



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-05996
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace Garcia, Esquire, Department Counsel
For Applicant: *Pro se*

August 3, 2010

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant stopped paying on a mortgage loan when he was unemployed and his lender would not work with him to reduce the monthly payment. After his lender initiated foreclosure proceedings, Applicant retained a realtor to pursue a short sale. Several offers of purchase have fallen through. A sale of the property in the near future appears unlikely, given the local market and the condition of the property, which Applicant could improve but has chosen to ignore until he has a buyer. While he pays his other debts on time, the financial concerns are not mitigated. Clearance denied.

Statement of the Case

On December 9, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a statement of reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations, that provided the basis for its preliminary decision to deny him a security clearance and to refer the matter to an administrative judge. 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 (AG) effective within the Department of Defense on September 1, 2006.

On December 28, 2009, Applicant answered the SOR. He did not indicate whether or not he wanted a hearing. On January 4, 2010, Applicant provided DOHA with documents and requested a hearing. (Ex. J.) On March 3, 2010, the case was assigned to me to conduct a hearing and to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for him. On April 13, 2010, I scheduled a hearing for May 11, 2010.

I convened the hearing as scheduled. Four Government exhibits (Ex. 1-4) and 10 Applicant exhibits (Ex. A-J) were admitted into evidence without objection. Applicant testified, as reflected in a transcript (Tr.) received on May 24, 2010.

I held the record open until May 25, 2010, for Applicant to submit additional documents. Applicant timely submitted one document, which was entered without objection as Exhibit K.

Findings of Fact

The SOR alleges under Guideline F, Financial Considerations, that Applicant was 120 days or more past due in the approximate amount of \$44,992 on a mortgage loan with a \$284,088 balance. Applicant admits the debt, which he contends will be resolved through a short sale of the property.

After considering the pleadings, exhibits, and transcript, I make the following factual findings.

Applicant is a 36-year-old systems engineer, who has worked for his present employer since December 2008. He seeks a secret-level security clearance for his duties. (Ex. 1, I.) He married in February 2007 (Ex. 1.), and he and his spouse have one child. (Tr. 100.)

Applicant is a naturalized U.S. citizen who came to the United States in February 2001.¹ He lived with his cousin, and enrolled in college. In July 2002, he moved to his own apartment. While in school, Applicant worked full-time as a translator of technical documents during the summer of 2003, and again from June 2004 to October 2006. He relied on student loans to pay for his education. Between November 2001 and May 2005, he borrowed \$38,683 from a single lender. In May 2005, he was awarded his bachelor's degree. (Ex. 1, 3.)

In March 2006, Applicant bought a home in state X, taking on a 30-year mortgage of \$245,000. (Ex. 3, Tr. 88.) The interest rate on the loan was 8.325%, making his monthly payments \$1,699.69. (Ex. G.) Around April 2006, Applicant began

¹Applicant took his present name on his naturalization in September 2007. (Ex. 1, Tr. 31.) The mortgage loan at issue was taken out in his birth name. (Ex. 1, G.)

working as a test engineer on a contract basis within the telecommunications industry. It is unclear how much he was paid in that job.

In early June 2006, Applicant refinanced his student loan debt through consolidation loans of \$22,457 and \$23,920. He also took out an automobile loan of \$14,888, to be repaid at \$284 per month for seven years. (Ex. 2, 3.)

From mid-December 2006 until late June 2007, Applicant was employed as a systems engineer at \$20 per hour. He also designed web sites for another company on the side, and earned an additional \$40,000 in income. (Tr. 91.) He lost his primary job when the contract ended (Ex. 1, A.), and he was paid unemployment compensation at \$275 per week starting July 21, 2007 through the week of September 22, 2007, for a total of \$4,400. (Ex. B, Tr. 57.)

While he was unemployed, Applicant continued to make his monthly mortgage payment of \$1,699 per month, taking cash advances from a couple of consumer credit card accounts to do so.² (Ex. 2, Tr. 46, 60.) After an unsuccessful job search in state X, Applicant relocated to another state for a new job in September 2007. Applicant told his mortgage lender to take possession of the property in state X since he was no longer living in the house. (Tr. 47.) When the mortgagee refused to foreclose, Applicant listed the home for rent (Tr. 48.), but he had no success obtaining tenants. He then inquired of his mortgage lender about possibly reducing his monthly mortgage payment. (Ex. 2, Tr. 48.) Told he would have to demonstrate a willingness to continue to pay the mortgage, Applicant made his payments for September through November 2007, again relying on consumer credit cards accounts. (Ex. G, Tr. 47-48.) In December 2007, Applicant learned that the mortgagee would not reduce his monthly payment. Applicant stopped any payments (SOR 1.a) because his income was insufficient to cover the mortgage and also pay his current living expenses and credit card debts. (Ex. G, Tr. 47-48, 58.) The mortgagee began to assess late fees on his mortgage account. (Ex. G.)

Around May 2008, Applicant contacted the mortgagee with the intent of resuming repayment of the delinquent mortgage. He had extra income from some information technology work on the side. Since Applicant was in arrears, the lender demanded a lump sum payment that he could not afford. Applicant told a Government investigator in May 2009 that the mortgagee wanted \$28,000. (Ex. 2.) He testified discrepantly that he had to come up with \$5,000 cash. (Tr. 48-49.) Applicant made no payment to the bank or on the property taxes assessed on the home. (Tr. 75-77.)

Applicant started working for his current employer in December 2008. (Ex. 1.) Around February 2009, the mortgagee initiated foreclosure proceedings on his home in state X. (Ex. 2, 3, 4.) After Applicant received notice of the intended foreclosure, he contacted the mortgagee and learned that he could reduce his debt through a short sale. (Tr. 49.)

²Applicant incurred about \$11,000 in credit card debt to pay his mortgage in 2007. (Ex.4, Tr. 60.)

On March 13, 2009, Applicant applied for a secret-level security clearance. He responded "Yes" to question 26.b on his Electronic Questionnaires for Investigations Processing, "Have you had any possessions or property voluntarily or involuntarily repossessed or foreclosed?," and disclosed his delinquent home loan. (Ex. 1.) In late April 2009, Applicant contracted with a real estate agent to pursue a short sale of the property. (Ex. F.)³ The broker listed the home for \$72,000 as a bank owned, foreclosure, to be sold "As Is" property.⁴ (Ex. E.)

On May 19, 2009, Applicant was interviewed by an authorized investigator for the Government, in part about his delinquent mortgage loan. Applicant indicated that his financial situation was stable and that he owed no delinquent debt other than the mortgage. He admitted that he was still receiving monthly statements from the mortgagee, but he did not intend to pay the debt because the mortgagee would not negotiate with him. (Ex. 2.) Applicant subsequently made a \$1,000 payment on the mortgage sometime in 2009, but it was returned to him by the lender because the property was listed for short sale. (Tr. 68-69.)

On November 27, 2009, a buyer offered to purchase the property in an "As Is" contract for \$70,000. A closing date was set for January 11, 2010, but the potential buyer qualified only for a loan of \$52,500. (Ex. J.) On December 18, 2009, another potential buyer offered \$72,000 for the property. On December 31, 2009, Applicant's mortgagee approved a short sale for \$72,000, conditioned on receipt of a minimum payment of \$66,305.57 by January 31, 2010. Under the terms of the short sale, Applicant would not be liable to his mortgagee for any deficiency balance, although he could have a tax liability. (Ex. C, E, J.) Applicant agreed to the terms on January 4, 2010 (Tr. 33.), but the buyer failed to secure financing. (Tr. 52.) On January 23, 2010, Applicant was offered \$60,000 cash for the property. Despite proof that the buyer had the funds (Ex. D, Tr. 52.), the mortgagee did not approve the short sale, and raised its price for a short sale approval to \$85,000. (Tr. 44, 51, 54.) After the mortgagee rejected the cash offer, Applicant asked his lender to extend his loan to 50 years, which would make his monthly payment an affordable \$1,000, but the mortgagee refused to do so. (Tr. 44.) As of March 2010, Equifax was reporting the loan as \$58,365 past due on a balance of \$294,342. (Ex. H.) According to the mortgagee's records, the unpaid principal was around \$244,996.11 with \$16,242.87 in uncollected fees and late charges owed. (Ex. G.)

