



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



In the matter of:)	
)	
)	ISCR Case No. 09-06289
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

November 22, 2010

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for a security clearance is denied.

On May 6, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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 for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on June 3, 2010, and requested a hearing before an administrative judge. The case was assigned to me on September 8, 2010. DOHA issued a Notice of Hearing on September 10, 2010. I convened the hearing as scheduled on October 21, 2010. The Government offered Exhibits (GE) 1 through 7. Applicant did not object and they were admitted. Applicant and two witnesses testified.

Applicant offered Exhibits (AE) A through P, which were admitted without objections. DOHA received the hearing transcript (Tr.) on October 29, 2010.

Findings of Fact

Applicant admitted all the allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 40 years old. He is not married. He has a 16-year-old son who lives with him. He graduated from high school in 1988. He has worked for his present employer, a federal contractor, since 2008. He has worked for other federal contractors in the past and has held a security clearance since approximately 2004.¹

In 2004, Applicant's father asked him to co-sign a loan for a mortgage for a house. His father could not get the loan by himself. His stepmother did not have good credit. There were two loans on his father's house. Applicant co-signed both loans. They are listed in SOR ¶¶ 1.a and 1.b. Applicant understood that by co-signing the loans he bore the responsibility to ensure the loans were paid. At the time, his father was employed. He earned about \$77,000 annually and his wife earned about \$68,000 annually. From 2004 to 2008, Applicant's father made the payments on the mortgages.²

In 2008, Applicant's father was diagnosed with an illness and he lost his job. Applicant helped his father as much as he could to pay the loans. They tried to renegotiate a different payment plan with the creditor, but were unsuccessful. When his father returned to work, it was at a job that paid a third of what he had previously been earning. They attempted to obtain mortgage hardship assistance in November 2008. Applicant's father made some payments from his savings. The last payment that was made on the debt in SOR ¶ 1.b was in July 2008. This debt is for the first mortgage. Applicant attempted to set up a payment arrangement, but the house is foreclosed. The house has not been sold. The amount of the loan is \$391,000.³ Applicant's father did not want to move in with Applicant because it would have required a longer commute to his job. His father exhausted his savings to make house payments. He now rents an apartment. His father has not made any payments on this loan since 2008.

Applicant stopped making payments on the debt in SOR ¶ 1.a (\$71,708), the second loan on the house, in September 2008. He and his father negotiated a payment plan and his father resumed making payments in February 2010. He has been paying \$310 monthly on that debt.⁴

¹ Tr. 57, 92-94.

² Tr. 24-44, 97-108.

³ *Id.*; AE P.

⁴ Tr. 31-35; GE 4; AE M, O.

The debt in SOR ¶ 1.c is no longer past due. Applicant has an automatic payment arrangement to ensure timely payment. He had a payment plan in place and was unaware that he had to contact the creditor to renew it. It lapsed without him knowing. He has since renewed the plan.⁵

The debt in SOR ¶ 1.d is for the mortgage on Applicant's personal house. The amount of the loan is \$366,000. He was current on his payments until his father had problems paying his mortgage. When his father could no longer pay the mortgage on his house, Applicant put his personal house up for sale in September 2008. Applicant and his fiancée had purchased their house jointly in 2004. She helped pay the mortgage. In December 2008, they separated. She had been paying the utilities for the house. When she moved out she continued to help with the expenses for awhile, but then could no longer afford to do so. Applicant became responsible for the monthly payments and expenses. They unsuccessfully attempted to modify the loan. He paid the monthly payments until December 2009, when he could no longer afford to pay. Applicant stated he has been actively trying to sell his house for the past two years, but has been unsuccessful. He has only been able to make partial mortgage payments on and off for the past five or six months. He attempted to "short sale" the house, but was unsuccessful. Applicant is attempting to resolve the mortgage debt for his house by a "deed in lieu" process. At this juncture, that has not transpired and the debt remains unresolved.⁶

Applicant has ten credit cards that he pays approximately \$900 on monthly. He estimated the total balance on the cards is between \$15,000 and \$20,000. How much he pays monthly towards his credit card debt fluctuates, depending on how much money he has, but he always makes minimum payments. He and his former fiancée explained that he used the credit cards to fund repairs and renovations required for their house when they moved in. He purchased a luxury car in 2008 for \$55,000. He pays about \$995 a month in car payments. His fiancée helped him make the payments for a short period of time after she moved out, but no longer provides help.⁷

Applicant does not have a written budget and has not received any financial counseling. He explained he does keep track of his money, but not formally on paper. He has a nominal amount of money in his checking and savings account, but stated he has an emergency fund.⁸

Applicant stated when his father asked him for financial help he felt obligated to co-sign the loan. He could not allow his father to be without a home. He cannot pay the loan on his father's house. When his fiancée moved out, it created an additional

⁵ Tr. 44-45; AE N, K.

⁶ Tr. 46-56, 59-63; 111-123; AE A.

⁷ Tr. 56-57, 66-74, 77-82, 111-123.

⁸ Tr. 84-87.

financial burden and he could no longer make the payments on his own house. He does not believe he was irresponsible in co-signing his father's loan because his father needed a place to live. He stated he could not force his father to live with him. Applicant confirmed that until he sells his house he will continue to have financial problems.

I have considered all of the character letters provided by Applicant. He is described as hardworking, responsible, reliable, conscientious, respectful, honest and trustworthy. He is considered a professional in the workplace.⁹

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 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 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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

⁹ AE L.

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 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 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. I have considered all of the disqualifying conditions under AG ¶ 19 and especially considered:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has two delinquent debts that remain unpaid and unresolved. His debts are for two mortgages on properties that are in foreclosure. The total amount owed on the combined loans is \$757,000. I find there is sufficient evidence to raise these disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under 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;

(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 debts are recent because two remain unresolved and unpaid. I find mitigating condition AG ¶ 20(a) does not apply. Applicant co-signed loans for his father. He did this during a time when Applicant had significant obligations to pay. His father became ill and could not pay the mortgages. Applicant and his fiancé separated and he was responsible for paying the total amount of his own mortgage. Applicant's father is repaying the second mortgage in SOR ¶ 1.a. Applicant resolved the payment issue for the debt in SOR ¶ 1.c. He has been attempting to resolve the unpaid mortgages, but has been unsuccessful. He has tried to sell his home and sought hardship assistance. I find AG ¶ 20(b) partially applies because the conditions that resulted in the financial problems were largely beyond his control. However, Applicant was on notice when his father could not obtain a loan on his own, that his father may experience financial problems in the future. Applicant did not plan for that contingency and did not ensure he could afford to pay the loans, if necessary. I find he did not act responsibly under the circumstances. Applicant has not received any financial counseling and does not have a budget. He is hoping to resolve his mortgage debt through a transfer in deed, but that has not yet occurred. The mortgage on his father's home is still unresolved. His father has been paying the second loan on the home. Until Applicant can resolve the mortgage debts that total approximately \$757,000, it is too early to conclude that they are not a security concern. Therefore, AG ¶¶ 20 (c) and 20 (d) do not apply.

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 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 those guidelines, but some warrant additional comment. Applicant and his fiancé bought a house together in 2004. Applicant co-signed loans for his father, who then was unable to pay the loans because he lost his job due to illness. Applicant and his fiancée separated. He became responsible for paying the mortgage on their home. He found he did not have the resources to pay all of the debts he owed. The two mortgage debts remain unpaid. Applicant wanted to help his father. Although admirable, when his father could no longer pay his bills, Applicant could not fulfill his obligation. Applicant is attempting to resolve the debts he owes, but at this juncture they remain unresolved. Therefore, it is too early to conclude that Applicant's delinquent debts are no longer a security concern. 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 failed to mitigate the security concerns arising under the guideline for 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge