



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



In the matter of:)
)
) ISCR Case No. 09-05252
SSN:)
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: Patrick McGuire, Esq.

September 8, 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 December 23, 2009, 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 March 26, 2010, and requested a hearing before an administrative judge. Department Counsel amended the SOR on April 20, 2010. Applicant answered the amendment on May 10, 2010. The case was assigned to another administrative judge on May 27, 2010. DOHA issued a notice of hearing on

June 15, 2010. The case was reassigned to me on July 7, 2010. The hearing was convened as scheduled on July 7, 2010. The Government offered Exhibits (GE) 1 through 5, which were received without objection. The Government also offered a demonstrative exhibit that was marked Hearing Exhibit (HE) I. Applicant testified and submitted Exhibits (AE) A through L, which were admitted without objection. The record was held open until August 13, 2010, for Applicant to submit additional information. Applicant submitted documents, which were marked AE M through R and admitted without objection. Applicant later submitted better copies of pages from AE N. Those pages are marked AE N(1). Applicant's facsimile cover sheets are marked HE II and III. Applicant's memorandum is marked HE IV. Department Counsel's memorandum is marked HE V. DOHA received the transcript of the hearing (Tr.) on July 14, 2010.

Findings of Fact

Applicant is a 30-year-old employee of a defense contractor. He has worked for his current employer since September 2008. He is seeking to retain his security clearance that he has held since about 2007. He has a bachelor's degree and a master's degree. He is single and has no children.¹

Applicant purchased a house in February 2006, while he was in graduate school. He was also working full-time. The house was a "pre-foreclosure" in that the previous owner was unable to maintain the mortgage payments. The house needed some repairs, but Applicant felt he paid less than market value for the property. Applicant was a first-time buyer, and he planned to live in the house. He paid about \$276,000 for the house. He put about \$5,000 down and financed the remainder through a first and a second mortgage.²

The renovations on the house took about four to five months to complete. Applicant stayed at the house periodically during the renovations, but spent most of his time at his mother's house, which was close to his graduate school. Applicant estimated the costs of the renovations at about \$50,000. He paid for the renovations from savings and income.³

Applicant was a little concerned about the neighborhood where the house was located. In about December 2006, he began to explore his options to sell the house and move to a better neighborhood. His cousin was a real estate agent. A buyer of Applicant's property was located, and Applicant found a house to buy that would be his residence. The prospective buyer of Applicant's house was unable to qualify for a mortgage to buy the house. A rent-to-own agreement was entered in which the prospective buyer would rent the property for a year and then purchase the property. Applicant took out a second mortgage/home equity loan on the property of about

¹ Tr. at 19-20, 83-84, 104-105; GE 1.

² Tr. at 21-26, 77.

³ Tr. at 23-25.

\$68,000. He stated that about \$50,000 made up for what he paid for the renovations on the property and he kept the remainder.⁴

Applicant bought a second house in March 2007 for \$277,000. This house has been his residence since it was purchased. He bought a third property as an investment in March 2007. He stated the owner of the third property was in trouble financially and was having difficulties keeping the property. He bought the house for \$350,000 and financed the entire amount. The previous owner remained in the property as a renter with the agreement that she could repurchase the property in a year. About four to five months later, the tenant became sick and was hospitalized for several months. She stopped paying the rent when she became sick and moved out. Applicant was without a tenant for about three months. He was able to maintain the mortgage payments, and he is current on the mortgages for this property.⁵

Applicant fell behind on the first and second mortgages on the second house he purchased, which is his current residence. He entered loan modification agreements with the bank holding his first and second mortgages in July and August 2009. He stated the lender advised him to stop paying the mortgages so that he could qualify to modify his loans. He is now current on those mortgages. The first and second mortgages on this property are alleged in SOR ¶¶ 1.c and 1.d.⁶

The tenant in Applicant's first property told Applicant that she could not buy the house or continue to rent it. She moved out of the house in about August 2007. Applicant attempted to sell the first house after the tenant vacated the property, but the real estate market collapsed, making it impossible to sell the property for what was owed on the mortgages. He was also unable to rent the property. At the same time, he was dealing with the loss of rent in his third property. Applicant knew that he was unable to maintain the mortgages on all three properties. He went to the holders of his mortgages and attempted to negotiate lower interest payments, but the banks were unwilling to change the terms of the mortgages. He decided to concentrate on paying the mortgages on two of the properties, his residence and the third property purchased. The holder of the mortgages on the first property suggested Applicant attempt a short-sale of the property. Applicant had several offers for the property, but the bank was unwilling to accept their offer prices for a short-sale. Applicant paid the mortgages on the first property until about November 2007, and then stopped and let the property go to foreclosure. The house was foreclosed in August 2009. The first mortgage on the foreclosed property is alleged in SOR ¶ 1.b.⁷

The holder of the first mortgage on the foreclosed property issued an Internal Revenue Service (IRS) form 1099-A (Acquisition or Abandonment of Secured Property)

⁴ Tr. at 24-28, 50-52; GE 1-5.

⁵ Tr. at 29, 58-63, 73, 76.

⁶ Tr. at 55-57, 63-70, 73, 79-83; GE 1, 5; AE O-R.

