



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



In the matter of:)
)
) ISCR Case No. 09-07429
)
)
Applicant for Security Clearance)

Appearances

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

January 19, 2011

Decision

MASON, Paul J., Administrative Judge:

In April 2006, Applicant purchased a \$410,000 condominium he could not afford. His monthly mortgage payment was approximately \$2,400 a month. After his wife was granted child support (two children) in October 2006, other fees and expenses continued to increase. He tried unsuccessfully to restructure the mortgages and other fees/expenses. He stopped paying the mortgages in September 2007 when he realized he could not keep the mortgages and additional expenses current. The condominium went into foreclosure, and he believes the house was sold because the lenders have not contacted him. Applicant's payment of two of the listed creditors, his willingness to negotiate a payment plan with the two lenders, and his other evidence in mitigation, is sufficient to find the financial guideline in his favor. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP, GE 1) on May 18, 2009. He was interviewed by an investigator from the Office of Personnel Management (OPM) on July 8, 2009, and a summary of this interview appears in GE 2 dated February 23, 2010. Applicant agreed with the investigator's summary (*Id.* at 108), and agreed that the summary could be used to determine his security suitability. (*Id.* at 142)

On March 31, 2010, 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 April 23, 2010. DOHA issued a Notice of Hearing on June 21, 2010, for a hearing on July 15, 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 and his second-line supervisor testified. He was granted until July 29, 2010, to submit additional evidence regarding his delinquent financial obligations. No additional information was received. DOHA received the transcript (Tr.) on July 23, 2010. The record closed on July 27, 2010.

Findings of Fact

The SOR contains four allegations under Guideline F (financial considerations). The first allegation involves overpaid VA benefits. The second and third allegations contain delinquent mortgage accounts. The last allegation is a past due credit card. Applicant admitted all allegations. Applicant is 33 years old, divorced with two children, ages eight and five. (Tr. 25) He has been employed by a defense contractor as a test engineer since September 2005. Applicant has been attending a satellite location of a college located in the midwestern United States. He needs two classes to complete his bachelor's degree in electronic systems and technology.

In April 1996, Applicant entered the United States Navy and was employed as an electronics technician. He was honorably discharged in October 2005.

Applicant was separated from his wife in October 2005. He and his wife had joint custody of the two children. Motivated by a desire "to help my [two] kids out in the long run

and to make some financial growth,” (Tr. 22) he purchased a condominium in April 2006 for \$410,000, with a first mortgage of \$320,000 (SOR 1.c), and a second mortgage of approximately \$90,000 (SOR 1.b) Although he purchased the property through a real estate agent, Applicant was not knowledgeable of the costs related to the purchase. (Tr. 22-23) Applicant’s mortgage payment for both mortgages totaled approximately \$2,400 a month. Although he was able to meet the monthly mortgage payment for about 15 or 16 months, (Tr. 36) he realized he should not have purchased the dwelling. (GE 2 at 113)

In October 2006, Applicant’s wife was awarded child support of \$408 a month.¹ In September 2007, the condominium fees increased from \$400 a month to \$700 a month. (GE 2; Tr. 38) In the same time period, Applicant’s day-care expenses reached \$1,100 a month. (Tr. 39) The monthly mortgage, increased condo fee, child support, day-care, and overall cost of living, were more than Applicant could manage. He tried to renegotiate or modify the mortgages, but was unsuccessful. (Tr. 38) He consulted with different realty agents to sell the property, but was informed that condominiums were the most difficult type of dwelling to sell. (Tr. 38-39)

Applicant stopped making the \$2,400 mortgage payment in September 2007. Applicant moved out of the property, and it went into foreclosure in March 2008 with Applicant owing approximately \$212,000 on the largest mortgage. He is confident the property was sold because he has not been receiving notices from either lender to recover balances. In addition, he has not received a request from a collection agency or a notice from the Internal Revenue Service (IRS) that he derived income from the sale of the condo. (Tr. 41) If there is any deficiency on either mortgage after the foreclosure and sale of the property, Applicant is willing to satisfy the deficiency under some type of repayment plan. (Tr. 43) In October 2008, and December 2008, Applicant tried unsuccessfully to take out two loans to pay for both mortgage arrears. Each loan request was denied because of outstanding loans and other obligations. (Tr. 18; AE C) In the future, Applicant intends to conduct more long-term research before he decides to purchase another home. (Tr. 47-48)

SOR 1.a, \$132, Veterans Administration (VA) military benefit account. Applicant explained that the VA made a mistake with his educational payment benefits. The VA’s normal procedure was to deduct any surplus amount from the next benefit distribution, but they did not have Applicant’s correct address. After being alerted that the payment was unauthorized, he provided full restitution. (Tr. 33; AE B)

SOR 1.d, \$816, credit card. Applicant and his former wife had a joint credit card. Applicant satisfied this account on April 23, 2010. (AE A)

¹ They divorced in December 2008. (GE 1 at 40)

With regard to financial counseling, Applicant completed a three-week financial counseling course to teach the enrollee how to be budget his earnings so he can keep track of his expenditures. (Tr. 50-51) Applicant has a retirement savings account and a savings account. (Tr. 51-52) Applicant is current with his child support and other financial obligations. (Tr. 47-48)

Character Evidence

Applicant's second-line supervisor has had a security clearance for 22 years. He has supervised Applicant at least since 2005. He also socializes with him. (Tr. 53) The supervisor has tremendous trust in Applicant, and, in his most recent evaluation, Applicant was singularly recognized for his outstanding job performance. (Tr. 54) In all of Applicant's assignments, he always gets enthusiastic reviews from the customer for completing his projects in a timely manner. (Tr. 55)

Applicant has received several medals and awards during his military service. (Tr. 27-29)

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 required to be used to the extent they apply 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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 for 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.

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 four allegations in the SOR. AG ¶ 19(a) (*inability or unwillingness to satisfy debts*); and AG ¶ 19(c) (*a history of not meeting financial obligations*), apply.

Four conditions under AG ¶ 20 could potentially mitigate Applicant's delinquent indebtedness: 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, and the person acted responsibly under the circumstances*); 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*).

In April 2006, Applicant was separated from his wife and had joint custody of two children. Rather than spending time to understand the fees related to owning a condominium, and evaluating how a \$2,400 monthly mortgage payment and expenses would impact his other financial obligations, Applicant purchased the condominium for \$410,000. From October 2006, when his wife was awarded the child support, until he eventually moved out in March 2008, Applicant encountered several additional reasons, such as increased condominium fees and day care, why he should not have entered a contract to purchase the dwelling. Applicant testified credibly about learning from his real estate folly. I conclude it will not happen again. Applicant receives some mitigation under AG ¶ 20(a).

Applicant initially encountered marital problems when he separated from his wife in October 2005. Applicant's purchase of his condominium in April 2006 is not mitigating under AG ¶ 20(b). However, after discovering he could not meet the additional fees and child support, he tried unsuccessfully to modify the mortgage and sell the property. In late 2008, he attempted in vain to take out loans to meet the mortgage arrears. Even after foreclosure of the property in 2008, Applicant has kept his child support and other financial obligations current.

The documentation provided by Applicant shows he has satisfied two of the listed creditors, and unsuccessfully tried to take out loans to repay the other two lenders. Even though the creditors have not contacted him, he still owes the debt and is willing to negotiate a reasonable figure for repayment. The satisfaction of two creditors and willingness to address the other two accounts persuades me to conclude Applicant's debts are being resolved within the scope of both AG ¶ 20(c) and 20(d). The amount of mitigation he receives under the two mitigating conditions falls short of meeting his case under the financial guideline.

Whole-Person Concept

In evaluating Applicant's security clearance worthiness, I have examined the evidence under the disqualifying and mitigating conditions. 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 outcome of this case ultimately weighs in Applicant's favor under the whole-person concept based on his decision not to immediately walk away from his property after realizing he could not pay the overall increased costs. Though he tried to work out a reduced mortgage and sale of the property, the child support, increased condominium fee, and day-care, were too much for him to manage.

Though Applicant should never have purchased the property in April 2006, he attempted to modify the increased expense by reducing the mortgage or selling the

property. The attempts at modification or sale, while keeping his other bills and his child support current, demonstrate responsible action by Applicant under the circumstances.

Applicant is 47 years old. He served for 10 years in the United States Navy, receiving several medals and an honorable discharge. He has earned a tremendous amount of respect by his second-line supervisor and his customers over the past five years. Considering the entire record, I conclude that Applicant warrants a security clearance.

Formal Findings

Paragraph 1 (Guideline F):

FOR APPLICANT

Subparagraph 1.a

For Applicant

Subparagraph 1.b

For Applicant

Subparagraph 1.c

For Applicant

Subparagraph 1.d

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