



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



In the matter of:)	
)	
)	ISCR Case No. 09-01576
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline H. Jeffreys, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

September 23, 2010

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated Financial Considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

The Defense Office of Hearings and Appeals (DOHA) issued an undated Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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 adjudicative guidelines (AG).

Applicant received the SOR on June 10, 2010. He answered the SOR on June 22, 2010, and requested a hearing before an administrative judge. The case was assigned to me on July 12, 2010. DOHA issued a notice of hearing on July 28, 2010, and the hearing was convened as scheduled on August 18, 2010. The Government

offered Exhibits (GE) 1 through 5, which were received without objection. Applicant testified, called three witnesses, and submitted Exhibits (AE) A through M, which were admitted without objection. The record was held open for Applicant to submit additional information. Applicant submitted a letter that was marked AE N and admitted without objection. Department Counsel's memorandum is marked Hearing Exhibit (HE) I. DOHA received the transcript of the hearing (Tr.) on August 26, 2010.

Findings of Fact

Applicant is a 48-year-old employee of a defense contractor. He has worked for his current employer since 2007. He served in the U.S. Air Force and received an Honorable Discharge. He seeks to retain a security clearance that he has held for more than 20 years without incident. He has a bachelor's degree and a master's degree. He has been married for more than ten years. He has no children.¹

The SOR alleges that Applicant is \$23,053 past-due on a mortgage that has a balance of \$99,433. It also alleges that Applicant and his wife owe approximately \$102,557 in unsecured credit card debt. Applicant admitted the past-due mortgage allegation, and he denied the unsecured credit card debt allegation. He also provided information in support of his request for a security clearance.

Applicant started investing in real estate in about 2000. Over the next several years, in addition to his home, he purchased five investment properties. He is handy and was able to do some of the renovations of the properties himself. Two of the properties were adjacent with several acres of land. Applicant hoped to develop the adjacent properties into a single property with a commercial application. He worked with a developer who was also a manager of the type of commercial property that Applicant sought to develop. Applicant met with the zoning commission on numerous occasions and also had out-of-pocket expenses for the planning of the project. The developer dropped out of the project in 2008. Applicant has put on hold, if not cancelled, any plans to develop the two properties.²

Applicant funded the purchase of his properties and their renovations through various means. All the investment properties were essentially 100% financed through first and second mortgages. His credit card balances increased substantially as he was renovating the properties. Applicant worked for a defense contractor from 1996 until he was laid off in 2007 after his employer lost a contract. He was out of work for about two to three months before he started working for his current employer. He took out a loan against his 401(k) at his former job. When he was laid off, he took a distribution of about \$75,000 from the 401(k). That distribution created a tax liability that he has since resolved.³

¹ Tr. at 40, 43, 78-79; GE 1; AE K.

² Tr. at 39, 50, 58-60; GE 2.

³ Tr. at 43, 51, 74-76; GE 2.

In October 2006, Applicant took out a second mortgage of \$100,000 on one of the properties. He used the funds he received from the second mortgage and the 401(k) distribution to renovate the properties and for living expenses while he was unemployed.⁴

Applicant had periods when he did not have tenants in his properties. His wife's parents rented one of the properties, but they both passed away. He and his wife provided financial support to her parents. His wife also did not work while she was caring for her mother.⁵

Applicant had a difficult time paying all the mortgages and his credit card debt. When he saw that he was not going to be able to pay all his debts on time, he notified his supervisor so that the information could be forwarded to the Department of Defense. Several credit card accounts became delinquent in about 2007, and Applicant stopped paying the second mortgage he obtained in 2006. Applicant hoped he could sell one or more of his properties to satisfy his debts. Around the same time period, the housing market collapsed, which made it difficult to sell the properties for what was owed on the mortgages.⁶

Applicant sold two of his investment properties. He settled at least two debts. He has brought current all his other credit card debt. In 2009, he reported in his response to interrogatories that he and his wife had ten credit card accounts with balances totaling \$102,557. That figure did not include the settled accounts. He reported at the hearing that the balances on the ten accounts were \$86,126. He submitted account statements from the ten accounts. The balances from the account statements were slightly lower than reported by Applicant. One of the accounts was several months past-due before Applicant brought it current within the last month.⁷

