



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



In the matter of:)
)
)
) ISCR Case No. 08-12181
)
Applicant for Security Clearance)

Appearances

For Government: Braden Murphy, Esquire, Department Counsel
For Applicant: Peter J. Jeffrey, Esquire

December 29, 2009

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, testimony, and exhibits, I conclude that Applicant mitigated the government's security concerns under Guideline F, Financial Considerations. His eligibility for a security clearance is granted.

Applicant signed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on August 26, 2008. On May 15, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing 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 June 9, 2009, Applicant answered the SOR in writing. He elected to have a hearing before an administrative judge. The case was assigned to me on September 9,

2009. A Notice of Hearing, setting Applicant's hearing for October 21, 2009, was issued September 17, 2009. I convened the hearing as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

The Government called no witnesses and introduced four exhibits, which were marked Ex. 1 through 4 and admitted to the record without objection. Applicant testified on his own behalf and called one witness. He introduced 22 exhibits, which were identified and marked as Ex. A through Ex. V and admitted to the record without objection. DOHA received the transcript (Tr.) of the hearing on October 29, 2009.

Findings of Fact

The SOR contains one allegation of disqualifying conduct under AG F, Financial Considerations. Applicant admitted the allegation and offered additional information. He denied that the allegation raised security concerns under AG F. Applicant's admission is admitted as a finding of fact. (SOR; Answer to SOR.)

Applicant is 31 years old and employed as a computer programmer and application developer by a government contractor. He has provided contract services to a U.S. government agency for approximately 11 years. His gross annual salary is approximately \$160,000. He attended college for about two years, but he has not earned a degree. He has held a security clearance since 1998. (Ex. 1; Tr. 41-44, 60-63.)

Applicant's parents immigrated to the United States and became naturalized U.S. citizens. Applicant and his two brothers and two sisters were born in the United States. Applicant is his parents' second oldest child and first-born son. Applicant's father works as a radio technician with a communications company. His mother, who has recently become disabled by blindness, worked as an administrative clerk in a physician's office. (Ex. 1; Tr. 65, 85-86.)

When Applicant was in high school, he lived with his family in an eastern state. His parents rented a home. They did not discuss their salaries or financial circumstances with their children. In 1999, Applicant was no longer living at home and was employed in another part of the United States. His parents contacted him and told him they had an opportunity to purchase the home they had been renting. They asked Applicant, who was then about 21 years old and earning a good salary, to purchase the home in his name and they would, in turn, pay the monthly mortgage on the property. Applicant agreed, and he alone signed the mortgage. He and his parents did not commit this agreement to writing. All mortgage documents and payment books were sent to the parents at the home address. When the parents sought to refinance the property in August 2007, Applicant signed a document appointing his mother as his attorney-in-fact and authorizing her to exercise a specific power of attorney to refinance a loan secured by real property. (Ex. R; Tr. 45-48, 64-66, 79, 87-88.)

Applicant and his wife were married in June 2008. Soon thereafter, Applicant's wife became pregnant, and the couple began to think about purchasing a home. They checked their credit reports to assess their financial strength. When he looked at his credit report in July 2008, he was surprised to find several delinquent accounts: a VISA credit card account, with a balance of \$8,000, for which payment had not been made for three months; a line of credit loan, with a balance of approximately \$2,500, for which payment had not been made for two months; and an American Express credit card account, with a balance of \$5,000, which was in collection status.¹ (Tr. 50-52.)

The delinquent debts identified on Applicant's credit report belonged to his parents. They had not told Applicant of their financial difficulties. Applicant identified the Visa account as one his father had opened in Applicant's name several years ago. Applicant used the card but maintained a zero balance. He thought the card had expired and the account was closed. However, he learned that the card had been activated and used, without his knowledge, by his parents, and they had accumulated a delinquency of \$8,000 in his name.² (Tr. 50-51, 88.)

Applicant identified the line of credit as associated with the home mortgage that he had signed in 1999. He concluded that his parents had incurred the line of credit delinquency of \$2,500. (Tr. 51-52.)

Applicant's father was responsible for the American Express delinquency. Applicant was an additional cardholder on the account. When the account became delinquent, the creditor sought payment from Applicant. (Tr. 52-53.)

