



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



In the matter of:)	
)	
)	ISCR Case No. 09-04389
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Fahryn Hoffman, Esquire, Department Counsel
For Applicant: *Pro se*

July 20, 2010

Decision

HOGAN, Erin C., Chief Administrative Judge:

Applicant submitted a security clearance application (e-QIP) on January 13, 2009. On October 21, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the 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 adjudicative guidelines (AG) which became effective within the Department of Defense on September 1, 2006.

On December 10, 2009, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on February 5, 2010. The case was assigned to me on February 19, 2010. On March 11, 2010, a Notice of Hearing was issued scheduling the hearing for April 14, 2010. The case was heard on that date. The Government offered five exhibits which were admitted as Government Exhibits (Gov) 1 – 5. The Applicant and one witness testified and offered ten exhibits which were admitted as Applicant Exhibits (AE) A - J. The record was held open until May 14, 2010, to allow Applicant to submit additional documents. Applicant requested additional time to submit documents. His request was granted until June 1,

2010. He submitted ten documents that were admitted as AE K – T. Department Counsel's response to the post-hearing submissions is marked as Hearing Exhibit (HE) I. The transcript (Tr.) was received on April 27, 2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his answer to the SOR, Applicant denied the allegations in ¶¶ 1.a, 1.b, 1.d, 1.e, 1.g, 1.h, and 1.i. He admitted the allegations in ¶¶ 1.c, 1.f, 1.i, 1.j, and 1.k.

Applicant is a 53-year-old employee with a Department of Defense contractor seeking to maintain a security clearance. He holds two full-time jobs. He is a contract employee for a telecommunications company that works on DOD contracts. He also works for another DOD contractor. He disclosed his employment situation to both companies. He served in the U.S. Navy from 1978 – 1982. He separated as an E-5. He has held a Top Secret clearance since 1999. He has a graduate degree in information systems. He separated from his first wife in 1997. They divorced in October 2006. Two daughters were born of this marriage, ages 20 and 21. He married his current wife in November 2006. She has a daughter, age 22. One of Applicant's daughters and his step-daughter live with him and his wife. (Tr. 6-8, 88-92, 97, 101; Gov 1)

Applicant's security clearance background investigation revealed that he has 12 delinquent accounts which total approximately \$829,988. Of that amount, \$827,212 involves several mortgages that were foreclosed. (SOR ¶¶ 1.f, 1.i, 1.j, 1.k) The eight remaining accounts are medical or consumer debts and total approximately \$2,776. (SOR ¶¶ 1.a – 1.e, 1.g, 1.h, and 1.i)

During Applicant's first marriage, he purchased House # 1. After he moved out of the home in September 2005 and after the divorce, his ex-wife and two daughters continued to live in the home. Applicant agreed to continue to make the \$2,500 monthly mortgage payments. (Tr. 65, 90, 107; Gov 2 at 7)

Applicant's current wife owned a townhome when she married Applicant. She rents the townhome. The monthly mortgage payment on the townhome is \$1,500. The current tenant pays \$1,750. (Tr. 72, 85, 111) In 2007, previous renters of the townhome stopped paying the rent. The rent was \$2,200 a month. The tenants did not pay rent for six months. Applicant's wife took the tenants to court and obtained a notice to vacate the property. The tenants moved out after receiving the notice to vacate. Applicant's wife anticipates they lost \$13,020 in unpaid rent. She did not attempt to collect the rent because the judge advised her that the collection efforts would more than likely be futile. They also had to repair the property before they rented the townhouse again because of the damage the tenants caused to the property before moving out. The mortgage on the townhome is current. (Tr. 112-120)

Applicant and his current wife purchased House # 2 in 2005 for \$725,000 which they use as their primary residence. House # 2 has two mortgages. The primary

mortgage is an adjustable rate mortgage. The monthly mortgage payment on the primary mortgage started at \$2,562. It gradually increased to \$5,614. After Applicant purchased the home, it declined in value. Its current worth is approximately \$398,000. They could not sell or refinance the property because the amount of the loan was more than the house's appraisal value. In 2009, Applicant applied for a loan modification. The mortgage payment was reduced to \$4,486.62. Applicant's second mortgage monthly payment was \$1,188. The second mortgage was charged off in November 2008. Applicant is currently in the process of applying for another loan modification on House #2 to get the payments reduced. He believes the second mortgage and the debt owed to the Homeowner's Association (SOR ¶¶ 1.a, 1.f) will be included in the most recent modification. The modification will be complete in July 2010. Applicant provided no documentation regarding the loan modification. (Tr. 82-83; AE C; AE D)