Two other potential buyers expressed interest in the home, but they were unable to secure financing due to the condition of the premises. (Tr. 54.) In addition to having mold and structural integrity issues (tree roots were growing in the master bedroom, Tr. 55, 78), an air conditioner, washer and dryer, stove, mirror, kitchen and bathroom sinks,

³Applicant testified that he originally retained the real estate agent to list the property for sale the day that he was laid off, which he mistakenly indicated was July 1, 2006 (vice 2007). (Tr. 59-60.) Exhibit F reflects that Applicant signed a listing contract with the realtor on April 29, 2009, to list the house as a short sale. Exhibit F does not contradict Applicant's assertion that he retained the realtor initially in 2007 to sell the property before the mortgagee initiated foreclosure proceedings.

⁴Applicant testified that actions to pursue a short sale stopped the foreclosure proceedings. (Tr. 70.)

and some copper wiring had been stolen from the house in 2009. Applicant does not intend to replace missing fixtures and appliances until he receives a firm offer. (Ex. K, Tr. 62, 71, 83.) There have been no offers on the home since late January 2010, when the asking price increased to \$85,000.⁵ (Ex. F, Tr. 55, 75, 83, 89.) Applicant's relator considers it unlikely that the house will sell at \$85,000, given recent comparable sales in the area. (Ex. F.) A larger home in the neighborhood sold for \$70,000. (Tr. 88-89.)

As of May 11, 2010, Applicant owed about \$7,500 in delinquent real estate taxes on the property. He decided not to pay the taxes after he received notice of foreclosure proceedings from his mortgagee. He had been told that any delinquent property taxes would be paid by the mortgagee in a short sale, and that he would then owe the mortgagee for those taxes. (Tr. 75-77.) Around May 25, 2010, Applicant was told by the mortgagee that since the asking price for a short sale includes property tax, he didn't need to pay the property tax. (Ex. K.)

Applicant has a history of timely payments on his consumer credit and loan obligations except for the mortgage. In May 2009, he took out an unsecured loan of \$13,500, to be repaid at \$334 per month for five years.⁶ In July 2009, he financed the purchase of a 2007 model-year family sedan through a \$14,484 loan, to be repaid at \$314 per month for 59 months. As of November 2009, Applicant owed respective balances of \$492 and \$2,870 on the two credit card accounts used to make his mortgage payments following his job layoff in 2007. (Ex. 2.) He subsequently paid off the smaller credit card balance, but continues to pay on his unsecured loan, his vehicle loan, and the larger credit card debt. As of May 2010, his student loans were still in deferment with balances of \$22,804 and \$23,920. (Ex. H.)

Applicant earns \$36.54 per hour (\$2,923.20 biweekly exclusive of overtime) for his work as a systems engineer. (Ex. 2, Tr. 89.) Applicant's spouse is a student not employed outside the home. In January 2010, Applicant and his spouse moved to a new address, at an increase in rent from their previous \$1,000 per month to \$1,519 per month. (Tr. 64-65.) They have child care costs for their daughter at \$800 per month. (Tr. 67.) As of May 2010, Applicant estimates he has \$700 to \$800 per month in discretionary income after paying their expenses. Applicant is not making any payments on his defaulted mortgage. (Tr. 68.) Applicant has \$1,000 in bank savings and 401(k) assets of about \$13,000. (Tr. 69-70.) Applicant has not had any financial counseling apart from informal discussions with a fellow church member, who did not think Applicant needed any counseling, provided the house sells. (Tr. 72.)

Applicant's immediate supervisor supports him in his efforts to obtain a secret-level security clearance. Applicant has demonstrated integrity and he possesses a "discernable and valuable skill" for his employer. He completes his work on time, and

⁵Applicant has no equity in the house. He testified that he bought the home for \$245,000, but that other, larger homes on his street, sold for between \$65,000 and \$89,000. (Tr. 89.)

⁶It is unclear why Applicant took out this loan. In November 2008, Applicant paid off an automobile loan for a 2005 model-year economy car. The loan was for seven years with an initial balance of \$14,888, and Applicant paid it off early by increasing the amount of his monthly payment. (Ex. H, Tr. 66, 73.)

has provided a quality product for the programs he has supported. This section manager is aware that Applicant's "current situation raised some questions about his recent financial past," but from what he knows, Applicant has been cooperative and responsible in addressing those concerns. (Ex. I.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has 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). 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 and mitigating conditions, which are required to be considered 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 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. 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, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of Executive Order 10865 provides that 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 about finances 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.

In March 2006, Applicant overextended himself financially by taking out a mortgage of \$245,000. He managed to make the payments, largely through side jobs that brought in an additional \$40,000 income. After he was laid off at the end of June 2007, he asked his lender to reduce his monthly mortgage payment, and he relied on credit cards to make a few payments in an effort to demonstrate his willingness to pay on the loan. However, after the mortgagee then refused to reduce his monthly loan obligation, he stopped paying the mortgage and also the real estate taxes on the property. Facing foreclosure, Applicant listed the home "As Is" at a short sale price with the approval of his mortgage lender. But as of May 2010, the house had not sold. His loan had an unpaid principal balance of \$244,996.11 with another \$16,242.87 owed in fees and late charges. He also had not paid about \$7,500 in property taxes. Disqualifying conditions AG ¶ 19(c), "a history of not meeting financial obligations," and AG ¶ 19(a), "inability or unwillingness to satisfy debts," apply.

Applicant's default of his mortgage and real estate tax delinquency are too recent to favorably consider AG ¶ 20(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." AG ¶ 20(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," is implicated in part. An unforeseen job layoff and unsuccessful job search in state X led Applicant to move for a new job in September 2007. While it was Applicant's decision to stop paying when he learned in December 2007 that the mortgagee would not lower his payment, his mortgage problems started when he lost his job. Moreover, concerning his recent efforts to resolve the debt, Applicant had no control over the depressed real estate market or crime in the community. Certainly, Applicant had no influence over the mortgagee, who rejected an offer of cash for the property and raised the asking price for any short sale to \$85,000. That said, AG ¶ 20(b) does not mitigate his financial irresponsibility. He took on this sizeable debt only months out of college. He defaulted on the loan because the lender would not reduce his monthly payment. More recently, he has chosen not to make repairs to the property until he has a buyer, despite knowing that some potential buyers have been denied loans because of the poor condition of the home. The property is

devalued and less likely to sell in part because of structural problems, such as tree roots growing in the master bedroom, that are not attributable to theft or vandalism.

Applicant's recent attempts to reduce or eliminate his mortgage debt through a short sale implicate AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." At the same time, Applicant has not made that debt a priority for him. He has also done little to address his delinquent property taxes. It was not until after his hearing that he contacted the local municipality about the taxes. He was apparently told by the mortgagee that the short sale price covers the property taxes. At present, Applicant would appear to be liable for the property taxes since the house has not sold.

The house is not likely to sell in the near future, especially in light of its poor condition and asking price of \$85,000. A larger home in the neighborhood sold for \$70,000. Applicant's realtor had no success in persuading the mortgagee that the area would not support a sale of Applicant's property for \$85,000. Under the circumstances, it would be premature to apply AG ¶ 20(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."

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 conduct and all the relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a).⁷ While Applicant's mortgage problems started with a job layoff in the summer of 2007, he exercised questionable financial judgment in taking on such a sizeable debt burden when he was working in a job that he had held in college. When the lender refused to reduce his monthly payment, he chose to default on the loan. Efforts to address the debt thereafter were sporadic and not a priority for him. After the most recent offer on the house was rejected by the mortgagee, Applicant attempted to get the mortgagee to extend his loan to 50 years instead of making repairs to the property that would increase his odds of a successful short sale, and perhaps mitigate the concerns of the Government. If the house sells, there may be tax consequences for Applicant on any debt charged off by the mortgage lender.

⁷The adjudicative factors under AG ¶ 2(a) are as follows:

(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.

Concerning Applicant's overall financial status, he is currently paying his other obligations on time, but he also owes about \$45,000 in student loan debt that he will have to begin repaying at some future date. He is making payments on an unsecured installment loan that has a balance of \$12,073. It is unclear why he needed that installment loan. He and his spouse's rent increased by \$519 with their recent move in January 2010. Despite an annual salary in excess of \$77,000, Applicant has only \$1,000 in bank savings, even though he reports between \$700 and \$800 per month in discretionary income. In Applicant's favor, he has handled his credit card obligations responsibly, but it is not enough to overcome the judgment concerns raised by his handling of his mortgage.

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

Conclusion

In light of 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.

Elizabeth M. Matchinski
Administrative Judge