



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



In the matter of:)	
)	
)	ISCR Case No. 09-05403
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Fahryn E. Hoffman, Esquire, Department Counsel
For Applicant: Krystal M. Limon, Esquire

February 28, 2011

Decision

WHITE, David M., Administrative Judge:

Applicant and his wife bought a home in March 2006, while both were employed. His wife suffered a series of medical and employment setbacks, resulting in the SOR-listed delinquencies. They paid one minor debt, and made good-faith efforts to negotiate resolution of the other three. Each has now been resolved or is being repaid under agreements entered in 2009. He has both the means and every intention to remain solvent in the future. He is a responsible and trustworthy individual, and met his burden to mitigate security concerns arising from his financial situation. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Applicant submitted a security clearance application (SF 86) on February 2, 2009. On March 17, 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 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 for Determining Eligibility for Access to Classified Information that went into effect within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing (AR) on April 26, 2010, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on May 19, 2010, and the case was assigned to me on May 27, 2010. DOHA issued a Notice of Hearing on July 9, 2010, and I convened the hearing as scheduled on August 17, 2010. The Government offered exhibits (GE) 1 through 4, which were admitted without objection. Applicant offered exhibits (AE) A through M, which were admitted without objection, and testified on his own behalf. His wife also testified. I granted Applicant's request to leave the record open until September 7, 2010, for submission of additional evidence. DOHA received the transcript of the hearing (Tr.) on September 8, 2010. Applicant timely submitted AE N through U, which were admitted into evidence without objection, and the record was closed.

Findings of Fact

Applicant is a 29-year-old employee of a defense contractor, where he has worked, under various management arrangements, since January 2006. Before that, he was unemployed for nine months after being medically discharged, under honorable conditions, from the Navy in March 2005. He enlisted in August 1999, and served as a submarine missile technician with a Top Secret clearance, reaching pay grade E-5. He has never been involved in a security violation or adverse security incident. He has a 30% disability rating from the Veteran's Administration, for which he receives disability compensation. He and his wife have two children, ages 16 and 6.¹ In his response to the SOR, Applicant denied the factual allegations in SOR ¶¶ 1.a through 1.c, and admitted the allegation in SOR ¶ 1.d, with explanations to clarify each response.² Applicant's explanations and admissions, including his statements in response to DOHA interrogatories,³ are incorporated in the following findings.

In early 2006, Applicant had secured his current employment and his wife was working for a real estate broker as a commission-based closing specialist. She began that job in July 2005, and was earning a steady income of about \$1,000 per month. Real estate prices were still booming, and they wanted to buy a house within the limits of the city school district because the special education program in which their daughter participated was not available in outlying school districts. It seemed that such housing was rapidly becoming unavailable at a price they could afford. They bought a modest home for \$155,000 during March 2006. Although they had specified that they wanted to make mortgage payments of \$1,000 per month, they learned at closing that the total payment would actually be \$1,200 per month. They considered not following through on the purchase, but were advised that all contractual terms had been met and they could

¹GE 1; AE G; Tr.29-30, 106-111; 148-149.

²AR.

³GE 2.

not legally opt out without paying damages or other consequences. They did not inquire, and were not informed of the specific penalties that would apply, but decided to go ahead with the house purchase and save money elsewhere to make ends meet.⁴

Within a couple months after their home purchase, the local real estate market began to dry up. By about June 2006, Appellant's wife's commission income was down from \$1,000 to \$400 per month. She responded by performing closings for up to four additional agents in her office, and by opening a side business cleaning the empty houses listed through their office. Over the next year, she was able to slowly restore her monthly earnings to the \$800 to \$1,000 level.⁵

Appellant and his wife were able to make all mortgage payments during this period, but fell behind on a couple of credit card debts. The two debts alleged in SOR ¶¶ 1.b and 1.c became delinquent in March 2007, and showed balances due of \$5,759, and \$5,026, respectively on his credit report from February 2009.⁶ Their problems were exacerbated by a series of unanticipated medical problems beginning in early 2006. Their younger daughter was diagnosed with asthma, and their older daughter was diagnosed with migraine headaches and ADHD. Appellant's wife underwent two surgeries during 2006, one of which involved a four-day hospital stay. Due to insurance exclusions and co-pays, the resulting medical expenses were about \$2,000 more than they had anticipated. In January 2008, Appellant's wife started experiencing a persistent numbness in her hand. She underwent a series of therapies and tests, including two MRI examinations. In March 2008, she was diagnosed with multiple sclerosis (MS), and began taking medicine for it. Resulting medical costs from January to March 2008 that were not covered by insurance exceeded \$1,500. Her initial medication for the MS cost them about \$200 per month out of pocket. After a good initial reaction to treatment, they were able to reduce the monthly costs for medicine to about \$90, with one annual MRI for which they pay \$1,200. She was advised by her neurologist to stop working in her cleaning business because the chemicals could worsen her condition and symptoms.⁷

In June 2008, Appellant's wife was laid off from her real estate job due to lack of available work. A longtime friend of her mother's offered to, and did, lend them \$2,400 to cover their June and July mortgage payments while she looked for other work. Those payments were made to the creditor by the friend on her credit card. When the friend returned from a trip in August 2008, and saw \$2,400 in charges against her credit card by the lender on her August account statement, she mistakenly concluded that she had

⁴GE 1 at 47; Tr. 30-31, 60-63, 101-103.

⁵GE 1 at 47; Tr. 61-63.

⁶GE 4; Tr. 63-64.

⁷GE 1 at 47; Tr. 32-35.

been charged twice for these payments. She called her bank and cancelled the charges, without contacting or informing Appellant or his wife.⁸

Appellant's wife obtained a temporary position in August 2008, in which she worked between 20 and 40 hours a week. This job was converted to a full-time, permanent position for her in October 2009. The job paid only once per month, at the end of the month, so her first paycheck was not received until August 31, 2008.⁹ The plan was to pay the August mortgage payment in early September, and remain one-month delinquent on the mortgage until she resumed full-time work in October 2008. During mid-August, the mortgage lender sent a letter informing them that their June and July payments had been cancelled and they were now three months behind on the mortgage. They contacted the friend, who apologized for the mistake and sent them a check for the \$2,400 to use in bringing the payments current. They immediately contacted the lender to try to reinstate the June and July payments, but were informed that once a loan was more than three months past due, no partial payments could be accepted. Only a payment bringing the loan completely up to date would be accepted. They did not yet have the funds to make such a payment.¹⁰

The mortgage lender advised Applicant and his wife to stop making payments toward the loan and to apply for a loan modification. They initially did so in September 2008, and began saving between \$1,000 and \$1,200 per month in an account so they would have funds to execute the modified agreement when the bank approved it. Without belaboring the point, they were very proactive in applying for and pursuing a loan modification agreement through several unsuccessful iterations. They also unsuccessfully sought assistance from a foreclosure prevention specialist at their state housing department. Finally, on May 15, 2010, the home was sold at a foreclosure sale, even though their loan modification application remained open and pending approval. The outstanding balance on the loan was \$152,000, and Fannie Mae purchased the home for \$143,000. They re-listed it for sale at \$87,000. Applicant and his wife received a relocation assistance offer on May 25, 2010, under which Fannie Mae agreed to pay them \$1,400 if they voluntarily vacated the property on or before May 30, 2010, and left it in good and broom-clean condition. They accepted this offer and moved into rental lodgings.¹¹

The foreclosure laws of the state where Applicant resides provide for two procedures. The mortgage lender employed Non-Judicial Foreclosure procedures, which give the lender only 90 days after the sale to file a deficiency action against the borrower to recover the difference between the mortgage debt and the amount obtained at the sale. Applicant's lender did not file a deficiency action during the 90-day post-sale

⁸ Tr. 35-36, 63-71.

⁹Tr. 35, 50.

¹⁰Tr. 35-37, 65-72.

¹¹GE 3; AE E; AE F; AE R; AE U; Tr. 36-45, 67-73.

period. Accordingly, the \$9,000 deficiency claim has been abandoned by the lender, and it may no longer be asserted against Applicant.¹²

The \$37 debt alleged in SOR ¶ 1.a was for Applicant's co-pay for a doctor's visit by his youngest daughter on February 26, 2008. Applicant and his wife were unaware of the outstanding charge until notified of it by the collection agency to whom it was referred for collection on February 18, 2009. Once made aware of the debt, they promptly paid it on May 11, 2009. This was simply an oversight.¹³

As noted above, the credit card debt alleged in SOR ¶ 1.b was delinquent in the amount of \$5,759 on Applicant's February 2009 credit report. On his February 2010 credit report, the balance due was down to \$3,698.¹⁴ During December 2008, Applicant and his wife entered into an agreement with the predecessor collection agency holding this debt to pay \$200 per month until the balance was paid in full. The agency agreed not to charge further interest as long as the payments were made on time. All payments have been timely made since then, resulting in a balance due of \$2,026.71 on April 26, 2010, and \$1,281 on August 23, 2010. Applicant has sufficient funds to continue and complete these payments as agreed.¹⁵

The \$4,626 delinquent debt alleged in SOR ¶ 1.c involves a credit card issued to Applicant by their original home lender in connection with his mortgage loan. For a time, the bills were not delivered due to a lender error on the account address. Once they were financially able to do so during December 2009, they entered into an agreement to repay the balance in full at a rate of \$200 per month. The creditor has accepted this, and accepts six months worth of post-dated checks at a time to ensure payment without adding further interest to the debt. All payments pursuant to this agreement have been timely made, and sufficient funds are available to continue doing so.¹⁶

While waiting for the bank to foreclose on their home, Applicant and his wife saved from \$1,000 to \$1,200 each month that would otherwise have gone toward the mortgage, as described above. They saved around \$18,000 to \$19,000 in order to have funds to finance their loan modification, if and when it was approved. They stopped making these deposits in May 2010, when they began having to pay rent. They have since had to use around \$4,000 of those savings for various necessities, but still showed an account balance of \$15,500 as of August 2010. These funds are not

¹²AE R; AE S; Tr. 46, 98-100.

¹³AR; AE B; Tr. 55.

¹⁴GE 3; GE 4.

¹⁵GE 2; AE C; AE T; Tr. 50-53, 76-88, 90. AE T confirms that this collection account and SOR ¶ 1.b reflect the same debt. Applicant and his wife are also current on a \$207 per month repayment agreement with the collection agent for another delinquent credit card from the same original creditor which began on Dec. 9, 2009. GE 2 at 19; Tr. 83-85.

¹⁶GE 2 at 20; AE D; Tr. 53-55, 88-90.

encumbered, and are available to pay off the remaining debts discussed above. However, they made a responsible and well-reasoned decision to await a favorable outcome of Applicant's security clearance determination, because he will lose his employment if his clearance is denied. He and his wife also have about \$6,000 in retirement savings accounts, toward which they contribute monthly. Their combined monthly incomes, and his VA disability pay, provide a monthly surplus of income over expenses ranging from a positive \$585 to a slightly negative number when they choose to make additional discretionary expenses. Appellant's wife handles the family finances on a day to day basis, and she exhibited an excellent understanding of their financial situation and a determination to bring all debts current as soon as she can safely do so. She is also owed \$244 per month in child support from the father of their elder daughter. He last made a small payment toward this obligation in September 2005. Applicant's wife has not pursued the arrearage because her former husband cannot litigate custody issues while in such debt, and he is having trouble paying child support to the unwed and unemployed mother of his other child.¹⁷

Applicant's resume and performance assessments reflect his excellent performance of increasingly responsible duties. His supervisor for many years wrote glowingly of his character, responsibility, dedication to mission accomplishment, and perseverance through a difficult series of personal and financial setbacks.¹⁸ Applicant and his wife were extremely credible, organized, and well informed about their financial situation during the hearing.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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

¹⁷GE 2; AE O; AE P; AE Q; Tr. 57-58, 71-73, 95-96, 100-101.

¹⁸AE A; AE H through J; AE N.

classified information will be resolved in favor of the 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are 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 evidence raised security concerns under two Guideline F DCs, as set forth in AG ¶ 19(a) “inability or unwillingness to satisfy debts”; and ¶ 19(c) “a history of not meeting financial obligations.” Applicant’s history of delinquent debt stretches back about three years, and continues, in part, at present. The burden accordingly shifts to Applicant to rebut, explain, extenuate or mitigate these facts and the resulting security concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial problems:

- (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's delinquent indebtedness is ongoing in part. He repaid the \$37 medical debt listed in SOR ¶ 1.a, during May 2009, shortly after becoming aware of it. Applicant had fully resolved that debt well before the issuance of the SOR, thereby mitigating any resulting security concerns through application of AG ¶ 20(d).

Applicant has good-paying and steady work, and has surplus income again now that his wife has obtained full-time employment. During 2009, they entered into repayment agreements for three credit cards (two of which are listed in the SOR), that had fallen delinquent due to the conditions and circumstances discussed below. They have remained current on these agreements, and have the means to continue to do so. At the present rate of \$200 per month per card, all three debts will be repaid within 18 months. He also has sufficient savings to completely repay all three debts immediately, once it becomes unnecessary to hold those funds in reserve in case he loses his security clearance and job. He therefore established substantial mitigation under AG ¶¶ 20(c) and (d) because these debts are under control, and being resolved under their good-faith efforts to repay these creditors.

Mitigation under AG ¶ 20(b) was also established, concerning the three debts that are not yet repaid. Applicant's now-delinquent debts were not originally caused by matters outside his control, but his inability to pay them as he originally intended resulted from the collapse of the housing market; his wife's loss of employment and income despite working additional jobs; a series of difficult and expensive medical developments; and the cancellation of two months worth of mortgage payments without their knowledge that made their plan to bring their mortgage current impossible to implement. Applicant and his wife have acted with great responsibility throughout these problems. They worked very hard for almost two years to renegotiate their mortgage

loan terms, despite the fact that their home was worth substantially less than they owed on the mortgage loan. It was the mortgage lender who chose to exercise foreclosure proceedings, and under state law Applicant and his wife are not responsible for the resulting deficiency. Such circumstances may negate the element of good-faith under other circumstances. However, Applicant did everything within his power to resume mortgage payments and fulfill his promise, but was refused by the lender. His conduct reflected a responsible approach to his commitments, and he is no longer subject to any pressure or coercion over any remaining deficiency claim, which the bank abandoned.

Applicant and his wife are both employed, fully current in paying their regular living expenses, and have more than \$15,500 in liquid savings with which to address the delinquencies once his clearance and job are no longer in jeopardy. Thus, additional mitigation was established under AG ¶¶ 20(c) and (d).

As the Appeal Board has ruled concerning the successful mitigation of security concerns arising from financial considerations, “[a]n applicant is not required to show that [he] has completely paid off [his] indebtedness, only that [he] has established a reasonable plan to resolve [his] debts and has ‘taken significant actions to implement that plan.’”¹⁹ This applicant has established and substantially implemented an effective plan to resolve the debts that could formerly have given rise to security concerns. He also demonstrated his commitment to avoiding future financial problems, and a solvent budget that will permit him to do so.

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.

¹⁹ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)).

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant incurred a moderate amount of delinquent debt in connection with his wife's medical and employment problems. He has maintained an excellent employment record, and actively attempted to negotiate good-faith resolution of those debts with his creditors. His home mortgage loan was resolved through foreclosure by the lender, despite almost two years of very diligent efforts by Applicant and his wife to resolve that debt in the only way offered by the lender. He is a mature and responsible individual, and the recurrence of financial problems is quite unlikely. His proactive efforts to achieve resolution of his debts have eliminated any ongoing potential for pressure, coercion, exploitation, or duress.

Overall, the record evidence creates substantial confidence as to Applicant's present eligibility and suitability for a security clearance. He fully met his burden to mitigate the security concerns arising from his financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a through 1.d: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

DAVID M. WHITE
Administrative Judge