstances beyond his control, but he acted responsibly in addressing his debts. Under the circumstances of this case, keeping his personal finances straight while the Ponzi-scheme-related properties are resolved is the responsible course of action.⁵ Similarly, credit counseling is not an issue in this case, his personal finances are under control, and the ultimate resolution of the Ponzi-scheme-related properties is unlikely to effect his personal finances.⁶ Finally, he paid the one debt that was reasonably within his ability to pay, one he was not aware of until the scheme began to unravel.⁷

The disqualifying and mitigating factors under financial conditions do not really contemplate the kind of financial circumstances Applicant found himself in. The real security concern in this case boils down to a whole-person issue. Despite the size of the debt, the circumstances surrounding it are such that there is no reasonable risk that Applicant would resort to illegal activity to obtain funds to pay it. I conclude Guideline F for Applicant.

Formal Findings

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph a-d: For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

JOHN GRATTAN METZ, JR
Administrative Judge

⁴¶ 20.(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur .

⁵¶ 20.(b) the conditions that resulted in the financial problem were largely beyond the person’s control . . . and the individual acted responsibly under the circumstances.

⁶¶ 20.(c) the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control.

⁷¶ 20.(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. For this factor 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 his debt, which is present here as to the electric bill.