



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



In the matter of:)
)
) ISCR Case No. 08-08980
)
)
Applicant for Security Clearance)

Appearances

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

October 13, 2009

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, and exhibits, I conclude that Applicant failed to mitigate the Government’s security concerns under Guideline F, Financial Considerations, and a “whole person” analysis. His eligibility for a security clearance is denied.

Applicant completed a security clearance application (SF-86) on February 16, 2008. On January 15, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant 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.

Applicant's answer to the SOR was signed and notarized on February 6, 2009. However, it was not complete when it was received by DOHA. Applicant then submitted a complete answer, which was signed and notarized on February 27, 2009. He requested a decision on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on August 7, 2009. The FORM contained documents identified as Items 1 through 8. By letter dated August 10, 2009, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information and objections within 30 days of receipt. Applicant received the file on August 19, 2009. His response was due not later than September 18, 2009. Within the required time period, he submitted an explanatory cover letter and seven attachments. Department Counsel did not object to Applicant's submission. On September 17, 2009, the case was assigned to me for a decision. I marked Applicant's submission as Item 9 and admitted it to the record.

Findings of Fact

The SOR contains six allegations of financial delinquency under AG ¶ 18, Financial Considerations (SOR ¶¶ 1.a. through 1.f.). In his Answer to the SOR, Applicant admitted five of the Guideline F allegations of financial delinquency and provided additional information (SOR ¶¶ 1.a., 1.b., 1.c., 1.d., and 1.f.). He denied one allegation (SOR ¶ 1.e.). Applicant's admissions are entered herein as findings of fact. (Item 1; Item 3; Item 4.)

Applicant is 63 years old, married, and a retired federal employee. He receives a net monthly federal retirement annuity of \$3,847, and he seeks a security clearance for part-time work as an investigator for a government contractor. (Item 4 at 3; Item 5; Item 6 at 18.)

In 2007, Applicant's wife lost her job, which paid approximately \$40,000 a year, plus benefits. She remains unemployed. In his part-time work as an investigator, Applicant earned approximately \$3,668 between January 2008 and October 2008.¹ (Item 4 at 2; Item 6 at 16.)

In retirement, Applicant invested in real estate. He purchased two properties: his residence and a second home, which he purchased in April 2006 as a rental property. His home was secured by a mortgage of \$355,000. The rental property was secured by a mortgage of \$253,000. Applicant also had a home equity loan of approximately \$79,954 on the rental property. His monthly mortgage payment on his home was \$2,845. His monthly mortgage payment on his rental property was \$1,759, and his monthly payment on the home equity loan was \$632. (Item 9 at 5, 14.)

¹The record does not specify whether taxes had been deducted from the amounts Applicant reported as part-time income.

In August 2007, Applicant's tenants moved out. He tried to sell the property, but was unable to do so. He contacted the mortgage lender and sought a loan modification agreement. He executed a loan modification agreement with the lender, and he found another tenant in January 2008. He charged the second tenant a monthly rent of \$1,500. In May 2008, Applicant had the tenant served with a demand for rent. When the tenant failed to pay the rent within the specified time period, she was evicted. (Item 9 at 1, 11-12.)

Applicant's financial difficulties continued. He was unable to find reliable renters, and he was unable to pay the two mortgages and the home equity loan unless he received rent from one of the properties. As a result of the downturn in the real estate market, he was unable to sell the properties. In June 2008, to avoid foreclosure, he agreed to short sale proceedings for the two properties. In March 2009, the rental property was sold in a short sale² for the purchase price of \$274,207. In his Answer to the SOR and in response to DOHA interrogatories, Applicant asserted that the home equity loan was rolled into the short sale of the rental property, but he provided no documentation to corroborate this statement. In April 2009, his residence was sold in a short sale for an unspecified amount. The home equity loan debt of \$79,954 was alleged at SOR ¶ 1.a.; the rental property debt of \$253,000 was alleged at SOR ¶ 1.b.; and the home mortgage debt of \$355,000 was alleged at SOR ¶ 1.d. (Item 1; Item 3; Item 4; Item 6 at 2-3; Item 9 at 1, 13-19.)

In documentation filed on September 26, 2007, with his mortgage lender, Applicant, identifying himself as "borrower," reported the following net monthly income: wages, \$3,965; annuity, \$4,462; paycheck deductions, \$1,112. In documentation filed with DOHA on November 9, 2008, Applicant reported a net monthly income of \$3,848, monthly fixed expenses of \$2,695; credit card and consumer debt payments of \$1,288; and a negative monthly remainder of \$135. He reported no monthly payments on the real property mortgages, which he stated were in short sale status. (Item 9 at 5; Item 6 at 13-14.)

In response to DOHA interrogatories, Applicant also listed monthly financial obligations of \$688 and \$423 for installment payments on two automobiles. The total indebtedness on the two automobile loans was \$31,378. Applicant provided a footnote stating that the \$423 monthly payment was being made by a relative, who had possession of the vehicle. (Item 6 at 14.)

Applicant admitted a delinquent credit card debt of \$6,351, which was alleged at SOR ¶ 1.c. He provided documentation in his response to DOHA interrogatories showing that he had made monthly payments of \$100 on the debt in March, May, July,

² I take administrative notice that a short sale is a real estate transaction that occurs when the net proceeds from the sale of a home or residential property are not enough to cover the seller's mortgage obligations and closing costs, such as property taxes, transfer taxes, and real estate agents' commissions. Short sales are likely to occur when the seller (borrower) is in default on the underlying mortgage, the lender has given notice of foreclosure, and the seller (borrower) is unable or unwilling to pay the difference between what the property sells for and what is owed.