Applicant's credit report also showed that his parents were past due on the mortgage payments for the house he had purchased for their use. In August 2008, Applicant reported on his e-QIP that the mortgage arrearage was \$8,303. Applicant's credit bureau report of September 2008 showed a delinquency of \$11,070 on a mortgage account of \$318,000. The SOR, relying on information found on Applicant's March 3, 2009, credit report, alleged that the total arrearage on the mortgage debt of \$318,000 was \$27,677 and that the mortgage had been placed in foreclosure. (SOR ¶ 1.a; Ex. 2; Tr. 54.)

After learning of the delinquencies, Applicant sought an explanation from his parents. His parents were unable to explain why the delinquent debts had not been paid. Applicant contacted the credit card companies to close the accounts, and he requested that all future statements be sent to him at his address and not to his parents. He then sought a way to satisfy the debts. (Tr. 53.)

¹ The two credit card debts and the line of credit debt were not alleged on the SOR.

² The parents also used, without authorization, a credit card in the name of one of Applicant's younger brothers. The brother discovered a delinquency of approximately \$6,000 on the credit card at about the same time in 2008 that Applicant discovered the delinquencies in his accounts that were attributable to his parents. (Tr. 86-87.)

Applicant established a monthly payment plan to pay down the Visa debt. His personal financial statement of September 30, 2009, shows a balance of \$4,900 on the account, with scheduled monthly payment of \$166 and an actual payment of \$400. Applicant paid the American Express delinquency of \$5,000 in full, and the account was closed by the creditor (Ex. U; Tr. 53-54.)

Applicant asked his father to help to retire the line of credit debt. The father said he would pay \$100 a month on the debt. Applicant's personal financial statement of September 30, 2009, shows that Applicant is also paying \$100 a month on the debt. (Ex. U; Tr. 54.)

Applicant contacted the company holding his mortgage and learned that his parents had requested and received a loan modification but had failed to make the required payments. The lender requested full payment of the loan from Applicant. (Tr. 55.)

Applicant did not have enough money to pay the full amount of the delinquency. The mortgage holder would not accept any monthly mortgage payments until the arrearage was satisfied. Applicant considered paying the arrearage, but he was not able to meet the monthly mortgage payments that would be required thereafter, and he could not trust his parents to make them once the arrearage was satisfied. (Tr. 79-81.)

Applicant and his wife struggled to find a way to resolve the situation. At one point, they concluded that the only realistic option was foreclosure. In a letter, he stated:

I realize a foreclosure is a drastic step, but in a situation like this my wife and I feel it is the only choice that makes sense since we have our own family to support and cannot afford to support my parents. This would also cut me [off from] all financial ties with my parents and I will be able to slowly build up my credit once again.

(Ex. E)

Although no payments have been made on the mortgage loan since approximately March 2008, and the property is in pre-foreclosure status, Applicant's parents have remained in the home. Applicant and his wife consulted with a real estate attorney, who advised them to attempt a short sale of the property. In order for Applicant to list the property in a short sale, it would be necessary for Applicant's parents to vacate the premises. The parents have refused to leave the house, after repeated demands by Applicant and his wife that they vacate. Applicant and his wife have hired an attorney who specializes in eviction actions to represent them. On September 24, 2009, their attorney sent Applicant's parents a certified letter demanding that they vacate the property and advising them of legal action should they not comply. If his parents do not voluntarily comply with Applicant's request to vacate the property, he will authorize eviction proceedings. (Ex. 3; Tr. 48, 55-57, 83-84.)

Applicant's wife testified on his behalf. She is employed by a federal defense agency, and she was granted a security clearance by her agency in December 2008. During the investigation of her security worthiness by her agency, Applicant's wife provided detailed information about her husband's delinquent mortgage and the actions of his parents. (Tr. 82, 99-102.)

Applicant and his wife provided a financial statement dated September 30, 2009. Their total combined net monthly income is \$13,400. They reported fixed monthly expenses of \$4,050. Their combined monthly debt payments are \$7,158. They have a net monthly remainder of \$2,192. (Ex. U.)

Applicant also reported \$11,000 in savings and approximately \$50,000 in his 401(k) plan. He stated that he intended to use these resources to satisfy any deficiency that might arise from foreclosure or a short sale of the property. (Tr. 58.)

Applicant's supervisors and co-workers provided letters that praised his technical skills in computer programming. Supervisors called his work performance "outstanding." A co-worker who has worked with him for ten years stated: "[Applicant] became highly respected in our organization and was sought after for his knowledge, skills, and abilities in information systems." He has received several certificates of appreciation for innovative computer applications. (Ex. G; Ex. H; Ex. I; Ex. J; Ex. K; Ex. L; Ex. M; Ex. N; Ex. O; Ex. P; Ex. Q.)

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 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, 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. Applicant, as a young man, acceded to his parents’ request that he take out a mortgage in his name on a property that they resided in. They promised to make the monthly mortgage payments on the property, but they failed to do so and did not advise Applicant of their inability to pay. As a newlywed, Applicant learned that his parents had not only failed to pay the mortgage, but they had used credit cards and made additional unauthorized charges in his name. Because of his parents’ actions, Applicant was legally responsible for a financial delinquency of at least \$27,677. This evidence is sufficient to raise these two potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant’s financial delinquencies. Unresolved financial delinquency might be mitigated if it “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.” (AG ¶ 20(a)) Additionally, unresolved financial delinquency might be mitigated 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.” (AG ¶ 20(b)) Still other mitigating circumstances that might be applicable include 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” (AG ¶ 20(c)) or “the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” (AG ¶ 20(d)) 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 options to resolve the issue,” then AG ¶ 20(e) might apply.

Applicant admitted a financial delinquency related to a mortgage loan on a property he purchased for his parents in 1999. Although there was no written agreement, the parents agreed to make all of the mortgage payments. All mortgage correspondence was sent to the parents. Applicant lived in another part of the country from his parents, and he was not aware of their financial situation or their failure to pay the mortgage. Applicant’s parents’ actions were beyond his control.

Once he learned that his parents had incurred delinquencies in his name, Applicant acted responsibly under the circumstances. He contacted the credit card creditors and made arrangements to pay them. He set up a payment plan to satisfy the line of credit debt. When his father agreed to pay \$100 a month on the delinquency, Applicant, knowing his father’s payment history, also paid the creditor \$100 each month.

The mortgage delinquency presented significant financial and familial difficulties. Applicant lacked the resources to pay the mortgage debt of \$318,000 in full. While he could have satisfied the arrearage, he did not have the resources to continue to pay his parents' monthly mortgage debt, and he could not trust them to pay it in the future. When he asked them to vacate the property so that he could list the home for a short sale, they refused to cooperate. Despite these difficulties, Applicant and his wife have moved forward, sought legal counsel, and have taken action to resolve the debt responsibly.

Applicant was caught in a severe downturn in the real estate market and, unfortunately, he was misused by his own parents, whose refusal to meet their financial obligations reflected poorly and unfairly on Applicant. This is an unusual circumstance, unlikely to recur, and does not cast doubt on Applicant's current reliability, trustworthiness, or good judgment.

Applicant has learned, through experience, some hard financial lessons. He has also acknowledged his financial responsibilities and has made good-faith efforts to satisfy his creditors. His own financial record reflects reasonable risk-taking and responsible financial behavior. He continues to try to resolve a financial obligation he did not seek. He has identified savings and money in his 401(k) plan that he will use, if necessary, to satisfy a deficiency arising from a foreclosure or a short sale of the property. I conclude that AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(e) apply in mitigation to the facts of Applicant's 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 relevant 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 31 years old and a

highly skilled computer programmer. He has worked as a contract employee serving the same federal agency for 11 years. His supervisors and co-workers value his skills and abilities; they consider his work to be outstanding. Applicant has held a security clearance, without incident, since 1998.

Applicant's wife also holds a security clearance and is employed by a federal agency. She, like Applicant, realizes the importance of financial responsibility, and she has fully disclosed Applicant's financial situation to security personnel in her agency. Applicant and his wife have every reason to be prudent, reliable, and resourceful in their personal and professional lives. Applicant's financial problems began when his parents failed to honor a commitment they made to him. Applicant and his wife responded to this setback with energy and determination. I observed Applicant carefully at his hearing; I assessed his credibility; and I carefully reviewed the record evidence in this case. I have no doubt that he will honor any legal financial obligations that arise from signing the mortgage on his parents' home. I believe it is highly unlikely that in the future he will fail to carry out any of the responsibilities of a person entrusted with a security clearance and the protection of classified information. I conclude that he is not a security risk.

Applicant is a serious and responsible person. He has shown good faith in contacting his creditors and working with them to resolve or alleviate his indebtedness. He is currently living within his means and paying attention to his financial obligations.

Overall, the record evidence leaves me with no questions or doubts as to Applicant's judgment and eligibility and suitability for a security clearance, and I conclude Applicant mitigated the security concerns arising under Guideline F, 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

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.

Joan Caton Anthony
Administrative Judge