



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



In the matter of:)
)
) ISCR Case No. 09-05576
)
)
Applicant for Security Clearance)

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel
For Applicant: *Pro se*

October 28, 2010

Decision

RIVERA, Juan J., Administrative Judge:

Applicant and his spouse acquired three real estate mortgages totaling approximately \$568,000. One of the mortgages was foreclosed and the other two were charged off. He presented no evidence to establish a track record of financial responsibility. There are no clear indications that his financial problem is being resolved or is under control. Clearance denied.

Statement of the Case

Applicant submitted a security clearance application on April 9, 2009. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to grant Applicant's request for a security clearance.

¹ Required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; and Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as revised.

On February 2, 2010, DOHA issued Applicant a Statement of Reasons (SOR), which specified the basis for its decision - security concerns raised under Guideline F (Financial Considerations) of the adjudicative guidelines (AG).²

Applicant answered the SOR on March 23, 2010. He elected to have his case decided on the written record in lieu of a hearing. (Item 4) A complete copy of the file of relevant material (FORM), dated April 16, 2010, was provided to him. Applicant received his copy of the FORM; however, he misdated his receipt of the FORM. The FORM letter of transmittal (which includes Applicant's receipt), is also dated April 20, 2010. Applicant indicated he received his copy of the FORM on "April 7, 2010," before the mailing date of the FORM. I conclude Applicant received a copy of the FORM sometime after April 23, 2010. Applicant was given 30 days from the date he received the FORM to submit any objections, and information in mitigation or extenuation. He did not respond, and the case was assigned to me on July 20, 2010, to determine whether a clearance should be granted or denied. As of October 25, 2010, he did not submit an answer to the FORM.

Findings of Fact

Applicant admitted the three SOR allegations, indicating the accounts were "in the process of being resolved." His admissions are incorporated as findings of fact. After a thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 43-year-old local area network administrator II, employed by a defense contractor. He graduated from high school in June 1986. He married his spouse in February 1996, and they have three children, ages 13, 12, and 5. According to his security clearance application, he has been consistently and fully employed from February 1999 to present, except for the period of January 2000 to August 2001, when he was unemployed. He has approximately eight years of experience working for several government contractors. From July 2006 until September 2007, he was self-employed as a realtor. This appears to be his first security clearance application.

In June 2009, Applicant was confronted by a background investigator about his delinquent mortgages and his overall financial situation. During the interview, he stated he and his wife purchased the property alleged in SOR ¶ 1.c for \$424,000, with a \$40,000 down payment. Based on the December 2009 credit report, the account was opened in March 2006. Applicant did not make his mortgage payments and the property was foreclosed in May 2009. He indicated he did not have the ability to make any payments on that property. As of the day of his interview, Applicant claimed he was current on his day-to-day living expenses and was paying his bills on time. He averred he had no knowledge of the other mortgages alleged in the SOR. He claimed his wife handled all the household finances, and even though the accounts were joint accounts, he denied any knowledge of them.

² Adjudication of this case is controlled by the AGs, implemented by the DOD on September 1, 2006.

Later, in response to DOHA interrogatories, Applicant admitted that the account alleged in SOR ¶ 1.a (\$169,000) resulted from a second mortgage (home equity loan) he and his wife took on one of their investment properties. Based on the December 2009 credit report, the home equity loan was opened in March 2006, and it was reported delinquent in May 2008. The account was charged off. He claimed the loan would be satisfied upon the sale of the property. He presented no evidence showing the property was sold, or that the debt has been paid. The debt alleged in SOR ¶ 1.a originated as a real estate mortgage acquired jointly by Applicant and his spouse in March 2006. The credit report shows the account was charged off in May 2009. He presented no evidence showing that the debt has been resolved.

The SOR alleges the three delinquent mortgages for a total of near \$568,000 (SOR ¶¶ 1.a-1.c). In his response to the SOR, Applicant admitted these were his delinquent debts. Applicant presented almost no information about his past or current financial situation in the FORM. He failed to indicate why he acquired the alleged mortgages, when and why they became delinquent, and what efforts, if any, he took to resolve these debts. There is no evidence to show Applicant has participated in financial counseling, or whether he and his wife follow a budget. Applicant presented no documentary evidence showing any efforts to resolve his debts since he acquired them. Moreover, the record has little documentary evidence about Applicant's current financial situation.

Policies

The President of the United States has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). The President has authorized the Secretary of Defense to grant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These AGs are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable to reach his decision.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that 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. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Executive Order 12968 (Aug. 2, 1995), Section 3. Thus, a clearance decision is merely an indication that the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue [his or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline F, Financial Considerations

Under Guideline F, the security concern is that 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. AG ¶ 18.

Between early 2006 and late 2009, Applicant and his spouse acquired three real estate mortgages that became delinquent. One of the mortgages was foreclosed and the other two were charged off. The three delinquent mortgages total approximately

\$568,000. Applicant has been consistently employed since 1999, except for a 20-month period in 2000-2001. AG ¶ 19(a): “inability or unwillingness to satisfy debts” and AG ¶ 19(c): “a history of not meeting financial obligations” apply.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

(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;

(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; and

(f) the affluence resulted from a legal source of income.

Applicant’s sparse favorable evidence fails to fully raise the applicability of any mitigating condition. His financial problems are ongoing and his evidence fails to show they occurred under such circumstances that they are unlikely to recur and do not cast doubt on Applicant's current reliability, trustworthiness, or good judgment. AG ¶ 20(a) does not apply.

Applicant presented little evidence to establish circumstances beyond his control contributing to his inability to pay his debts, except for his 20-month period of unemployment in 2000-2001. However, there is no evidence showing how this period of unemployment adversely affected his financial situation, particularly since he acquired the mortgages in 2006. Applicant presented no evidence of efforts to resolve his financial obligations since he acquired the debts. His favorable information fails to establish a track record of financial responsibility. AG ¶ 20(b) does not apply.

AG ¶ 20(c) does not apply because there are no clear indications that his financial problem is being resolved or is under control. He presented no evidence that he has received financial counseling. Considering the number of delinquent debts, the date the debts were acquired, the aggregate value of the debts, and the lack of documentary evidence of efforts to resolve his legal financial obligations, Applicant's information is insufficient to establish that his financial problems are unlikely to recur. The remaining mitigating conditions are not reasonably raised by the facts in this case.

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 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.

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. AG ¶ 2(c). I have incorporated in my whole-person analysis my comments on the analysis of Guideline F.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant receives credit for his work history and eight years working for government contractors. He is considered to be a valuable employee since he was rehired by his current employer. These factors show some responsibility.

Notwithstanding, security concerns remain about Applicant's current financial responsibility, reliability, and judgment. Applicant has failed to show good-faith efforts to resolve his financial problems in a timely manner. The sparse mitigating evidence fails to convince me of Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant failed 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 Section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a - 1.c:	Against Applicant

Conclusion

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

JUAN J. RIVERA
Administrative Judge