



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



In the matter of:)	
)	
)	ISCR Case No. 08-08905
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

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

June 26, 2009

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on April 2, 2008. On February 4, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline 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.

On February 15, 2009, Applicant answered the SOR and requested a hearing before an administrative judge. The case was assigned to another administrative judge on March 19, 2009. On March 23, 2009, a Notice of Hearing was issued, scheduling the hearing for April 7, 2009. The case was convened on that date. The administrative judge continued the case because Applicant did not receive the Notice of Hearing within 15 days as required by Directive ¶ E3.1.8. The case was transferred to me on May 15, 2009. On June 1, 2009, a Notice of Hearing was issued, scheduling the hearing for

June 16, 2009. The Government offered five exhibits which were admitted as Government Exhibits (Gov) 1 – 5 without objection. Applicant testified and offered three exhibits which were admitted as Applicant Exhibits (AE) A – C without objection. The transcript was received on June 24, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR, Applicant admits all of the SOR allegations.

Applicant is a 32-year-old security officer employed with a Department of Defense contractor seeking a security clearance. He has been employed with the defense contractor since March 2008. He also works another full-time job as a security officer at a community college. He takes college classes part-time and hopes to obtain a nursing degree. From December 1995 to December 1999, he served on active duty in the United States Marine Corps as a diesel mechanic. He received an Honorable Discharge. He was originally a citizen of Trinidad. He became a U.S. citizen in 2001. This is his first time applying for a security clearance. He is married and has four children, ages 16, 14, 6 and 5. The two older children are his wife's children from a prior marriage. Applicant adopted them. (Tr at 5-8, 25-27; Gov 1)

On April 2, 2008, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP). In response to question 27(b) which asks whether the applicant has had any property repossessed within the past seven years, he listed a mortgage foreclosure in March 2008. (Gov 1) A subsequent background investigation confirmed that Applicant had two outstanding judgments entered against he and his wife related to home foreclosures. On January 30, 2008, a judgment was entered against Applicant and his wife in favor of a bank in the amount of \$301,253.77. This is the mortgage foreclosure Applicant listed on his e-QIP application. (SOR ¶ 1.a: Gov 2) On April 23, 2008, a judgment was entered against Applicant and his wife on behalf of a home loan company in the amount of \$336,932.77. (SOR ¶ 1.b: Gov 3; Gov 4 at 3; Gov 5 at 3) The second foreclosure occurred after Applicant completed the e-QIP application. The two foreclosures are the basis of the SOR.

After Applicant separated from active duty in the U.S. Marine Corps in December 1999, he initially drove a truck and tried to attend school. In December 2000, he got a job as a mail carrier with the U.S. Postal Service. He worked for the Postal Service until 2004. In November 2004, Applicant and his family moved to the southeastern part of the U.S. because of his oldest son's severe asthma. (Tr at 28; Gov 1, section 11)

From November 2004 to June 2005, Applicant worked as a loan originator for a mortgage company. He and his wife both obtained real estate licenses. From June 2005 to September 2006, he worked as a sales associate (i.e. realtor) for another mortgage company. In September 2006, Applicant and his wife opened their own real estate business which they operated out of their home. (Tr at 28-30; Gov 1, section 11)

At some point, Applicant and his wife began to invest in real estate in the southeastern part of the U.S.. They started to invest in real estate during a period when the real estate market was booming and credit was easy to get. Things initially went well. They made a profit on the first home that they purchased. They used the money to invest in other properties. Then the economy and the real estate market in the southeastern part of the U.S. crashed. Applicant and his wife tried to rent the properties. They took out a home equity loan on their own home in order to meet payments. They were able to make house payments for a period of six months to a year but eventually had to let the mortgages go to foreclosure. Although not alleged in the SOR, Applicant and his wife had a third investment property that recently went to foreclosure. (Tr at 29 – 33, 38 – 39; Answer to SOR)

On June 10, 2009, Applicant and his wife filed for bankruptcy under Chapter 7. Their listed assets total \$798,761. (The assets listed include the foreclosed mortgage properties.) Their listed liabilities total \$1,128,419.06. The majority of the debts consist of the three properties that were foreclosed. During the past year, Applicant and his wife relied on credit cards to pay expenses as well. These accounts never became delinquent but are included in the bankruptcy. Applicant anticipates the bankruptcy will be completed in September 2009. (Tr at 13, 40-41, 48; AE A; AE B; and AE C)

During the hearing, Applicant testified that other than the home foreclosures, he and his wife were never late on any of their other debts. (Tr at 36) Credit Reports, dated January 6, 2009, and May 9, 2008, support this assertion. (Gov 4; Gov 5)

Applicant works from 6:30am to 2:30pm on Monday through Friday at his job at the community college. He works from 3:00 pm to 11:00 pm at his job with the defense contractor. He attends class on Thursday evenings and Saturday mornings. He pays for his classes with the GI Bill. He and his wife still have their real estate business but business is minimal. His wife intends to look for employment once their youngest child begins school in September 2009. (Tr at 43)

Applicant and his wife are required to take two financial counseling courses in conjunction with their bankruptcy filing. They completed the first course on-line and will soon complete the second course. They have had no other financial counseling. (Tr at 46-47)

Applicant's net monthly income is \$3,466. His wife's net monthly income is approximately \$150. Their mortgage payment is \$1,800. They have two automobiles. One is paid for. The other, a 2007 Toyota Camry, is going to be surrendered during the bankruptcy. Applicant states that his finances will become more stable once the bankruptcy is complete. He now states that investing in real estate was a stupid decision. He and his wife are attempting to rebuild their finances. (Tr at 35, 37, 48-51)

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.

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 disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (an inability or unwillingness to satisfy debts); FC DC ¶19(c) (a history of not meeting financial obligations); and FC DC ¶ 19(e) (consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis) apply to Applicant's case. Applicant and his wife had a high debt-to-income ratio as a result of their real estate investments. After the real estate market in the southeastern U.S. crashed, they were unable to pay the mortgages on their three investment properties.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005)).

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following Financial Considerations Mitigating Conditions (FC MC) potentially apply to Applicant's case: FC MC ¶ 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) does not apply. Applicant's three mortgage foreclosures occurred within the past year. He filed for bankruptcy a few weeks ago. The behavior was too recent to conclude this mitigating condition applies. FC MC ¶ 20(a) does not apply. However, it is noted that all of Applicant's other financial accounts were current prior to filing for bankruptcy.

FC MC ¶ 20(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) applies. Applicant's financial problems resulted from a downturn in the real estate market. Things were good for awhile but then the local real estate market collapsed. Applicant and his wife attempted to keep things afloat but eventually had to let three of the homes be foreclosed. Aside from the mortgage foreclosures, Applicant was current on his remaining financial obligations. He acted reasonably under the circumstances when he decided to file for bankruptcy. It would have been impossible for Applicant to repay the balance owed after the foreclosures were complete. He works two full-time jobs to support his family which shows an industrious work ethic.

FC MC ¶20(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) applies. Applicant is required to attend two financial counseling sessions as a condition of his bankruptcy. He completed one course and will soon complete the next course. His financial situation will stabilize after his bankruptcy is complete in the fall 2009.

FC MC ¶20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Bankruptcy is a legitimate way to resolve one's debts. Applicant filed for bankruptcy because of the losses suffered from his real estate investments. Aside from these foreclosed mortgages, Applicant was current on his other financial obligations. While Applicant did not demonstrate the best judgment by getting in over his head in real estate investments, the banks gave him the loans to purchase the property even though his income was insufficient to qualify for the loans. He has learned a valuable lesson and is taking the steps within his power to rectify the situation.

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. I considered Applicant's honorable service in the United States Marine Corps. I considered the fact that he works two full-time jobs to support his family and attends college classes part-time. I considered the principal factor causing his financial problems was the downturn in the local real estate market. I considered that aside from his three mortgage foreclosures, Applicant was current on his financial accounts. By filing for bankruptcy, Applicant has taken steps towards resolving his financial situation. Admittedly, he did not make the best decisions when purchasing homes that he could not afford. However, based on the particular facts of this case, Applicant has presented sufficient evidence to mitigate the security concerns raised under 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

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.

ERIN C. HOGAN
Administrative Judge