Applicant's efforts to resolve the delinquent second mortgage was hindered when the bank that owned the mortgage went bankrupt. He and the bank that purchased the second mortgage agreed to settle the \$99,433 owed on the second mortgage for \$25,000. Applicant borrowed \$25,000 from his 401(k) and paid the settlement on the second mortgage in August 2010. He is aware that the settlement could have tax consequences, and he is preparing for that possibility.⁸

Applicant has received financial counseling from multiple sources. He completed formal financial counseling on August 7, 2010. Applicant believes he has weathered his financial difficulties. He completed a net worth statement worksheet. He estimates the value of his and his wife's assets at almost \$1.6 million and his liabilities at about \$1.15

⁴ Tr. at 44-46.

⁵ Tr. at 40, 60-61, 85; GE 2.

⁶ Tr. at 45, 56-57, 73; GE 2; AE A.

⁷ Tr. at 36, 41, 46, 53, 70-72; GE -5; AE M.

⁸ Tr. at 34-36, 47, 50, 63, 80-81; Applicant's response to SOR; AE H, N.

million, leaving an estimated net worth of more than \$435,000. His assets include his house and six additional properties. Three of the properties are undeveloped land, with no mortgages. The estimated value of the three properties totals \$180,000. Two of the properties were inherited by his wife. Applicant and his wife own a 9-year-old vehicle and two 15-year-old vehicles. He has renters in his three investment houses. He has about \$6,200 in his bank account and \$25,000 remaining in his 401(k) after his \$25,000 loan. He has a positive cash flow after his monthly income and liabilities are calculated. He still hopes to sell at least one of the investment properties. He is convinced that he has sufficient assets to deal with any additional contingencies such as the loss of a tenant.⁹

Applicant's witnesses and character letters attested to his superior job performance, integrity, honor, dependability, dedication, leadership, judgment, ethics, trustworthiness, professionalism, reliability, and honesty. The character references recommend him for a security clearance.¹⁰

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the 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.

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,

⁹ Tr. at 37-42, 49-54, 63-66, 77-78, 83-86; GE 2-5; AE I, J, L.

¹⁰ Tr. at 15-33; AE A-G. I give little weight to the references' recommendations about Applicant's security worthiness.

or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain 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 an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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. Three are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (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.

Applicant purchased more properties than he had the financial resources to manage. He used credit cards to partially fund the renovations of the properties. At one

point, he and his wife owed more than \$100,000 in unsecured credit card debt. The evidence is sufficient to raise all the above disqualifying conditions.

Four Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

(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;

(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;

(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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant only recently resolved his delinquent debts. AG ¶ 20(a) is not yet applicable.

Applicant's financial problems were mainly related to his real estate investments. His investments did not go as planned. A partner in a development dropped out; he had properties without renters for a period; he was unemployed for several months; and the housing market collapsed. Some of these factors were outside his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. All investments carry risk, some more so than others. Applicant essentially was leveraging his investments when he completely financed his properties. Housing markets have soared in the past and collapsed, and they will likely do so again. Because of the inherent risk in Applicant's investment strategy, I am unable to make a determination that he acted completely responsibly under the circumstances. AG ¶ 20(b) is partially applicable.

Applicant has received financial counseling. He has sold two properties and has renters in his other properties. He settled or brought current all his debts, including his IRS debt. He has a positive cash flow and assets that can be used in the event of any additional contingencies. His financial situation is far from perfect because he still has a large amount of debt. However, he has sufficiently managed his finances to convince me that there are clear indications that his financial problems are being resolved and are under control. AG ¶ 20(c) is applicable. Applicant does not receive full mitigation under AG ¶ 20(d) because his mortgage debt was settled after the issuance of the SOR for one quarter of the amount he owed.

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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's favorable character evidence. Applicant overextended himself when he purchased more properties than he was able to manage. His unsecured debt soared and he was unable to pay the second mortgage on one of the properties. He settled that debt and brought all his other debts current. He sold two of his properties and has renters in his other properties. He has a positive cash flow and sufficient assets to address future contingencies. His finances do not constitute a security risk.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated Financial Considerations security concerns.

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
Subparagraphs 1.a-1.b:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge