



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



In the matter of:)
)
-----) ISCR Case No. 08-08687
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro Se*

February 25, 2009

Decision

GALES, Robert Robinson, Chief Administrative Judge:

Applicant mitigated the security concerns regarding financial considerations. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On April 24, 2008, Applicant applied for a security clearance and submitted a Questionnaire For Sensitive Positions, Standard Form 86 (SF 86).¹ On November 6, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). The SOR alleged security concerns under Guideline F (Financial Considerations), and detailed reasons why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a

¹ Government Exhibit 1 (SF 86, dated April 24, 2008), at 2.

security clearance for Applicant, and recommended referral to an Administrative Judge to determine whether a clearance should be granted, continued, denied, or revoked.

It should be noted that on December 29, 2005, the President promulgated revised *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information*, and on August 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing implementation of those revised Adjudicative Guidelines (hereinafter AG) for all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended and modified (Regulation), in which the SOR was issued on or after September 1, 2006. The AG are applicable to Applicant's case because his SOR was issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on November 13, 2008. In a sworn, written statement, dated November 24, 2008, Applicant responded to the SOR allegations and requested a hearing before an Administrative Judge. Department Counsel indicated the Government was prepared to proceed on December 8, 2008, and the case was assigned to me on January 26, 2009. A Notice of Hearing was issued on February 2, 2009, and I convened the hearing, as scheduled, on February 12, 2009.

During the hearing, five Government exhibits and three Applicant exhibits were admitted into evidence without objection. Applicant testified. The transcript of the hearing (Tr.) was received on February 19, 2009.

The record was kept open until February 19, 2009, to enable Applicant to supplement the record, but he apparently chose not to do so.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a. through 1.e. of the SOR.

Applicant is a 62-year-old employee of a defense contractor, and he is seeking to obtain a security clearance, the level of which has not been divulged. Applicant served as an enlisted pipefitter/plumber with the U.S. Navy aboard an aircraft carrier during the mid-1960s. Upon his honorable discharge from active duty, he held a series of jobs with a variety of employers as a journeyman plumber or pipefitter. He has been gainfully employed by the same defense contractor since April 2008, and currently serves as a refrigeration mechanic.²

Applicant has been married to his third and current wife since 2001.³ He and his first two wives have five children, born in 1969, 1970, 1976, 1978, and 1988, respectively.⁴

² *Id.*

³ *Id.* at 7.

Over the years, Applicant has financed and purchased a number of family residences without difficulties. In December 2004, he applied for mortgage financing from Countrywide on a new residence. He was advised by the lender that he could afford the type of mortgage they were offering him,⁵ so he put \$8,000 down⁶ and secured a mortgage in the amount of \$300,000 with an accompanying home equity or 2nd mortgage in the amount of \$75,000, for a total of \$375,000.⁷ Applicant dutifully paid his monthly mortgage of \$1,326⁸ without any difficulty for about two years.⁹

At some point, Applicant noticed that his monthly payment was increasing by about \$200 to \$300 each month and the equity in his residence was decreasing. Eventually, his monthly payment increased to \$3,000.¹⁰ Because of the difficulty in paying that amount, he asked Countrywide to explain what was happening, and was informed that he was in a “negative interest” situation. The Countrywide lender advised him to refinance his residence by obtaining another mortgage, but indicated the mortgage would have to be issued by a different mortgage lender.¹¹

Following the guidance furnished by Countrywide, in January 2007, Countrywide directed Applicant to American Home, another mortgage lender.¹² Following a bank appraisal of the property,¹³ Applicant was issued a mortgage believed to be around \$535,000, the amount deemed to be what he owed Countrywide.¹⁴ He was required to finance an additional \$35,000 to \$37,000 to match the amount of reduced equity on the house, as well as for taxes and loan processing.¹⁵ The new monthly mortgage payment was \$3,200.¹⁶ His obligation to Countrywide was satisfied, but his problems just started, for he still could not afford the monthly payments for which he had just been approved

⁴ *Id.* at 27.

⁵ Tr. at 44.

⁶ *Id.* at 42.

⁷ *Id.*

⁸ *Id.* at 44.

⁹ *Id.* at 44-45.

¹⁰ *Id.* at 45.

¹¹ *Id.* at 60-61.

¹² *Id.* at 61.

¹³ *Id.* at 64.

¹⁴ *Id.* at 62.

¹⁵ *Id.* at 62, 64-65.

¹⁶ *Id.*

by American Home.¹⁷ When asked why he agreed to take out the new loan he contended he did so because the Countrywide loan officer told him to do so.¹⁸ Applicant's sister is much more blunt in her assessment of the situation. She said: he was "duped" by the mortgage companies.¹⁹

Sometime thereafter, and unable to make the monthly mortgage payments, Applicant sought the assistance of a bankruptcy attorney. Applicant was advised that once he filed for bankruptcy, he could remain in the house, but that scenario did not feel right to him.²⁰ Applicant apparently made some monthly payments, but eventually he stopped. Someone claiming to represent Wells Fargo offered him \$1,500 to move out of the house.²¹ He accepted the offer and relocated.