September, October, and November 2008. He failed to provide evidence of payment after November 2008. (Item 3; Item 4: Item 6 at 5-10.)

Applicant denied owing a delinquent credit card of \$1,384, alleged at SOR ¶ 1.e. The debt was listed as over 120 days delinquent as of January 1, 2008, on Applicant's credit report of March 2008. Applicant's credit report of December 2008, listed the account as closed by the creditor grantor. Applicant claimed that the account was not his, but he acknowledged that he had a separate account with the same grantor, which was current. He failed to provide documentation to establish that the delinquency alleged at SOR ¶ 1.e. was not his. (Item 3; Item 4; Item 6 at 2-3; Item 7; Item 8.)

Applicant admitted a delinquent debt of \$568, alleged at SOR ¶ 1.f. The debt arose when an individual with whom he co-signed a car note discontinued automobile insurance and refused to pay the debt after the automobile was totally destroyed in an accident. Applicant stated he would not pay the debt because "I have never had this vehicle in my possession nor [do] I know where the vehicle is." He further stated: "I am aware that a co-signer is also obligated, but I refuse to pay for something I do not have, nor ever had." (Item 4 at 2.)

The record does not establish that Applicant has received financial counseling.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant an applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant's suitability for a security clearance, an 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 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, the administrative judge applies these guidelines 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. 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.

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 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. Beginning in about 2006 or 2007, Applicant accumulated substantial delinquent debt and did not pay his creditors. This evidence is sufficient to raise these disqualifying conditions.

Several mitigating conditions could apply to Applicant’s case. If the financially delinquent 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,” then AG ¶ 20(a) might apply. If “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,” then AG ¶ 20(b) might apply. If “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,” then AG ¶ 20(c) might apply. If “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” then AG ¶ 20(d) might apply. Finally, if “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,” then AG ¶ 20(e) might apply.

Applicant’s wife lost her job in 2007, which caused financial hardship because her annual income of approximately \$40,000 was needed to help pay the mortgages on their real estate properties and their other consumer debt. Additionally, Applicant was unable to rent his property to reliable tenants. When his tenant did not pay her rent in 2007, he took action to have her evicted. However, the decline in the real estate market made it difficult to rent or sell the two properties. Applicant contacted his mortgage lenders and agreed to have the two properties sold in short sales, and the short sales were concluded in March and April of 2009.

The circumstances associated with the real property debts were unusual and were at least in part beyond Applicant’s control. Moreover, Applicant’s wife’s job loss in 2007 was also beyond his control. Applicant acted responsibly by contacting his mortgage lenders and agreeing to short sales of the properties when it became clear that the mortgages would be foreclosed.

The record does not establish that Applicant has participated in financial counseling, nor does it establish that Applicant’s financial situation has stabilized or is under control. In the financial statement he submitted in response to DOHA interrogatories, Applicant reported a negative monthly net remainder of \$135 after paying consumer debt unrelated to his two mortgage loans and his home equity loan. He reported his annuity as his stable source of income, and his wife continues to be unemployed. I conclude that AG ¶¶ 20(a), 20(b), and 20(c) apply only in part.

Applicant admitted a delinquent credit card debt of \$6,351, and he provided evidence of six monthly payments \$100 in 2008. However, he failed to provide evidence of a payment plan or continuing good-faith payments in 2009. He denied a delinquent credit card debt that appeared on his credit report of March 2008. He asserted he had an account with the same creditor that was not delinquent. He failed to provide documentation to corroborate that the alleged delinquent debt was not his.³ Additionally, Applicant admitted a delinquent debt but refused to pay it, even though he acknowledged a legal obligation to do so and failed to establish that he had a reasonable basis to dispute the debt. I conclude that AG ¶¶ 20(d) and 20(e) do not apply to the facts of Applicant's case.

Whole Person Concept

Under the whole person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an 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 commonsense 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 is a mature adult. To his credit, he provided documentation to corroborate that he had consulted with his mortgage lenders and had resolved his mortgage debts through short sales in lieu of foreclosure. However, he failed to establish that the home equity loan was folded into the short sale of his rental property, and he failed to show that he had made consistent good-faith efforts to identify and resolve the debts identified at SOR ¶¶ 1.c., 1.e., and 1.f. He has not established a reliable track record of timely and consistent payment of his debts over time. Because he has not received financial counseling and appears to

³ ISCR Case No. 03-20327 at 3 (App. Bd. Oct. 26, 2006) provides, "Applicant's credit report was sufficient to establish the Government's prima facie case that Applicant had [deleted] delinquent [SOR] debts that are of security concern." Applicant's history of delinquent debt is documented in his response to DOHA interrogatories.

lack a clear plan for resolving his delinquent debts, it is likely that his financially delinquent behavior will recur.

Overall, the record evidence leaves me with questions and doubts at the present time as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial delinquencies.

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
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	For Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraph 1.d.:	For Applicant
Subparagraph 1.e.:	Against Applicant
Subparagraph 1.f.:	Against Applicant

Conclusion

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

Joan Caton Anthony
Administrative Judge