⁷ Tr. at 30-35, 73-74, 78; GE 1, 5.

for tax year 2009. The form indicated that the lender acquired the property on August 20, 2009. The balance of the principal on the first mortgage at that time was listed as \$272,168, and the fair market value of the property was listed at \$187,000. That shows a deficiency balance on the mortgage of about \$85,000. Applicant thought that the IRS form 1099-A meant any deficiency owed was cancelled by the lender. He testified that his accountant told him that the debt was cancelled. The bank has not made any demands for payment of the deficiency owed on the mortgage. His most recent credit report shows a zero balance on this mortgage. However, the IRS form 1099-A does not indicate a cancellation of a debt. Applicant confused the form he received with an IRS form 1099-C (Cancellation of Debt), which would indicate that the debt was cancelled. Applicant testified that, if he discovered that he still owed for the deficiency on the first mortgage, he would take steps to settle the debt.⁸

Applicant attempted to negotiate a settlement of the second mortgage on his foreclosed property. That debt of \$68,000 is alleged in SOR ¶ 1.a. The lender asked Applicant to make three monthly payments of \$200, and then they would work out an agreement to settle the debt. Applicant submitted evidence that he made \$200 payments to the lender in April, May, and June 2010. Applicant testified that the lender told him that the lender would settle the debt for 10% of the amount owed. Applicant stated that he had the funds to pay that amount, and he planned on settling the debt once he received the written settlement agreement.⁹

Applicant's post-hearing submissions included a settlement agreement from the collection company holding the second mortgage on his foreclosed property. The agreement was dated July 14, 2010. The company agreed to settle the amount due of \$72,717 for \$7,252. The agreement required payment by July 29, 2010. The agreement stated that "[t]his letter and your cancelled check or other receipt will serve as your proof of payment." The record in this case was held open until August 13, 2010. Applicant's attorney sent their post-hearing submission on August 13, 2010. There was no evidence that Applicant paid the settlement amount.¹⁰

Applicant has not received formal financial counseling, but he has received financial advice, and he has utilized a company that challenges inaccurate information on his credit report. With the exception of Applicant's real estate purchases and investments, his finances are otherwise in order and do not raise any security concerns.¹¹

Applicant's most recent performance evaluation reflects superior job performance and shows that Applicant is a valued and trusted employee. Letters on Applicant's behalf attest to his professionalism, trustworthiness, responsibility, integrity, honesty,

⁸ Tr. at 35-49, 72; AE A, J, N.

⁹ Tr. at 50-55; AE K.

¹⁰ AE M; HE II.

¹¹ Tr. at 71-74, 84-85; GE 5; AE J, L.

reliability, dedication, dependability, loyalty, commitment, and sound judgment. The authors are aware of Applicant's financial situation and recommend him for a security clearance.¹²

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 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 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

¹² AE C-I.

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 was unable to pay the mortgages on his properties for a period, and one property was foreclosed. 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.

Applicant has not resolved the deficiencies owed on the mortgages on his foreclosed property. His financial issues are recent and ongoing. AG ¶ 20(a) is not applicable.

Applicant bought three houses in a short period. He had two renters in his investment properties with agreements that the renters would purchase the properties. Both renters terminated their leases early and did not purchase the properties. One property went without a renter for several months, and one property was unrented for an extended period. The housing market collapsed, and he could not sell the houses. Applicant decided he could not save all three properties. He concentrated on two properties, and he is now current on the mortgages on those two properties. He lost one house to foreclosure. His renters' actions and the real estate collapse were 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 invested in properties without the financial resources to handle a downturn in the market. He refinanced his original property. After accounting for the costs of renovating the property, Applicant took out more than \$10,000 of the equity. He testified that he had the funds to settle the second mortgage on the property. He submitted a copy of a settlement agreement, but no proof that he paid the settlement amount. I am unable to make a determination that he acted responsibly under the circumstances. AG ¶ 20(b) is partially applicable.

Applicant may have received some financial counseling from the company he retained to dispute inaccurate items on his credit report. Applicant is current on the mortgages on his two remaining properties. Except for his real estate issues, his finances do not raise any concerns. He testified that he thought the deficiency owed on his first mortgage had been cancelled by the lender. The IRS form 1099-A law does not establish that the debt was cancelled. The second mortgage also remains unresolved. Because of the lingering issues related to the mortgages on his foreclosed property, I find that his financial problems are not resolved and are not under control. AG ¶ 20(c) is partially applicable.

Applicant has not made a good-faith effort to repay or otherwise resolve the debts resulting from his foreclosed property. AG ¶ 20(d) is not applicable to those debts.

In sum, I conclude that financial concerns remain 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 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 and superior job performance. He overextended himself and bought three properties in a short period. He lost one of the properties to foreclosure after his two renters broke their leases. The collapse of the real estate market prevented him from selling the properties for what was owed on the mortgages. The mortgages on his two remaining properties are current. He has an unresolved mortgage that was about \$272,000 when the property was foreclosed, and there is insufficient evidence to rule out the possibility of a deficiency at this time. Applicant testified he intended to settle the second mortgage. The settlement agreement called for him to pay \$7,252 by July 29, 2010, to resolve a debt of \$72,717. Applicant provided no explanation for why he did not do so. His finances continue to present security concerns.

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:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge