



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-10013
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jennifer I. Goldstein, Esq., Department Counsel

For Applicant: James Q. McDermott, Esq.

January 15, 2010

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on June 12, 2008 (Government Exhibit 1). On March 19, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F concerning Applicant. 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 answered the SOR in writing on April 13, 2009, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on June 8, 2009. This case was assigned to me on June 9, 2009. DOHA issued a notice of hearing on June 16, 2009, and I convened the hearing as scheduled on July 28, 2009. The Government offered Government Exhibits 1 through 8, which were

received without objection. Applicant testified on his own behalf, and submitted Applicant Exhibits A through P, also without objection. DOHA received the transcript of the hearing, and the record closed, on August 5, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is 49 and married. He is employed by a defense contractor and seeks to retain a security clearance in connection with his employment.

Guideline F, Financial Considerations

The Government alleges that Applicant is ineligible for clearance because he is financially overextended and therefore at risk of having to engage in illegal acts to generate funds. Applicant denied the sole allegation in the SOR. ¶ 1.a. alleges that the Applicant owes a mortgage company \$51,406 due to a foreclosure on his house.

In June 2006, Applicant and his wife decided to buy a house, after renting for some time. They used 100% financing to buy the house for \$258,950. They obtained a first mortgage in the amount of \$206,400, and a second mortgage in the amount of \$51,600. Both loans were from the same lender and were solely used to purchase the house. Within months of buying the home, the housing bubble burst and the house was worth less than what Applicant owed on it. (Applicant's Exhibit A; Transcript at 35-38.)

A more serious event happened just a few months later. In the fall of 2006, Applicant's wife was diagnosed with a large brain tumour after falling in the shower during an epileptic seizure. She underwent major brain surgery in November 2007, and was hospitalized for several days at a hospital 80 miles from their home. Applicant drove to see his wife every day that she was hospitalized.

After returning home, Applicant's wife suffered from a severe infection that required her to be hospitalized again for a period of three weeks. Applicant again drove 160 miles round trip every day to visit his wife when she was in the hospital. For six weeks after her release, she stayed with her parents so that she could receive continued care. This required a 180 mile round trip three to four times a week for Applicant. All of this was a financial strain to him. (Applicant Exhibit B; Transcript at 38-42.)

Applicant's wife has never fully returned to normal after her surgery. She is now on permanent disability, after a one day attempt to return to the work force in 2007. (Applicant Exhibit K; Transcript at 43-44.)

With his wife unable to work, it became clear to Applicant by June of 2007, that he would not be able to keep the house. At that time, he informed his employer's security department of this fact. (Applicant Exhibit P; Transcript at 44-46.)

In order not to have a foreclosure on his record, Applicant attempted to arrange a short sale. Even though he obtained a buyer, Applicant's mortgage company refused to accept a short sale and foreclosed on the property in April 2008. The amount the mortgage company received at the foreclosure sale was \$143,000. This was more than \$100,000 less than the purchase price just 22 months before. (Applicant Exhibit D.)

The mortgage company first reported to the credit bureaus that Applicant's second mortgage was a charge off in the amount of \$51,406. (Government Exhibits 5, 6, and 7; Applicant Exhibit C; Transcript at 46-47.) This was incorrect. Since both of Applicant's mortgages were purchase money loans, they were "without recourse" under applicable state law.¹ In other words, after the foreclosure sale Applicant has no personal liability for the loan.

The mortgage company confirmed the fact that Applicant had no further personal liability in a later communication after he disputed the charge off. In a letter dated April 3, 2009, they state, "A correction has been sent to the credit bureaus updating to report the loan as a charge off with a zero balance." (Applicant Exhibit L at 2; Transcript at 47.) Government Exhibit 8, a credit report dated July 28, 2009, confirms that this was done and this loan now shows as a paid charge off with a zero balance.

Since the foreclosure and his wife's illness, Applicant has downsized his life. They now live in a \$65,000 mobile home, own both of their cars outright, and are current on all of their normal monthly debts. (Transcript at 48-50, 69-70.) Applicant states, "I'm not going to ever buy anything again that I can't afford on my salary, and we just are making sure that we are never going to make any of these mistakes that we've learned in the last year, two years, will never happen again." (Transcript at 69.)

Mitigation

Applicant has worked for his employer for 30 years, rising up from the mailroom. (Applicant's Exhibit O.) He submitted a letter from his supervisor, who has known Applicant for over 23 years. In the 15 years that Applicant has worked on the team, the supervisor finds that Applicant is "a dedicated, meticulous employee," and one who "realizes and takes seriously potential security threats and can be trusted to conscientiously safeguard information." (Applicant Exhibit M.)

Applicant also submitted a letter from the Director of Security at his employer. This person has known Applicant for over 15 years and has knowledge of the Applicant's financial problems. He states, "I speak for my whole department when I say that [Applicant] has never given us cause to question his honesty or integrity." (Applicant Exhibit N.)

¹§508(b), State Civil Code.

Policies

Security clearance decisions are not made in a vacuum. 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 to be used as appropriate 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. In addition, the administrative judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order . . . shall be a determination 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. Applicant, by his own admission, had his house foreclosed on, with the result that a \$51,406 second mortgage was wiped out. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. 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.” Applicant’s financial difficulties arose because of the burst in the housing bubble in 2006, as well as his wife’s serious, life-threatening, illness. The evidence is clear that the Applicant has learned from this situation, down-sized his life, and will not get himself in such a financial condition again. This mitigating condition applies.

AG ¶ 20(b) states that the disqualifying conditions may be mitigated where “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.” As stated above, the serious illness of the Applicant’s wife had a direct influence on his inability to keep his house. He attempted a short sale of his house, and kept his employer fully informed of his financial situation. This mitigating condition also applies to this case.

Applicant does not owe any money on his second mortgage. The foreclosure sale wiped out the debt legally. The mortgage company acknowledges this. Accordingly, AG ¶ 20(d) is applicable under the particular facts of this case.

As fully stated above, Applicant has been forced by his wife's illness and their financial condition to change their lives in profound ways. He credibly testified that he understands how they got into this financial situation, and that he will not get into it again. Under the particular circumstances of this case, I find that "there are clear indications that the problem is being resolved or is under control," as required by AG ¶ 20(c).

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 relevant circumstances. 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 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. Applicant, like many other people, wound up with his house being worth less than he owed on it. That fact, combined with his wife's serious illness, made it impossible for him to retain his house. His spending was not irresponsible, nor were any of his subsequent actions to resolve the debt (AG ¶ 2(a)(2)). Based on the state of the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, at the present time, I find that there is no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8); and that there is no likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his financial situation at this time.

On balance, I conclude that Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports granting his request for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a.:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge