



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-08128
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Fahryn E. Hoffman, Esq., Department Counsel
For Applicant: *Pro se*

December 21, 2010

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department's intent to deny or revoke his eligibility for a security clearance to work in the defense industry. The evidence shows Applicant has a mortgage loan that is past due in the approximate amount of \$72,000 and in foreclosure. This circumstance happened due to job layoffs and underemployment. Applicant and his wife have pursued a systematic approach to sell the home, but without success due to a difficult residential real estate market. They are now working with the lender to resolve the situation via a deed in lieu of foreclosure. Applicant has acted reasonably and responsibly under the circumstances. Accordingly, as explained below, this case is decided for Applicant.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on May 6, 2010, the Defense Office of Hearings and Appeals (the Agency) issued a statement of reasons (SOR) explaining it was unable to find it is clearly consistent with the national interest to grant Applicant access to classified information. The SOR is similar to a complaint, and it detailed the factual basis for the action under the security guideline known as Guideline F for financial considerations. The SOR also recommended that the case be submitted to an administrative judge to decide whether to deny or revoke Applicant's security clearance.

Applicant answered the SOR in a timely fashion and requested a hearing. The case was assigned to a judge on August 5, 2010. The case was reassigned to me September 7, 2010. The hearing took place September 17, 2010. The hearing transcript (Tr.) was received September 28, 2010.

The record was left open until October 29, 2010, to allow Applicant an opportunity to submit additional documentary evidence, if it became available, about the deed-in-lieu process. No additional information was received.

Findings of Fact

Applicant is a 30-year-old employee of a federal contractor. His educational background includes a bachelor's degree in mechanical engineering. He is currently pursuing a master's degree in management. He has worked as a mechanical design engineer for his current employer since August 2008. He is known as a reliable, competent employee as shown by the favorable recommendation of the company president and performance reviews.²

Applicant and his wife have been married since 2001. They have no children. Together, Applicant and his wife will earn a gross income of more than \$100,000 in 2010.³ Applicant is the primary bread winner, and his salary for 2010 is about \$85,000. Since June 2010, they have lived in a duplex apartment and pay about \$700 in monthly

¹ This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

² Exhibits J and K.

³ Exhibit M.

rent.⁴ They are living modestly and have no plans to upgrade by moving into a more expensive rental or buying a home.

The evidence shows Applicant has a mortgage loan that is past due in the approximate amount of \$72,000 and in foreclosure.⁵ This circumstance happened due to job layoffs and underemployment. Applicant and his wife have pursued a systematic approach to sell the home, but without success due to a difficult real estate market.⁶ They are now working with the lender to resolve the situation via a deed in lieu of foreclosure.⁷ In general, this is “[a] deed by which a borrower conveys fee-simple title to a lender in satisfaction of a mortgage debt and as a substitute for foreclosure.”⁸

The following chronology of events will place Applicant’s financial situation in context.⁹ The most relevant events are as follows:

1. Applicant completed his bachelor’s degree in May 2003, and he began his first job as a mechanical engineer the same month in State A. He accepted another job as an analyst in late 2004 and continued working in State A until early 2006.
2. Applicant and his wife moved to Florida in February 2006 to pursue a job opportunity with a family business connected to high-end or luxury homes. He worked as a production manager/engineer and his wife worked at the company as well doing administrative work.
3. They initially rented a home, as they had previously bought, lived in, and sold two homes.
4. As the business was going well, they opted to purchase a home in June 2006 for about \$300,000.
5. By about October 2007, Applicant and his wife saw business slowing, as it was at that time in many parts of the United States. Anticipating a layoff, Applicant started looking for another job. They also retained a real estate agent and listed the home for sale at \$296,900.
6. Comparable home prices started dropping, so they obtained approval for a \$25,000 unsecured loan to assist them in selling the house.
7. Applicant found a new engineering job in December 2007, but it required a long commute. He accepted it with a start date of January 2008 at a salary of about \$65,000, which was \$30,000 less than he made with the family business.
8. His spouse was laid off from the family business on December 24, 2007.

⁴ Exhibit O.

⁵ Exhibits 1, 2, 3, 5, and 6.

⁶ Exhibits A–F.

⁷ Exhibits G and H.

⁸ *Black’s Law Dictionary* 476 (Bryan A. Garner ed., 9th ed., West 2009).

⁹ See Exhibit I (time line prepared by Applicant).

9. Working with a new real estate agent in January 2008, they decided to pursue a short sale of the house and they vacated the property. They moved into a small boat they purchased and lived aboard it as the cost was roughly equal to rental property. The purchase was assisted by the \$25,000 unsecured loan.
10. His wife found employment in late January 2008 at a reduced wage.
11. By February 2008, the house was listed for sale at \$260,000.¹⁰ The price was then reduced periodically. For example, by December 2008, the price was reduced to \$220,000.
12. Applicant accepted a job offer from his current employer (a former boss) in July 2008. They, along with the boat, moved back to State A and Applicant began work the following month.
13. They continued living aboard the boat on a lake thereby requiring a long commute to and from work.
14. By July 2009, the house price was reduced to \$175,000. By April 2010, the price was \$160,000.
15. During the first quarter of 2008 through April 2010, the lender that held the mortgage turned down two short-sale offers in a process that took several months. A third short sale fell apart due to the buyer's health.
16. In about April 2010, Applicant and his wife initiated the deed-in-lieu process with the lender. Applicant reports the lender misplaced or lost their case file three times.
17. Also by April 2010, Applicant and his wife had grown weary of the long commute and their debt, so they created a plan to move into inexpensive rental property and sell the boat.
18. They moved into their current residence, a duplex apartment, in June 2010, and signed a one-year lease with rent of \$700 monthly. The boat was also placed on the market with the idea to use the sale proceeds to reduce debt as outlined in their written budget.¹¹ The boat is still for sale as of September 2010.
19. The deed-in-lieu process resumed in August 2010 after a call from the lender who had called about the short sale.
20. In September 2010, the lender indicated that the deed-in-lieu process could proceed if Applicant made a lump-sum payment of \$16,500 or signed a \$33,000 promissory note upon execution of the deed.¹²
21. As of September 17, 2010, Applicant and his wife have agreed to accept the lender's offer and they are awaiting the necessary paperwork to complete the deed-in-lieu process.
22. Their intentions are to remain in the rental property indefinitely, pay off their debt, which is not delinquent, and then work on adding money to savings and retirement accounts. In this regard, they presented a written budget outlining their

¹⁰ Exhibit A.

¹¹ Exhibits L and N.

¹² Exhibits G and H.

current income and bills and their future income and bills. In both cases, there is a positive net remainder of about \$500 monthly.

Besides the past-due mortgage loan, the credit reports from 2005, 2009, and 2010 reveal that Applicant has no other delinquent debts.¹³

Administrative or official notice was taken of the following well-known facts: (1) the recent turmoil in the U.S. mortgage industry, which continues to date; and (2) that Florida is one of the states that has been hit hard with foreclosures and related problems and delays in selling residential real estate.¹⁴

Law and Policies

This section sets forth the general principles of law and policies that apply to an industrial security clearance case. The only purpose of a clearance decision is to decide if an applicant is suitable for access to classified information. The Department of Defense takes the handling and safeguarding of classified information seriously because it affects our national security, the lives of our servicemembers, and our operations abroad.

It is well-established law that no one has a right to a security clearance.¹⁵ As noted by the Supreme Court in *Department of Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹⁶ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.¹⁷ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹⁸

¹³ Exhibits 4–6.

¹⁴ Tr. 96–97.

¹⁵ *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

¹⁶ 484 U.S. at 531.

¹⁷ Directive, ¶ 3.2.

¹⁸ Directive, ¶ 3.2.

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹⁹ The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.²⁰ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.²¹ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.²² In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of the evidence.²³ The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.²⁴

The AG set forth the relevant standards to consider when evaluating a person's security clearance eligibility, including disqualifying conditions and mitigating conditions for each guideline. In addition, each clearance decision must be a commonsense decision based upon consideration of the relevant facts and circumstances, the pertinent criteria and adjudication factors, and the whole-person concept.

The Government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.²⁵ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

Analysis

Under Guideline F for financial considerations,²⁶ the suitability of an applicant may be questioned or put into doubt when that applicant has a history of excessive indebtedness or financial problems or difficulties.²⁷ The overall concern under Guideline F is that:

¹⁹ ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

²⁰ Directive, Enclosure 3, ¶ E3.1.14.

²¹ Directive, Enclosure 3, ¶ E3.1.15.

²² Directive, Enclosure 3, ¶ E3.1.15.

²³ *Egan*, 484 U.S. at 531.

²⁴ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

²⁵ Executive Order 10865, § 7.

²⁶ AG ¶¶ 18, 19, and 20 (setting forth the security concern and the disqualifying and mitigating conditions).

²⁷ See ISCR Case No. 95-0611 (App. Bd. May 2, 1996) (It is well settled that "the security suitability of an applicant is placed into question when that applicant is shown to have a history of excessive indebtedness or recurring financial difficulties.") (citation omitted).

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.²⁸

Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information within the defense industry. Indeed, the practice of evaluating a person based on their record of financial responsibility (or lack thereof) is used in various industries. For example, the insurance industry uses credit-based insurance scores when determining insurance rates because the scores have been found to be effective in predicting future losses.

The evidence here supports a conclusion that Applicant has a history of financial problems or difficulties. This raises security concerns because it indicates inability or unwillingness to satisfy debts²⁹ and a history of not meeting financial obligations³⁰ within the meaning of Guideline F. The facts are sufficient to establish these two disqualifying conditions.

Under Guideline F, there are six conditions that may mitigate security concerns:³¹

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;

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;

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;

20(d) The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

²⁸ AG ¶ 18.

²⁹ AG ¶ 19(a).

³⁰ AG ¶ 19(c).

³¹ AG ¶ 20 (a) – (f).

20(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

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

Of those mitigating conditions, the most pertinent here are ¶¶ 20(a) and 20(b). Each is discussed briefly below.

Applicant receives credit in mitigation under ¶ 20(a), because his financial problems or difficulties occurred under circumstances that are unlikely to recur. His past-due mortgage is an aberration or outlier that is not representative of how he handles his financial obligations. And ¶ 20(b) applies too, because the conditions that resulted in his financial problems or difficulties were largely beyond his control—job layoffs, underemployment, and the difficult real estate market—and he acted responsibly under the circumstances. The evidence shows he quickly listed his house for sale, then changed it to a short sale and aggressively reduced the price on a systematic basis. He is now pursuing the deed-in-lieu process. Applicant and his spouse have made substantial efforts to resolve the past-due mortgage. Their biggest obstacle has been a difficult residential real estate market that is swamped with foreclosures. Of course, that circumstance is beyond their control.

Sometimes bad things happen to good people, and I am persuaded that is the situation here. This is not a case of an applicant consistently spending beyond his means and having a high-end lifestyle or standard of living. For example, buying a \$300,000 home on an annual income of more than \$100,000 is not unreasonable. Also, I am persuaded that Applicant is an otherwise financially responsible person who is endeavoring to resolve his financial problems or difficulties. Although the past-due mortgage is still unresolved, it does not raise doubts or questions about his judgment, reliability, and trustworthiness in a security-clearance context. Looking forward, it is most probable that Applicant will resolve this situation in time and that he will avoid similar problems in the future.

To conclude, Applicant has acted reasonably and responsibly under the circumstances, and I have no doubts or concerns about his security suitability or fitness. Applicant met his ultimate burden of persuasion to obtain a favorable clearance decision. This case is decided for Applicant.

Formal Findings

The formal findings on the SOR allegations are as follows:

Paragraph 1, Guideline F: For Applicant

Subparagraph 1.a: For Applicant

Conclusion

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Michael H. Leonard
Administrative Judge