



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



In the matter of:)
)
) ISCR Case No. 09-03510
)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Esq., Department Counsel
For Applicant: *Pro se*

August 30, 2010

Decision

RIVERA, Juan J., Administrative Judge:

Applicant mitigated the financial considerations security concerns created by the short sale of his home and the resulting second mortgage deficiency. Eligibility for access to classified information is granted.

Statement of the Case

On March 16, 2009, Applicant submitted a security clearance application. On March 11, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as revised; and the adjudicative guidelines (AG) implemented within DOD on September 1, 2006.

The SOR alleges security concerns under Guideline F (Financial Considerations). The SOR detailed reasons why DOHA could not make the preliminary

affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted or denied.

Applicant's answered the SOR on March 22, 2010. He elected to have his case decided on the written record in lieu of a hearing. (Item 3) A complete copy of the file of relevant material (FORM), dated April 21, 2010, was provided to him. He submitted his answer to the FORM on May 12, 2010. His response included three documents in refutation, extenuation, and mitigation, which were admitted as Applicant exhibit (AE) 1, without objection. The case was assigned to me on June 21, 2010.

Findings of Fact

Applicant admitted the SOR allegation and provided an explanation. His admission is incorporated as a finding of fact. After a thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 29-year-old technician employed by a defense contractor. He attended a technical college and received his associate's degree in May 2002. He married his spouse in November 2007. They have a two-year-old son.

Applicant has been continuously employed since May 1998, with no periods of unemployment. (Item 4) He has worked for his current employer, a government contractor, since May 2002. Pursuant to his employment, he has had access to classified information at the secret level since February 2002. There is no evidence he has ever compromised or caused others to compromise classified information.

In his March 2009 security clearance application, Applicant disclosed he had one account that was charged off -- the debt alleged in the SOR (a charged-off second mortgage of around \$45,000).

Applicant's background investigation addressed his financial situation. In April 2009, he was interviewed about his charged-off account. Applicant explained that in May 2005, he purchased a \$490,000 home with a 10% out-of-pocket down payment of \$49,000. He took a first mortgage for \$390,000, and a home equity line of credit (HELOC) second mortgage of \$49,000. Because of the downturn of the real estate market, Applicant decided that the purchase of the home was no longer a good investment. In August 2008, with the agreement of the credit union holding the first and second mortgages, he sold the home on a short sale. The short sale covered the payment of the first mortgage. The value of the second mortgage (\$45,993) was charged off. Applicant was never delinquent on his first or second mortgage payments. In accordance with the terms of the short sale agreement, the credit union considers the second mortgage loan uncollectable, and fully satisfied. (AE 1) He also submitted an Internal Revenue Service (IRS) Form 1099-C, indicating that the second mortgage debt has been canceled. (AE 1)

Applicant's personal financial statement (PFS) indicates he and his wife have a net monthly income of around \$6,300, with monthly expenses totaling \$3,575. Applicant revealed no monthly debts in his PFS. He also disclosed a savings account with \$19,000; stocks and bonds totaling \$55,000; and a \$45,000 car. I note that credit reports from March and October 2009, and March 2010 show approximately 30 different accounts (each), all of which are current and have been in good standing. The only debt with derogatory information is the account alleged in the SOR. There is no evidence Applicant has had any other financial problems.

As previously mentioned, Applicant disclosed his financial problem in his March 2009 security clearance application. He provided detailed information about his financial problem in his application, during his interview with a government investigator, and in his response to the DOHA financial interrogatories. He has been forthright during the security clearance investigation process.

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 required 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 controlling 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.

In the decision-making process, the Government has the initial burden of establishing controverted facts alleged in the SOR by "substantial evidence."¹ Once the

¹ See Directive ¶ E3.1.14. "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is

Government has produced substantial evidence of a disqualifying condition, the burden shifts to applicant to produce evidence “to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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* Executive Order 12968 (Aug. 2, 1995), Section 3.

Analysis

Guideline F, Financial Considerations

Under Guideline F, the security concern is that 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. AG ¶ 18.

The SOR alleged one charged-off debt totaling approximately \$45,000. AG ¶ 19(a): inability or unwillingness to satisfy debts, applies.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

- (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;

“more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

(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;

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

(e) 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; and

(f) the affluence resulted from a legal source of income.

Applicant sold his home after negotiating a short sale agreement with the credit union that held his first and second mortgages. He felt compelled to sell the house because he considered it no longer a wise investment in light of the downturn of the real estate market, the national economy, and decreasing home values. There is no evidence he was ever delinquent in his mortgage payments, nor is there evidence that he was delinquent on any other accounts. He presented documentary evidence that the SOR debt has been canceled, and the credit union considers the debt satisfied, but for less than the full amount.

There is no evidence Applicant currently has financial problems, and he appears to be living within his means. I find Applicant acted with initiative on his efforts to resolve a possible future financial problem. Although there is no evidence Applicant participated in financial counseling, he demonstrated he has the initiative and self-discipline necessary to reduce and resolve his debts.

Considering the evidence as a whole, I find AG ¶¶ 20 (a) and (c) apply. Applicant's past behavior and current financial situation do not raise doubts about his current reliability, trustworthiness, and judgment. Financial considerations concerns are mitigated.

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. 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 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. AG ¶ 2(c).

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.

Applicant should have been more careful in his investment. Notwithstanding, he was diligent and aggressive in his efforts to resolve his debt. Considering his and his wife's current salaries, he appears to be in a solid financial situation. He has worked for a government contractor since May 2002. He has held a security clearance since February 2004. There is no evidence he has ever compromised or caused others to compromise classified information. These factors show responsibility and judgment. On balance, I conclude that Applicant has mitigated the financial considerations security concern.

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 the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant eligibility for a security clearance for Applicant. Eligibility for a security clearance is granted.

JUAN J. RIVERA
Administrative Judge