



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 09-04520
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

August 30, 2010

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated Financial Considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On March 26, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a 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 answered the SOR on April 10, 2010, and requested a hearing before an administrative judge. The case was assigned to me on June 4, 2010. DOHA issued a notice of hearing on July 13, 2010, and the hearing was convened as scheduled on August 11, 2010. The Government offered Exhibits (GE) 1 through 7, which were

received without objection. Applicant testified but he did not submit any documentary evidence. DOHA received the transcript of the hearing (Tr.) on August 19, 2010.

Findings of Fact

Applicant is a 39-year-old employee of a defense contractor. He has worked for his current employer since 1999. He served in the United States Navy from 1989 until he was honorably discharged in 1994. He is applying for a security clearance. He held a security clearance in the past, but it has lapsed. Applicant is a high school graduate. He is single, and he has an 11-year-old child.¹

In about June 2004, Applicant had a friend [A] whose grandmother had a stroke, and her house was going into foreclosure. None of his friend's family members qualified for a mortgage. Applicant agreed to purchase the house from his friend's grandmother, with the verbal agreement that the friend's family would make the mortgage payments until the house and mortgage could be transferred to a family member. He bought the house for about \$320,000, which was completely financed through a first and second mortgage. The family paid Applicant the amount of the mortgage, and he paid the mortgagor. The family paid the mortgages for a period and then stopped the payments. Applicant was unable to pay the mortgages on his own.²

Applicant was a number of months behind on the mortgages, and the house was going into foreclosure. Applicant's friend had another friend [B] who was willing to lend \$20,000 to keep the house out of foreclosure. They hoped to bring the mortgages current and sell the house. Applicant did not know friend B at the time. Friend B agreed to lend the money, but insisted that Applicant be named on the loan. Friend A verbally agreed to pay the loan back to friend B. Applicant agreed to sign the loan because he hoped to keep the house from being foreclosed, which would negatively impact his credit rating. Applicant received a check for \$20,000, which he cashed and used to pay the delinquent amounts that were due on the mortgages.³

Friend A's family was unable to maintain the mortgage payments and did not pay the loan back to friend B. Because of the collapse of the real estate market, they were unable to sell the house, and the house was foreclosed. Applicant stated that the mortgage company sold the house for more than was owed on the two mortgages. He stated that the mortgage company has never requested payment for any deficiency owed on the mortgages.⁴

Friend B sued Applicant for the unpaid loan. Applicant stated friend A was also named in the lawsuit. Applicant was present at the trial. In about 2008, friend B obtained

¹ Tr. at 26-29; GE 1.

² Tr. at 15-18, 30; GE 3.

³ Tr. at 17-19, 32-33; GE 3.

⁴ Tr. at 19-21, 30-31; GE 2, 3.

a judgment of \$20,000 plus interest against Applicant and friend A. Applicant has made no attempt to pay or settle the judgment, because he believes it is friend A's responsibility. He testified that friend B told him that he knew that Applicant did not owe him the money, but he sued him because Applicant's name was on the paperwork. Applicant stated that he cannot afford to pay the judgment, but he would pay it if he were to come into some money.⁵

Applicant has not received financial counseling. With the exception of the foreclosed house and the unpaid mortgage, his financial situation generates no security concerns.⁶

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, 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

⁵ Tr. at 21-25; Applicant's response to SOR; GE 2, 3.

⁶ Tr. at 25, 34-35; GE 4-7.

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 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 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. Two are potentially applicable in this case:

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

The house that Applicant purchased for a friend was foreclosed after the mortgage payments were not made. A judgment was obtained against Applicant because a loan went unpaid. Applicant has made no efforts to pay the judgment. The evidence raises 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.

The judgment against Applicant is still pending resolution. His financial issues are recent and ongoing. AG ¶ 20(a) is not applicable.

Applicant bought a house for a friend because the friend's family could not qualify for a mortgage. He agreed to be responsible for a personal loan to attempt to keep the house out of foreclosure when the friend did not pay him the money for the mortgages on the house. They hoped to sell the house. The housing market collapsed, and he could not sell the house. The friend was unable to pay the mortgages or the loan. The house was lost to foreclosure, and a judgment was obtained against Applicant. The collapse of the real estate market and his friend's failure to pay the mortgages and the loan were outside his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant should have known that there was a good reason why his friend's grandmother's house was going into foreclosure and her family members could not qualify for a mortgage. If a bank or mortgage company was unwilling to give them a mortgage, he should have realized they represented a risk of being unable to pay the mortgages on the property. He exacerbated the situation by agreeing to become personally responsible for a \$20,000 loan. He has made no effort to pay the judgment that was based upon the loan. I am unable to make a determination that he acted responsibly under the circumstances. AG ¶ 20(b) is not applicable.

Applicant has not received financial counseling. His financial problems are not resolved and are not under control. He has not made a good-faith effort to pay or resolve his delinquent debt. AG ¶¶ 20(c) and 20(d) are not applicable.

Applicant indicated that the foreclosed house sold for enough to pay the two mortgages. The \$20,000 that was borrowed went to the mortgages. There has been no effort to collect any deficiency owed on the mortgages. I conclude SOR ¶ 1.b for Applicant.

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 honorable military service, his stable employment record, and that his finances, other than those related to the foreclosed house, are stable. Applicant was attempting to help a friend when he got himself into his predicament. However, this was not a matter of lending a friend several hundred dollars. He made himself liable for hundreds of thousands of dollars. He may have had good intentions, but he exhibited poor judgment.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not 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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For 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.

Edward W. Loughran
Administrative Judge