



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



In the matter of:)	
)	
)	ISCR Case No. 08-11940
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: John Glendon, Esquire, Department Counsel
For Applicant: Samuel Bluck, Esquire

August 27, 2010

Decision on Remand

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on September 2, 2008. On June 22, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for 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 acknowledged receipt of the SOR on June 25, 2009. He answered the SOR in writing through counsel on July 8, 2009, and requested a hearing before an Administrative Judge. DOHA received the request soon thereafter, and I received the case assignment on August 4, 2009. I granted Applicant's request for a delay until September 16, 2009, in order for his counsel to be available. DOHA issued a notice of hearing on August 5, 2009, and I convened the hearing as scheduled on September 16,

2009. The Government offered Exhibits (GXs) 1 through 8, which were received without objection. Applicant testified on his own behalf, as did four other witnesses, and submitted Exhibits (AppXs) A through BB, without objection. DOHA received the transcript of the hearing (TR) on September 23, 2009. The record closed on September 16, 2009, the date of the hearing. On December 15, 2009, I issued a Decision granting the Applicant access to classified information. The Government appealed this Decision.

On April 2, 2010, the Appeal Board issued a Decision, Remanding the “favorable security decision” to the undersigned with specific guidance. That guidance will be discussed at length under the Findings of Fact and Analysis, below. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is again granted.

Findings of Fact

In his Answer to the SOR, Applicant through counsel denied the factual allegations in all of the subparagraphs of the SOR. **Under the original Findings of Fact, I found the following:**

Guideline F - Financial Considerations

In 2003, the Applicant purchased Property #1 as a residence; and in 2005 he purchased Property #2 for a new residence, thus turning Property #1 into a rental. (TR at page 57 line 3 to page 59 line 16, and at page 59 line 17 to page 61 line 15.) The original appraisal price for Property #1 was fraudulently set high by the original lender, and the Applicant sued successfully in this regard. (TR at page 48 line 16 to page 49 line 4, and AppXs A and B.) This is evidenced by a Declaration by his former Counsel, who represented him in this matter, and by a Stipulation of Settlement from the lender. (AppXs A and B.)

In 2008, the real estate market collapsed, and the Applicant’s spouse lost her job. (TR at page 53 lines 3~11, and at page 61 line 16 to page 62 line 2.) In addition, the renter of Property #1 moved out, and he was unable to rent the property. (*Id.*) This caused the Applicant financial difficulties.

1.a. and 1.d. It is alleged that the Applicant owes \$344,000 and \$86,000, respectively on a first and a second mortgage on Property #1. This property was foreclosed on by the lenders, and the Applicant now owes nothing on these debts. (TR at page 47 lines 1~9 and 22~25, at page 52 lines 18~24, and AppXs A, C, D, J, Y and BB.) This is evidenced by a Declaration by his former Counsel, a Notice of Trustee’s Sale, a Home Loan 1099-A Tax Form, a Grant Deed, a Trustee’s deed Upon Sale, and a June 2009 Credit Report. (AppXs A, C, D, J, Y and BB.)

1.b. and 1.c. It is alleged that the Applicant owes \$567,000 and \$140,000, respectively on a first and a second mortgage on Property #2. This property was also foreclosed on by the lenders, and the Applicant, again, owes nothing on these debts.

(TR at page 47 lines 10~21, at page 52 line 25 to page 53 line 2, and AppXs J, Z, and AA.) This is evidenced by a Grant Deed, a Trustee's deed Upon Sale, and a June 2009 Credit Report. (AppXs J, Z, and AA.)

The Applicant is now current with all of his debts. (See AppX J.) He has savings bonds with a current redemption in excess of \$27,000 (AppX K); an investment portfolio valued at about \$9,800 (AppX L); and about \$2,255 and about \$6,331 in two IRAs (AppXs N and O).

The Appeal Board states the following, by way of guidance, as to my Findings of Fact:

The Judge's decision does not inform the reader of when the debts were incurred, how much they were for, when the debtor became delinquent, what the debtor's income was, if the debtor intended to pay the debts and how he intended to do so, how much of the debts were paid before the foreclosure, how much of the debts were paid in the foreclosure proceedings, and other pertinent facts. Without delineating this type of information it is not reasonable to reach conclusions about Applicant's judgment in a case about delinquent debts.

As noted above, the first mortgage debt on Property #1, which was turned into a rental property, was incurred in 2003. (TR at page 57 line 3 to page 59 line 16, and at page 59 line 17 to page 61 line 15.) The first mortgage debt on Property #2, which became the Applicant's new residence, was incurred in 2005. (*Id.*)

The purchase price for Property #1 was \$410,000, and for Property #2 was \$710,000. (TR at page 57 line 3 to page 59 line 16, and AppX A.) Like many caught up in the real estate boom of that period, the Applicant was not required to make any down payment on either property. (TR at page 59 line 17 to page 61 line 15.) In 2008, the real estate bubble burst, their monthly mortgage payments doubled, his, then fiancée, now spouse lost her job and its income, and they lost Property #1's tenant. (TR at page 53 lines 3~11, and at page 60 line 22 to page 62 line 2.) In summary, the following colloquy occurred between the Applicant and Department Counsel:

Department Counsel: When did you decide to let the bank foreclose on these properties?

Applicant: Pretty much when I talked to my lawyer, my real estate lawyer and when it came about when she, my wife lost her job and we had no money in our savings.

Department Counsel: Did you attempt to sell either of these properties?

Applicant: Oh yes, we tried. We tried, but it would have cost us money. (TR at page 62 lines 3~15.)

The value of Property #1 at the time of foreclosure was \$270,000, as evidenced by a Home Loan 1099-A Tax Form from holder of the primary mortgage. (AppX C.) The value of Property #2 at the time of foreclosure was about \$404,000, as evidenced by the Trustee's Deed Upon Sale. (AppX AA.) Neither the Government nor Applicant's Counsel established "how much of the debts were paid before the foreclosure."

In 2008, the Applicant's, then fiancée, now wife was earning about \$31,800. (GX 2 at page 10.) That income has been lost. The Applicant's current annual salary is about "\$82,000 or \$81,000." (TR at page 53 lines 12~20.) Since the foreclosures, he is now current with his other financial obligations. (*Id.*, and AppXs H~J.)

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 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

The Appeal Board states the following, by way of guidance, as to my Analysis:

The Judge’s **analysis** is a little more revealing, although it largely relies on conclusory statements that Applicant’s difficulties arose from the collapse of the real estate market, his wife’s job loss, and loss of a tenant. Here too, the reader would benefit from additional detail and explanation. (Emphasis supplied.)

I have incorporated this guidance in my below 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. In 2008, with the collapse of the real estate market, the Applicant became delinquent as to first and second mortgages on two separate properties. The evidence is thus sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

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.” All of the Applicant’s financial difficulties arose from the recent, 2008, collapse of the real estate market, which was exacerbated by his, then fiancée, now spouse losing her job, and by the loss of a tenant. The Applicant could not afford an attempt to sell the properties, as that would cost additional monies that the Applicant did not have. I find the behavior occurred under such unusual circumstances that it is unlikely to recur, and it does not raise concerns about his current reliability, trustworthiness, or good judgment. The evidence raises this potentially mitigating condition.

Under AG ¶ 20(b), it may be mitigating 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 noted above, the Applicant’s spouse lost her job, and his tenant moved out of his rental property. He now owes nothing on these debts. I find this potentially mitigating condition is a factor for consideration in this case.

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. 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.

The Applicant has offered the very supportive testimonies of a colleague, of his Human Resources Manager, of the Vice President of his employer’s operations, and of the CEO and President of his employer’s firm. (TR at page 23 line 23 to page 45 line 10.) He has also offered Personal Letters of Reference from three colleagues, from the

Facility Security Officer, and from the before mentioned CEO. (AppXs Q~U.) The CEO avers, in part, the following:

[The Applicant] . . . is a professional with an excellent reputation within the Navy C4I community as well as the Navy Information Assurance community. I have known [the Applicant] for over 3 years now and trust his judgment, value his advice and know him to be of fine character. I have been aware of his security clearance issues since 2009 and that has not changed my opinion of him nor altered our business relationship. (AppX T.)

During his testimony, the CEO further averred that the Applicant was trustworthy; and as such, should be granted a security clearance. (TR at page 42 line 10 to page 45 line 10.)

I considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. The 2008 collapse of the real estate market was an aberration which, with the recent changes in the banking and lending laws, is unlikely to be repeated. The Applicant has certainly learned a telling lesson as a result of the crash. He is unlikely to get caught up in any future borrowing euphoria. For all these reasons, I conclude Applicant has 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

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.

Richard A. Cefola
Administrative Judge