Title to the property subsequently passed to Citi Mortgage, and they foreclosed on it,²² leaving a deficiency of \$130,500. According to a recent credit report, the Citi²³ Mortgage account balance is zero, and the account is closed.

Applicant and his wife now reside in a trailer. Each week their net salary is about \$1,574.²⁴ With the exception of the purported mortgage deficiency, all their other accounts and expenses are now current.²⁵

The SOR identified five purportedly continuing delinquencies, including the mortgage deficiency. Applicant contends three of them have been satisfied, and one is being addressed. Those five debts listed in the SOR, and their respective purported current status, according to the credit reports, financial records and correspondence, as well as Applicant's comments regarding same, are described below:

¹⁷ *Id.*

¹⁸ *Id.* at 62-63.

¹⁹ *Id.* at 76.

²⁰ *Id.* at 47.

²¹ *Id.* at 47-48, 66.

²² Government Exhibit 2 (Combined Credit Report, dated May 6, 2008), at 8.

²³ Government Exhibit 5 (Equifax Credit Report, dated February 7, 2009), at 2.

²⁴ Tr. at 49.

²⁵ *Id.* at 51.

SOR ¶	TYPE DEBT	AMOUNT	STATUS
1.a.	Cable television	\$226	Collection Apr 2008. Amount corrected and paid Dec 2008.
1.b.	Medical	\$41	Collection Feb 2008. Insurance error. Paid Jan 2009.
1.c.	Medical	\$37	Collection Feb 2008. Insurance error. Paid Jan 2009.
1.d.	Ambulance service	\$756	Creditor failed to submit to insurance. Collection Jan 2007. Proposed payment arrangements.
1.e.	Mortgage	\$130,000	Foreclosure Nov 2008. Zero balance.

SOR ¶ 1.a. refers to a cable television account which Applicant had at his foreclosed residence. At the time he vacated it, he called the cable company to inform them of his pending departure and directed them to terminate the service. He was assured he was “up to par” and had a zero balance. He never received another bill. It was not until he was eventually informed that the account had gone into collection that he found out there was an outstanding balance.²⁶ The amount reported to collection was erroneous, for it was later corrected when he made the first of two payments.²⁷ The account was paid off in December 2008.²⁸

SOR ¶¶ 1.b. and 1.c. refer to the co-pay charges of medical bills which were not to have been charged to Applicant because he and his wife are both covered by medical insurance. The amounts were to be paid by his union. Nevertheless, rather than continuing to dispute the debt, he agreed to pay them both off so long as the union agreed to pay all future co-pays.²⁹ Both accounts have been paid.³⁰

SOR ¶ 1.d. refers to an ambulance bill which was incurred two years earlier following a severe automobile accident in which Applicant’s vehicle was driven into a concrete wall by a semi-truck.³¹ Although Applicant had insurance at the time, the creditor refused to submit a claim to the insurance company. By the time Applicant did so, interest had accrued, and he was told the insurance would have covered the

²⁶ *Id.* at 32-33.

²⁷ *Id.* at 33-34.

²⁸ Applicant Exhibit A (Cable Company Account, dated Dec 22, 2008).

²⁹ Tr. at 34-36.

³⁰ *Id.* at 36; Government Exhibit 5, *supra* note 23, at 1.

³¹ *Id.* at 37.

charges if the claim had been timely filed, but it was now too late.³² Applicant and the creditor have been in discussions, and the creditor has agreed to accept substantially less than the full amount to settle the claim.³³ Applicant intends to settle and pay the debt.³⁴

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the 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.

An Administrative Judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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 meaningful decision.

Since 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.

In the decision-making process, facts must be established by "substantial evidence."³⁵ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the Applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.

³² *Id.* at 37-39.

³³ *Id.* at 38.

³⁴ *Id.* at 39.

³⁵ "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1).

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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.” Accordingly, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism.

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 as well. The evidence is sufficient to establish AG ¶¶ 19(a) and 19(c).

Applicant has been gainfully employed since before his financial difficulty began. Intending to purchase a new family residence, Applicant sought guidance from the union representative and was directed to Countrywide where he presented his financial background as part of his application for the mortgage loan. Unfortunately, a combination of circumstances subsequently served him poorly, and after two years of paying his mortgage, he found himself unable to continue to do so. His interest rate rose rapidly and his monthly payment went from \$1,326 to \$3,000. He was unable to pay his mortgage, and eventually, was induced to abandon the residence to foreclosure.

I am mindful of the four other rather miniscule debts, but do not consider them part of a pattern. Two of those debts were the result of billing errors; one was caused by a creditor's refusal to submit the claim to the insurance company within the required timeframe; and his cable television bill resulted from a computer glitch. Moreover, those four debts have either been paid off or are in the process of being so.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial considerations. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "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." Evidence that "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" is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."³⁶ Also, AG ¶ 20(e), "the individual has a reasonable basis to dispute the legitimacy of the past-due debt which 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" may apply.

As noted above, the normal overriding concern pertaining to financial considerations in the security clearance context is that "[f]ailure 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. . . ." (emphasis supplied). But these are not "normal" times, for the world in general, and the United States in particular, is faced with economic chaos, plummeting real estate values, tightened credit, corporate layoffs and bankruptcies, diminished savings and retirement accounts, financial institution failures and takeovers, and soaring unemployment.

We no longer think in terms of millions or even billions of dollars when describing deficits, for in this new world order, trillions of dollars have become the new standard. We are in economic turmoil, with posturing and corporate greed running rampant; where credit is unavailable; where thousands, if not hundreds of thousands, of otherwise

³⁶ The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

innocent bystanders have become victims by losing their homes to foreclosure and their jobs to these uncertain times; and where the popular responses are to point the fingers of blame and throw unprecedented amounts of money, characterized as “stimulus” funds, into the abyss with the hope of success.

This economic catastrophe appears to be the “perfect storm” where the confluence of greed, irresponsible risk-taking, regulatory failure and inadequate oversight, malfeasance, misfeasance, and nonfeasance on the part of some segments of corporate America, our financial institutions, and political institutions, has resulted in unintentional consequences or “collateral damage” to the innocents. In the past, these unconscionable actions were overlooked in the race for enrichment.

To determine if an applicant is such an unintentional victim or a willing participant and complicit, in an otherwise unwise or irresponsible monetary scheme, or a person with poor self-control or lack of judgment, an analysis of the individual’s original intentions and actions is necessary. In this instance, Applicant’s financial history and actions reveals no evidence of poor self-control, lack of judgment, or a willingness to abide by rules and regulations. To the contrary, Applicant’s current situation was caused by other factors, including his gullibility in relying on the guidance of apparently knowledgeable but unscrupulous mortgage lenders.

Aware of Applicant’s inability to pay the monthly mortgage payments to Countrywide, that institution, nevertheless, urged him to refinance with another mortgage lender, increasing his debt and eventual monthly payment, seemingly to get him off their books to recoup the entire mortgage liability he owed Countrywide. Likewise, when American Home appraised his residence and found he qualified for an even higher mortgage, although the real estate value of his home had already plummeted to less than his Countrywide mortgage, they should have anticipated the result. It was evident that he could not afford the new mortgage, for he did not lie or represent his financial status in his application for the mortgage. It was seemingly another example of corporate greed and a disregard of lending guidelines.

While the foreclosure did take place, and there was apparently a deficiency of about \$130,000, the evidence now indicates there is a zero balance.³⁷ Considering the unusual circumstances of today’s economy in general, and the series of events involving Applicant’s mortgage loans in particular; Applicant’s actions with regard to the other four relatively minor debts; and the fact that he otherwise continues to maintain a good financial relationship with his credit union of over 30 years, there are clear indications that Applicant’s financial issue has been resolved and is now largely under control. The evidence establishes AG ¶¶ 20(c), 20(d), and 20(e), and partially 20(a)

³⁷ The law in some states provides that upon foreclosure, unless a judicial action is taken within certain time limits, a debt is resolved and the debtor has no continuing financial liability. See ISCR Case No. 07-12807 at 7 (Apr. 30, 2008) where-in I discuss the relevant statute of limitations pertaining to deficiencies.

because the circumstances are unusual and unlikely to recur, and do not cast doubt on his reliability, trustworthiness, and good judgment.

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) 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 met with a mortgage lender at Countrywide where he presented his financial background as part of his application for the mortgage loan. He was qualified for a particular loan, and it was granted to him. After making his monthly payments for about two years, he found that the required payments had risen to much higher unanticipated levels, and sought assistance in resolving the potential problem. He was directed to another mortgage lender at American Home where he again qualified for a mortgage loan of an amount in excess of the residence value and the payments were even higher than before. He soon found himself unable to continue to pay his monthly mortgage payments. Applicant had to eventually abandon the residence to foreclosure. (See AG ¶¶ 2(a)(1), 2(a)(2), 2(a)(5), and 2(a)(7).)

Of course, the issue is not simply whether all his debts are resolved; it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. I am mindful that while any one factor, considered in isolation, might put Applicant's credit history in a sympathetic light, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.³⁸ Considering the circumstances behind the mortgage loans given to him by the mortgage lenders, his employment history, his otherwise outstanding reputation, the

³⁸ See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006)

decline in real estate values, and his continuing good-faith efforts, the security concerns are mitigated. (See AG ¶¶ 2(a)(1), 2(a)(8), and 2(a)(9).)

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his 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
Subparagraph 1.e:	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.

ROBERT ROBINSON GALES
Chief Administrative Judge