Applicant's current wife was employed full-time with a defense contractor, earning \$63,000 a year. She quit work in 2007 to care for her mother who has significant health problems. Applicant's mother-in-law lives with him and his wife. Applicant's wife decided to start her own business cleaning apartments. The business gives her greater flexibility to care for her mother. (Tr. 40-41, 72)

In the spring of 2007, Applicant's wife attended a conference about starting a business and met an employee of a local bank who told her about real estate opportunities in a distressed area. The bank employee told Applicant's wife that if she were to invest in a property in that location, she would receive 100% financing from the bank. Applicant's wife believed that after they purchased a property and made some improvements, they could sell the property at an increased value. She believed they could make \$400,000 from the real estate investment. She found a distressed property located in the area mentioned by the bank that was on the market for \$173,000. Applicant's wife persuaded him that purchasing the property would be a great opportunity to make some money. They purchased the property, House #3, in March 2007. (Tr. 40-44; AE C)

Applicant and his wife understood that the purchase of House # 3 would be with 100 % financing. When they purchased the property, bank officials told them they had to make upgrades to the property, including building another floor. They were told to hire an architect to develop the plan for the upgrade. In June 2007, they hired an architect to draw up plans for remodeling the property. The architect cost around \$7,000, which they paid. After improvements, the property was to be potentially appraised at \$600,000. (Tr. 44-49)

At some point, the bank told Applicant and his wife that they needed to put \$18,000 in an escrow account. When they told the bank that they had no money, the bank suggested they refinance House # 1 to get the money. They refinanced House # 1 and put the \$18,000 in an escrow account. As the construction project progressed, they realized the costs were under-estimated. The bank eventually told Applicant and his wife that they were not going to give them additional money. In September 2008, the bank foreclosed on the property. Applicant maintained that House #3 was sold for more than the amount of the loan at the foreclosure sale but did not provide documentation

verifying this assertion. Applicant believes that they were victims of mortgage fraud in relation to the purchase and financing of House #3. (Tr. 17, 50-59; AE C; AE J)

Applicant and his wife had difficulty making the first and second mortgage payments on Home #1 after it was refinanced. In September 2008, Home # 1 was foreclosed. Applicant claims that the home was purchased at the foreclosure sale for more than the amount of the first and second mortgages on the home. He provided no documentation to verify this assertion. (Tr. 63-66; AE I)

In October 2006, Applicant was laid off from his current employer. He was given severance pay. In May 2007, his employer rehired him. His salary was reduced from \$83,000 a year to \$65,000 a year. He currently earns \$73,500. During the period that Appellant was laid off, he continued to work full-time for the other Department of Defense contractor. His annual salary at the other company is between \$75,000 to \$79,000. (Tr. 99-104)

The status of the delinquent accounts are:

1.a: \$1,822 judgment filed against Applicant in February 2009 on behalf of the Homeowner's Association in the neighborhood of Applicant's current residence – House #2. The judgment is related to a fine for a shed on their property that is too close to the property line. Applicant testified the previous owners built the shed. He anticipates the judgment will be incorporated into the mortgage loan modification that he is working on for his primary residence. (Tr. 122-128; Gov 3 at 1)

1.b: \$193 judgment filed against Applicant in 2007 on behalf of the Homeowner's Association in the neighborhood of Applicant's former residence – House #1. Applicant believes this debt is resolved. He believes the settlement was paid off when the home foreclosed. (Tr. 129-135; Gov 2 at 8; Gov 4 at 3; AE G)

1.c: \$199 Direct TV account placed for collection. Applicant believes this was paid off in July 2007 and in October 2009. He paid the account off when he separated from his first wife. He claims his ex-wife opened the account again in his name. The record was held open for him to provide proof of payment. He provided proof the debt was paid. (Tr. 136-138; Gov 2 at 8; Gov 3 at 1; Gov 4 at 4; AE P; AE S)

1.d: \$186 medical account placed for collection in February 2009. Applicant testified this debt was paid off over the telephone in October or November 2009. The record was held open for him to provide proof of payment. Nothing was submitted. (Tr. 139; Gov 3 at 1; Gov 4 at 21)

1.e: \$19 charged off account. Applicant claims his ex-wife opened this account in his name. He paid the account once he discovered it. He was going to look for a receipt. Nothing was submitted after the hearing. (Tr. 140-144; Gov 2 at 8; Gov 3 at 1-2; Gov 4 at 14)

1.f: \$206,762 home equity loan that was placed for collection in November 2008 for House # 2. This is the second mortgage on Applicant's current residence. He requested that he be allowed to pay a lesser payment. He hopes the second mortgage will be combined with his primary mortgage when he modifies his current mortgage. (Tr. 145-150; Gov 2 at 8; Gov 4 at 16)

1.g: \$209 discount department store account that was placed for collection in August 2008. Applicant testified the account was paid and intended to provide proof of payment after the hearing. Proof was provided that the account is paid in full. (Tr. 151; Gov 2 at 8; Gov 3 at 3; Gov 4 at 21; AE R)

1.h: \$88 charged off cell phone account. Applicant paid this account. (Tr. 152-153; AE H; Gov 2 at 9; Gov 3 at 3; Gov 4 at 19)

1.i: \$360,000 charged off first mortgage owed after Applicant's Home # 1 was foreclosed in September 2008. Applicant testified that the home sold for more than the mortgage amount. He provided no documentation verifying this assertion. He intends to pursue this issue with a real estate attorney. (Tr. 155-156; Gov 3 at 4; Gov 4 at 5,14; AE C; AE I)

1.j: \$233,000 charged off account related to the investment property – House # 3, which foreclosed in December 2007. Applicant claims the property was sold for more than its value. No documentation was provided. (Tr. 161-163, 167; Gov 3 at 4; AE J)

i.k: second mortgage on home # 1 that is 120 days or more past due in the amount of \$5,289, balance \$27,450. Applicant claims the home was sold for more than the mortgage amount and both mortgages should have been paid off as a result of the foreclosure sale. No documentation was provided. (Tr. 157-159, 164; Gov 2 at 8; Gov 4 at 17; AE I)

1.l \$60 medical account placed for collection in November 2007. Applicant disputes this account. His last contact with the creditor was in March 2009. Status of the debt is uncertain. (Tr. 169-172; Gov 2 at 8; Gov 4 at 8)

During the hearing, Applicant indicated that he and his wife's total net monthly income is \$12,027. Their current mortgage payment is \$4,557. They pay \$940 a month for the rent on their daughter's townhome where she attends college. Other monthly expenses include: groceries \$600; Gas utility \$525; Electric \$619; Water \$135; Gas for Cars \$475; other expenses \$800; and car loans \$1,125. His wife's credit cards have a balance of \$7,000. His credit cards have a balance of \$18,000. Combined they pay \$1,000 towards their credit cards each month. His approximate total monthly expenses are \$10,776. He has approximately \$1,251 after expenses each month. (Tr. 179 – 191; AE B: The monthly expenses are estimates. Applicant was given the opportunity to submit a more accurate budget after the hearing. He did not submit one.)

Applicant and his wife admit that they had a lot of debt when they married. They did not have the income to maintain the properties they purchased. Most of the

properties are worth less than the amount they owed. They would have sold the properties if they could. They do not want to file bankruptcy and intend to pay their debts. (Tr. 76-77)

Applicant provided several references from co-workers, superiors, and two ministers. All of Applicant's references think highly of him and state that he has an excellent character. (AE L- AE 0)

Policies

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

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, 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 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 disqualifying conditions that could raise security concerns. I find AG ¶ 19(a) (an inability or unwillingness to satisfy debts); AG ¶ 19(c), (a history of not meeting financial obligations); and AG ¶ 19(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) apply to Applicant’s case. Applicant incurred a significant amount of debt; most of the debt is the result of over-extending himself by purchasing numerous real estate properties that he could not afford. The SOR alleges 12 delinquent debts, a total approximate balance of \$829,988. Of that amount, \$827,212 consists of mortgages.

The Government’s substantial evidence and Applicant’s own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. AG ¶ 20(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) does not apply. While Applicant claims that the two properties that went into foreclosure were sold for more than the amount of the mortgages, he provided no proof verifying this assertion. Applicant demonstrated poor judgment when he purchased House #2 and House #3. At the time of those purchases, Applicant and his wife were already responsible for two mortgages. They had three children attending college. His wife quit her full-time job to open her own business. The renters of his wife’s townhome defaulted on their rent payments. Applicant had been laid off from one his jobs for eight months. Overall, Applicant’s circumstances were such that it was not prudent to

purchase more real estate. Applicant's financial situation raises questions about his reliability, trustworthiness, and good judgment.

AG ¶ 20(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) partially applies. Applicant was laid off from one of his full-time jobs from October 2006 to May 2007. His wife quit her job in early 2007 to start a business which would provide more flexible hours for her to care for her ailing mother. The tenants in Applicant's wife's townhome defaulted on their rent, leaving them responsible for three mortgage payments for over a six-month period. Admittedly, there were circumstances beyond Applicant's control which contributed to his inability to pay his bills. However, when Applicant remarried in 2006, he owned a home, and his wife owned a townhome. They purchased House #2 for \$725,000. Purchasing House #2 added a significant burden to his household finances. He financed the property with an adjustable rate mortgage which resulted in an increase in his monthly payments. In the spring 2007, he and his wife decided to purchase House #3 as an investment property, which further added to the burden. The decision to invest in this property was irresponsible considering Applicant's circumstances at the time of the purchase. Applicant's financial problems were mostly caused by factors within his control. He over-extended himself with real estate investments that he was unable to pay. While circumstances beyond Applicant's control contributed to his financial situation, Applicant did not act responsibly under the circumstances.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies with respect to the debts alleged in SOR ¶¶ 1.c, 1.g, and 1.h. Applicant did not provide sufficient evidence to verify the other debts were resolved. While Applicant claims that he owes no outstanding amounts related to the two homes that were foreclosed (House #1 and House #3), he did not provide proof to verify his assertions. Applicant testified that his second mortgage modification would be complete in July 2010. He anticipates the charged off \$206,762 second mortgage on the home will be included in the loan modification. He provided no additional documentary evidence verifying the terms of the second loan modification and whether it was to be approved.

AG ¶ 20(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) potentially applies with regard to the debts Applicant disputes. However, he did not provide documented proof to substantiate the basis of the dispute. Applicant claims he was the victim of mortgage fraud with respect to the purchase of House #3. I am unable to determine whether the transaction involved fraud. Applicant did not exercise due diligence when purchasing House #3. He and his wife decided to purchase House #3 because they thought they would make a lot of money on the investment. They did not research the transaction thoroughly before entering into the contract to purchase House #3 and did not realize the costs involved with renovating the property.

Applicant's financial problems resulted from over-extending himself in the real estate market. While some factors aggravated his financial situation, most of the problems were within his control. He should have exercised more due diligence when deciding to purchase the real estate properties to make sure he understood the terms of the mortgages and whether he could afford to pay the expenses on all of his properties. He did not mitigate the concerns raised under Guideline F.

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. 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 considered that Applicant works diligently at two full-time jobs to support his family. I considered the favorable comments of his references. I considered his mother-in-law's health problems as well the eight-month period when he was laid off from one of his full-time jobs. However, beginning in 2006, Applicant made several unwise real estate purchases which resulted in the foreclosure of two of his properties. He is struggling to keep his primary residence and hopes to be approved for a loan modification. While Applicant claims he owes no money as a result of the two properties that were sold at a foreclosure sale, he provided no documentation verifying this assertion. Questions remain about the status of his real estate properties. I find Applicant did not meet his ultimate burden of persuasion to obtain a favorable clearance decision.

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:	AGAINST APPLICANT
Subparagraphs 1.a – 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d – 1.f:	Against Applicant
Subparagraphs 1.g – 1.h:	For Applicant
Subparagraphs 1.i – 1.l:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ERIN C. HOGAN
Administrative Judge