



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 09-06134
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

November 4, 2010

Decision

MASON, Paul J., Administrative Judge:

In 2005, Applicant purchased a home with a negative amortization mortgage loan, making only partial payments on the interest generated by the loan, with the unpaid accrued interest capitalizing monthly into the principal balance, and requiring much higher mortgage payments be made at different times during the mortgage term. Since Applicant was aware when he signed the mortgage that the payments would increase as they did in May 2008, the dramatic increase in monthly mortgage payments cannot be viewed as an event largely beyond his control. On the other hand, his wife's sudden layoff in May 2008 immediately impacted his ability to pay all his bills. Applicant has earned security clearance access through his assertive and successful action in establishing a home modification loan in February 2010. His good judgment continued when he settled the debt at SOR 1.b in May 2010, and reached settlement terms with the creditor cited in SOR 1.a in July 2010. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted his Security Clearance Application (SCA, GE 1) on January 27, 2009. He was interviewed by an investigator from the Office of Personnel Management (OPM) on February 25, 2009, and a summary of this interview appears in GE 2 dated October 21, 2009. Interrogatory answers dated October 21, 2009, Applicant furnished additional information to the February 2009 interview summary at page 96¹ of GE 2, and indicated the summary could be used in a security clearance hearing to determine his security suitability. (GE 2, at 95)

On December 8, 2009, DOHA issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F). The action was taken pursuant to 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) implemented by the Department of Defense on September 1, 2006.

Applicant submitted his answer to the SOR on January 14, 2010. DOHA issued a Notice of Hearing on June 21, 2010, for a hearing on July 13, 2010. The hearing was held as scheduled. At the hearing, six exhibits (GE 1 through 6) were admitted in evidence in support of the Government's case. Applicant testified and proffered three exhibits (AE through AE C) that I admitted into evidence without objection. He was granted until July 27, 2010, to submit additional evidence regarding his delinquent financial obligations. No additional information was received. DOHA received the transcript on July 20, 2010. The record closed on July 27, 2010.

Findings of Fact

The SOR contains two allegations under guideline F (financial considerations). The first allegation is a delinquent credit card. The second allegation represents a delinquent home equity loan. Applicant is 35 years old and has been married since September 2000. He has two children, ages five and one. He has lived at his present address for five years.

In April 1998, Applicant entered the United States Marine Corps (USMC). He was 23 years old. In September 2003, he received an honorable discharge as a Sergeant. He immediately enrolled in a local university where he received his Associates degree in Business Administration in May 2005. In January 2006, Applicant began working as a real estate agent. In approximately July 2007, he was hired as a mechanic by a defense

¹ Handwritten page number appears at lower right corner of page.

contractor engaged in the business of repairing helicopters, and this employment has required three business trips to the Middle East for varying lengths of time to repair and maintain helicopters. During his last Middle East duty assignment, he earned about \$120,000 in hazard pay as determined by the combat environment. (Tr. 53)

In September 2005, Applicant and his wife purchased a home. They contracted for a primary mortgage account called a negative amortization loan where “every month his principal [amount of the mortgage loan] would go up and I would only pay a portion of the interest.”² (Tr. 40) The monthly mortgage payments began at \$1,500 a month in 2005. In May 2008, the payments rose to \$2,500 a month. (GE 2, February 2009 interview) At about the same time the mortgage spiked, his wife, who had just become pregnant, was laid off from her water sports job. (Tr. 39) From May 2008 to August 2008, Applicant and his wife experienced continuing difficulty making the primary mortgage payments. They also had trouble making regular payments on the home equity loan (SOR 1.b) they had opened in 2006, and a credit card account (SOR 1.a). In an attempt to reduce their monthly mortgage payments, Applicant and his wife tried to arrange a home loan modification agreement with the primary mortgage lender. They were unsuccessful. (GE 2, February 2009 interview)

Applicant paid \$2,500 for a debt consolidation company to negotiate a modification agreement with the lender of the primary mortgage. (*Id.*) A precondition of the agreement was for Applicant to make six successive monthly mortgage payments in a timely fashion, then they would qualify for the home loan modification, and their mortgage would be modified indefinitely beginning in April 2009. (*Id.*) The home loan modification agreement, which was signed by Applicant and his wife on February 5, 2010, displays the mortgage payment schedule for the next 26 years, (AE C), and also shows Applicant has made regular payments since the modification was implemented. (*Id.*)

Applicant used the same debt consolidation company to negotiate a settlement with a credit union for a delinquent credit card account of \$18,145 (SOR 1.a). (Tr. 48) The credit card became delinquent in October 2008. A debt collection law firm notified Applicant on July 7, 2010, that the creditor agreed to accept \$8,165.37 in two payments, the first at the end of July 2010, and the second at the end of August 2010. (AE B) Applicant intended to satisfy the delinquent credit card account. (Tr. 49)

Applicant and his wife received a home equity loan of about \$89,000 (SOR. 1.b) in 2006 to landscape their front and backyard. The home equity loan became delinquent in May 2008. With the help of the debt consolidation company, Applicant settled the loan for

² Applying my knowledge from similar cases involving negative amortization loans, the unpaid interest is capitalized into the monthly principal balance, requiring much higher mortgage payments during the term of the mortgage. This type of mortgage is generally used to sell real estate to a buyer who may not otherwise qualify to purchase the house.

\$20,000 in four installments of \$5,000 in May 2010. (AE A; Tr. 23-25)

Applicant and his wife had no financial difficulties for the first seven years of their marriage. (Tr. 42) Their financial challenges began in May 2008 when the primary mortgage increased 66%. (GE 1, at 34; GE 3, February 2009 interview) Since he accomplished the home modification agreement, he is not falling behind on any financial obligations. (Tr. 55) *See also*, GE 2 through GE 6. Though his wife pays the household bills (Tr. 62), they meet monthly to discuss financial issues. (Tr. 58) Applicant plans to implement a budget to monitor the family's finances. (*Id.*) Currently, Applicant keeps his monthly expenses below \$1,800 while reducing his energy consumption by \$100 every month. (Tr. 54) His wife will be graduating from school this summer, and her degree (unknown) should land her in a position that pays her twice as much as she earned before she was laid off in May 2008. (Tr. 55)

Character Evidence

A friend of 10 years, who met Applicant when they were in the Marines, has maintained contact after Applicant's discharge in September 2003. He recommended Applicant for a position of trust based on his honesty and devotion to his family.

Applicant has received several service medals and awards during his military service. (Tr. 35)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. Each guideline lists potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

The administrative judge's ultimate goal is to reach a fair and impartial decision that is based on common sense. The decision should also include a careful, thorough evaluation of a number of variables known as the "whole-person concept" that brings together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture. 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 the potential, rather than actual, risk of compromise of classified information.

Under Directive ¶ E3.I.14., the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.I.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 as to obtaining a favorable security decision.

Analysis

Financial Considerations

The security concern for financial considerations is set forth 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The Government has the responsibility of presenting sufficient information to support all allegations of the SOR. Based on the credit reports, Applicant's interrogatory responses, and his answers to the SOR, the Government has presented sufficient information to establish the two allegations in the SOR. AG ¶ 19(a) (*inability or unwillingness to satisfy debts*); and AG ¶ 19(c) (*a history of not meeting financial obligations*).

AG ¶ 19(a) applies based on Applicant's inability, not unwillingness, to pay the delinquent accounts. When Applicant could not pay his home equity loan in May 2008, he initiated a history of not paying debts within the scope of AG ¶ 19(c).

Four mitigating conditions under AG ¶ 20 are potentially applicable. 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 reliability, trustworthiness, and good judgment*) applies. The two accounts became delinquent in the last three years. The Government's and Applicant's credit reports show that, except for the listed delinquent debt, he has never had any kind of financial problems before or since May 2008. Based on the aggressive action taken by Applicant to reduce his primary mortgage payments and settle the two listed delinquent accounts, he has demonstrated he possesses the reliability, trustworthiness and good judgment necessary for access to classified information.

Before Applicant purchased his home in 2005, it is likely he may have been steered in the direction of a negative amortization loan to enhance the real estate broker's chances of selling the home to a buyer who otherwise would not qualify to purchase the dwelling. However, Applicant should have examined the fine print of the loan before officially agreeing to the terms of the loan. He knew or should have known the mortgage payments would spike during the term of the loan.

By contrast, Applicant had no way of knowing that his wife would be laid off in May 2008 at the same time the mortgage payments spiked. His wife's loss of employment affords him mitigation under AG ¶ 20(b) (*the conditions that resulted in the financial problem were largely beyond the person's control and the individual acted responsibly under the circumstances*). Applicant gains even more mitigation under the condition for his responsible action in finalizing the home loan modification agreement in February 2010 to dramatically reduce the size of the monthly mortgage payments.

Though Applicant has not received financial counseling, the home modification agreement in February 2010, the settlement in May 2010 of SOR 1.b for \$20,000, and the overall healthy status of his credit record demonstrates that he comprehends his financial management responsibilities. He is clearly serious about completing the settlement of SOR 1.a. that will eliminate the last delinquent account from his record. Applicant receives credit under 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*) and AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) for his documented steps effort to repay overdue creditors. Having weighed the negative evidence under AG ¶¶ 19(a) and 19(c) with the positive evidence under AG ¶¶ 20(a), 20(b), 20(c), and 20(d), the financial considerations guideline is resolved in Applicant's favor.

Whole Person Concept

I have examined the evidence under the disqualifying and mitigating conditions in my ultimate finding for Applicant under the financial considerations guideline. I have also weighed the circumstances within the context of nine variables known as the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

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 the participation was 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 dramatic increase in Applicant's primary mortgage and his wife's loss of employment in May 2008 were the primary reasons for his financial problems. While no mitigation is due Applicant for his poor judgment in failing to read the installment loan contract he signed in 2005, Applicant is entitled to mitigation for his wife's loss of employment.

Applicant quickly discovered after the mortgage increase in May 2008 that he was not going to have sufficient funds to pay the other bills. He exercised good judgment in pressing for a home loan modification agreement. When he met early resistance from the lender, he immediately hired a debt consolidation company for \$2,500, and signed the modification agreement in February 2010. He satisfied the home equity loan in May 2010, and has negotiated a settlement to pay the delinquent credit card account. Given Applicant's honorable career in the Marines, his reputation for being honest and a devoted family man, and the decisive action he demonstrated in paying off the two listed debts while reducing his primary mortgage payments, Applicant deserves access to classified information.

Formal Findings

Paragraph 1 (Guideline F):	FOR APPLICANT
Subparagraph 1.a	For Applicant
Subparagraph 1.b	For Applicant

Conclusion

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

Paul J. Mason
Administrative Judge