



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 09-04745
)	
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 January 19, 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 February 6, 2010, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on April 22, 2010. DOHA issued a notice of hearing on May 13, 2010, scheduling the hearing for June 24, 2010. Applicant was working in Afghanistan. He requested the

hearing be continued until he was home on vacation between July 29, 2010 and August 15, 2010. Documents relating to the request for a continuance were marked Hearing Exhibit (HE) I. The case was reassigned to me on June 4, 2010. DOHA issued another notice of hearing on July 13, 2010, and the hearing was convened as scheduled on August 10, 2010. The Government offered Exhibits (GE) 1 through 8, which were received without objection. Applicant testified and submitted Exhibits (AE) A through G, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on August 18, 2010.

Findings of Fact

Applicant is a 49-year-old employee of a defense contractor. He has worked for his current employer since April 2009. He is applying for a security clearance. He attended college for a period but did not obtain a degree. He is married with two children, ages 26 and 21.¹

Applicant worked as a manager for food establishments from the 1990s to 2003. He was the manager of a gas station from 2003 until he accepted his current job in 2009. His annual income from the gas station was about \$42,000. Applicant lives in an area of the country that has high real estate values. The housing market in his area increased greatly during the real estate boom of the early-to-mid 2000s. He bought a house for his personal residence in 2002. He paid about \$350,000 for the home. He put about \$50,000 down and financed the remainder.²

Applicant purchased a second house as an investment property in 2006. He paid about \$475,000 for the property. He refinanced his original home and took out about \$120,000 in equity from the property. He used that money as a down payment on the second property and financed the remainder. Applicant testified that the property was to be a rental property. He had a tenant but the rent did not cover the mortgage. The rent on the property was about \$1,900 per month, and the mortgage was about \$3,500 each month. There was also a period when the tenant was not paying the rent. Applicant refinanced the property at one point and used some of the equity he received to pay the monthly mortgage.³

Applicant purchased two more investment properties in 2007. He paid about \$500,000 each for the two properties. Both of the houses were 100% financed. The mortgage payments for the properties were about \$4,000 each property. Applicant hoped to sell the properties at a profit. The housing market slowed and then collapsed, and Applicant was unable to sell any of the properties for what he owed on the mortgages. He used credit cards in an attempt to maintain the properties. He was

¹ Tr. at 61-63; GE 1, 2.

² Tr. at 21-27, 64; GE 3, 7.

³ Tr. at 24-32, 65-66, 70-74; GE 3, 7.

unable to pay the mortgages or the credit cards. All four properties, including his home, were lost to foreclosure and a number of credit card debts became delinquent.⁴

The SOR alleges four credit card debts with balances totaling about \$45,552, a \$142 debt for a returned check, and two debts of \$70,902 and \$112,000 for foreclosed mortgages. Applicant admitted all the allegations. Individual debts are discussed below.

SOR ¶ 1.a alleges a delinquent debt of \$4,664 owed to a bank for a credit card. Applicant entered into a settlement agreement with the collection company handling the debt in March 2009. He agreed to settle the debt, which had grown to \$5,130, for \$3,900. Applicant was to pay seven consecutive monthly payments of \$25 starting April 1, 2009, followed by a payment of \$3,725 due no later than November 1, 2009. Applicant made nine monthly payments of \$25 between April 2009 and December 2009. He made \$50 payments in January and February 2010. The total amount of the 11 payments is \$325. Applicant testified that he stopped paying because he was in Afghanistan and did not have access to all his records.⁵

Applicant retained an attorney on May 26, 2010, to assist in settling his debts and to dispute “inaccurate, erroneous, or obsolete information contained in [his] credit reports.” The attorney submitted a letter dated August 9, 2010. She indicated that the creditor for the debt alleged in SOR ¶ 1.a agreed to accept \$50 monthly payments on the debt.⁶

SOR ¶ 1.b alleges a delinquent \$5,789 credit card debt. In June 2009, Applicant agreed to pay \$50 per month toward this debt, which had a balance at that time of \$5,989. Between May and October 2009, he paid the collection company handling the debt six monthly payments of \$50, for a total of \$300. His attorney indicated that the creditor agreed to accept \$50 monthly payments on the debt.⁷

On March 12, 2009, Applicant received a settlement agreement from the collection company handling the credit card debt alleged in SOR ¶ 1.c. The collection company agreed to settle the debt, which was \$18,646 at the time, for \$6,600. The agreement called for six consecutive monthly payments of \$100 starting March 2009, followed by four monthly payments of \$1,500. Applicant made \$50 payments in May, June, and July 2009, for a total of \$150. He stated that he stopped paying because the debt was sold to another collection company. The debt continued to accrue interest. Applicant admitted owing the amount alleged in the SOR, which is \$20,214. Applicant’s attorney indicated that the creditor agreed to accept \$100 monthly payments starting on September 1, 2010.⁸

⁴ Tr. at 22, 30, 32-36; GE 3, 7.

⁵ Tr. at 45-52; Applicant’s response to SOR; GE 8; AE B, D, F, G.

⁶ AE A.

⁷ Tr. at 52; Applicant’s response to SOR; GE 8; AE B, F, G.

⁸ Tr. at 52-53; Applicant’s response to SOR; GE 8; AE B, F.

SOR ¶ 1.e alleges a delinquent \$14,485 credit card debt. On March 26, 2009, the collection company handling the debt agreed to accept partial payments of \$20 each month. On April 1, 2009, the collection company agreed to accept \$3,678 in settlement of the debt, due in a lump-sum payment no later than April 25, 2009. Applicant made 11 monthly payments of \$40 between May 2009 and March 2010, for a total of \$440. Applicant's attorney indicated that the creditor agreed to accept \$100 monthly payments starting on September 1, 2010.⁹

Applicant has not paid the \$142 debt for a check returned for nonsufficient funds, as alleged in SOR ¶ 1.g. Applicant's attorney wrote a letter stating that she contacted the creditor, but she was told they no longer had the debt in their system. She stated she will continue to attempt to locate the owner of the debt and it will be paid once it is located.¹⁰

Applicant admitted owing the foreclosed mortgage loans of \$70,902 and \$112,000, as alleged in SOR ¶¶ 1.d and 1.g.¹¹ Applicant's attorney wrote the same thing about both debts:

The validity of this debt is being disputed as it was not a equity line and was in fact a second mortgage on a house that the lender foreclosed on and should not show a balance at all.¹²

Applicant's mortgagor on one of his properties issued an Internal Revenue Service (IRS) form 1099-C (Cancellation of Debt) in 2008. It listed the amount of debt cancelled as \$188,628. This does not appear to relate to either of the two foreclosed mortgages alleged in the SOR.¹³

Applicant submitted some evidence of questionable practices by the real estate company handling his investment properties. I note that one of the individuals from the real estate company that Applicant stated forged Applicant's name on a lease is listed on the signature line of the letter from Applicant's attorney as the "Sr. Negotiator" for the attorney.¹⁴

Applicant has worked as a linguist in Afghanistan since June 2009. He estimated that his annual salary while in Afghanistan, including bonuses, is about \$185,000. He stated that he paid about \$25,000 to \$30,000 toward his child's wedding expenses

⁹ Tr. at 53; Applicant's response to SOR; GE 8; AE B, F, G.

¹⁰ Tr. at 53-54; Applicant's response to SOR; AE B.

¹¹ Tr. at 36-38; Applicant's response to SOR.

¹² AE B.

¹³ Tr. at 67-70; GE 7.

¹⁴ Tr. at 72-81; GE 7; AE B.

during the past year and also paid the loan on one of his cars. His wife earns about \$1,600 per month, but she was not working when he purchased the four houses. He has about \$20,000 in the bank. He stated he will use that money and the salary he earns in Afghanistan to pay his creditors through the arrangements made by his attorney. He has not received formal financial counseling.¹⁵

Applicant submitted a number a certificates of appreciation and numerous letters from the military members he serves with in Afghanistan. They praise his value to the mission, as well as his outstanding abilities and performance as a linguist under rigorous and dangerous conditions.¹⁶ A Marine company commander wrote:

[Applicant] displayed uncommon valor while being exposed to the daily dangers of small arms fire, improvised explosive devices and numerous indirect fire attacks. His loyalty, dedication and patriotism are a shining example for all to emulate and was displayed daily during his various duties.¹⁷

Another Marine officer wrote:

[Applicant] lived in austere conditions, going months without showers or electricity. He shared living spaces with the Marines in a dusty war-torn, and crumbling facility infested with rodents and insects. He received little to no mail and ate a sub-standard repetitive menu of MREs with the Marines. In every way, he suffered the “Spartan” conditions to which Marines have grown accustomed over the years. More importantly, he, along with the Marines at [location], received nearly 30 days of indirect fire and faced an ever-present IED threat. He served alongside the Marines in some of the horrid scenes of battle, and partnered with them during trying times. Despite these [un]inhabitable, grisly, and life-threatening living conditions, [Applicant] remained stalwart in heart where others would have collapsed under the weight of the circumstances. He was a true team member who, throughout his meritorious service with the Marines, remained the consummate professional focusing on his duties. In sum, I consider him a hero to both the United States and Afghanistan.¹⁸

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

¹⁵ Tr. at 51, 54-61, 65, 81-90.

¹⁶ AE C.

¹⁷ *Id.*

¹⁸ *Id.*

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 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 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.

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his obligations for a period. The evidence raises the above disqualifying conditions.

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

Applicant has not resolved most of the debts alleged in the SOR. His financial issues are recent and ongoing. AG ¶ 20(a) is not applicable.

Applicant bought three houses as investment properties. He refinanced his home to fund the investments. He did not have the income to pay the mortgages. He

attempted to pay the mortgages with credit cards. He could not maintain the mortgage payments or the credit card payments. The housing market collapsed, and he could not sell the houses. He eventually lost all four houses to foreclosure. The real estate collapse was outside his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Any investment carries an element of risk. Applicant engaged in questionable investments without the financial resources to handle a downturn. He has worked in Afghanistan for the past year and earned about \$185,000. He has paid a total of about \$1,215 toward his \$45,000 credit card debt. I am unable to make a determination that he acted responsibly under the circumstances. AG ¶ 20(b) is not applicable.

Applicant may have received some financial counseling from the law firm that is assisting with his credit issues, but his financial problems are not resolved and are not under control. AG ¶ 20(c) is partially applicable.

Applicant's state has an anti-deficiency statute which may preclude a mortgagor from enforcing the deficiency owed on a mortgage after a home is foreclosed. He has made minimal payments toward his credit card debts. His efforts are insufficient to qualify as a good-faith effort to repay overdue creditors or otherwise resolve debts.¹⁹ AG ¶ 20(d) is not applicable.

Applicant's attorney disputed that his two foreclosed mortgage loans should reflect a balance on his credit report. Applicant does not dispute that his properties were foreclosed. I do not find AG ¶ 20(e) to be applicable.

In sum, I conclude that financial concerns are still present despite the presence of some mitigation.

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

¹⁹ The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [good-faith mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or an anti-deficiency statute]) in order to claim the benefit of [good-faith mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).

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 service to the mission in Afghanistan. Applicant is a loyal U.S. citizen who has worked overseas under dangerous conditions in support of the national defense. The Appeal Board has held in Foreign Preference cases that "an applicant's proven record of action in defense of the United States is very important and can lead to a favorable result for an applicant."²⁰ I give Applicant special consideration because of his service in Afghanistan. However, his finances are in complete disarray. He overextended himself and bought four properties in a short period and lost them all to foreclosure. I believe he was subjected to questionable practices by the real estate company handling his investment properties. However, he is ultimately responsible for his poor choices. Furthermore, he earned about \$185,000 during the year he was overseas, but he paid less than \$1,300 toward his delinquent debts. Applicant may be a brave, honorable, and patriotic man, but the current state of his finances precludes the granting of a security clearance.

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:

²⁰ ISCR Case 04-02511 at 4 (App. Bd. Mar. 20, 2007).

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e-1.f:	Against Applicant
Subparagraph 1.g:	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