



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



In the matter of:)	
)	
)	ISCR Case No. 10-00614
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: David A. Hayes, Esq., Department Counsel
For Applicant: William Savarino, Esq.

May 9, 2011

Decision

LYNCH, Noreen A., Administrative Judge:

On November 4, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) alleging security concerns arising under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing. DOHA assigned the case to me on February 24, 2011. A notice of hearing was issued on March 10, 2011, and the case was heard on March 24, 2011. Department Counsel offered six exhibits, which were admitted without objection as Government Exhibits (GE) 1-6. Applicant testified and submitted exhibits AE A through AE K at the hearing, which were admitted without objection. At Applicant's request, I kept the record open and Applicant timely submitted two exhibits that were marked as AE L and AE M. DOHA received the transcript (Tr.) on April 1, 2011. Based on a review of the pleadings, submissions,

testimony, and exhibits, I find Applicant met his burden regarding the security concerns raised. Security clearance is granted.

Findings of Fact

Applicant is a 58-year-old security analyst for a defense contractor, who graduated from college in 1982. He is married and has two children. He served in the U.S. Air Force from 1971 until 1995. He has held a security clearance since 1971. He has worked for his current employer since December 1994. (GE 1)

Applicant's wife served as an officer in the United States Navy for 20 years. She retired in October 2007. (AE I) Applicant's wife owned several rental properties before they were married. Applicant and his wife decided to engage in real estate investments. (Tr. 25) Their plan was to invest for four years. Applicant and his wife researched the housing market and believed they could be successful.

Applicant and his wife partnered with a real estate agent. They purchased newly constructed homes in a development. (AE A) After an initial payment on the houses, the real estate agent would sell the home. Applicant and his wife were successful in their endeavors. They realized a profit and the turn-around time was normally three to six months. (Tr. 26) Applicant and his wife sold four or five homes in 2004. (Tr.66)

In 2005, Applicant and his wife purchased a family residence for approximately \$850,000. He and his wife, two children and his mother-in-law reside in the house. They could easily afford the monthly mortgage based on their incomes. Also, they had each sold a prior home, and had money to serve as a down payment.

Applicant and his wife also own a retail business. The party store was a franchise when they bought it in 2005. (Tr. 59) They invested approximately \$100,000 in their business. While they do not take any income from the business, the business income pays its operational costs.

In May 2006, Applicant and his wife decided to invest in another house. They were advised that the home was newly constructed and was in the same development as the other homes they had previously sold. Applicant invested \$15,000 in the property that was due to sell for \$450,000. He and his wife obtained a home mortgage. Due to the economy downturn, the house did not sell. Applicant and his wife paid on the mortgage (\$2,683) for almost two years, but the house did not sell. (GE 3) They attempted three short sales on several occasions. (AE D, E and F) In fact, they had several buyers, but due to the lengthy process time with the bank, the buyers lost interest. They lowered the price; they improved the landscaping; they attempted a loan modification; (AE D) and they attempted to rent the house with an option to buy. (AE B)

Applicant contacted the credit union for a loan modification, when the house still had not sold by February 2008. (AE C) Applicant's wife, who had a prior account with the credit union, explained in her February 18, 2008, letter that they did not want to default on the loan nor did they want to have this property go into foreclosure. Applicant

and his wife asked that this be considered a hardship request. They again emphasized that they were amenable to a short sale. The credit union did not respond. (Tr. 34)

Applicant was never delinquent on any accounts for a 30-year period. He always paid his bills, and he had reserve money in savings accounts. He decided to take money out of his 401(k) to help pay the mortgage on the property that had not sold. They also took money out of their thrift savings account, and Applicant's wife sold one of her other properties. (Tr. 69) Eventually, Applicant and his wife exhausted their financial resources. Applicant managed to stay current on all expenses, except the investment property. His credit reports confirm that he had numerous accounts noted as "paid as agreed." (AE J)

Despite Applicant's attempts to present the credit union with several short sales, in 2009, the credit union took the home in lieu of the remainder of the mortgage. The amount of the property value was \$460,000. Applicant received a cancellation of debt from the credit union. The case is now closed. (AE I) The SOR alleges the indebtedness of the mortgage account as the only debt.

At the hearing, Applicant explained that this was a hard decision to make. He felt morally obligated to pay all his bills including the mortgage. However, there is no deficiency judgment owed. The case is closed. Applicant explained the situation in detail on his 2009 security clearance application. At no time was Applicant shirking his responsibility to his creditors. Applicant acknowledged that this is the only blemish on his credit report.

Applicant was also candid that his wife purchased properties before they were married. She has the responsibility for those properties. Applicant's name is not on those properties. Currently both properties have tenants in them. His wife also holds a security clearance, and is now working for a defense contractor. The foreclosure is also listed on her credit report.

Applicant's monthly net income is \$6,363. His wife also has an income of approximately \$8,200 per month. Applicant has a budget. Applicant received informal financial counseling. They have bank accounts and some savings. Applicant is current on his daily expenses. He has no car loan. They have a net monthly remainder of approximately \$3,420.

Applicant's employer describes him as an exemplary employee, who conducts himself with professionalism and is highly regarded by his peers. (AE K) He is a great asset to the company. His employer is aware of the financial issue concerning the investment property. He has never known Applicant to be in any financial difficulty in the time he has known him since 1991.

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The Government must present evidence to establish controverted facts alleged in the SOR. 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. . . ." ¹ The burden of proof is something less than a preponderance of evidence. ² The ultimate burden of persuasion is on the applicant. ³

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 the applicant may deliberately or inadvertently fail to protect 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." ⁴ "The clearly consistent standard indicates that security clearance

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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.” It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant had a delinquent debt in the approximate amount of \$450,000 for a home mortgage foreclosure in 2008. This debt occurred after Applicant’s wife ended her military career and decided to invest in real estate. Although the only delinquent debt that Applicant has had in a 30-year period, it was delinquent over a course of time when he could no longer pay the mortgage. Consequently, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

Applicant incurred the debt when he and his wife decided to invest in a home property in 2006 after they had successfully invested in a prior year. They researched the market and believed they would sell the home for a profit in a reasonable time. Despite many efforts, the home did not sell. They documented their many efforts to sell the home. They depleted their savings trying to pay the mortgage on this home. Prior to 2006, Applicant had no financial difficulties. Applicant consistently used sound judgment in his finances. The past-due mortgage situation is unlikely to recur. Applicant and his wife are no longer in the investment business. Consequently, Financial Considerations Mitigating Condition (FCMC) AG ¶ 20(a) (the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ *Id.*

recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment) applies.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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) applies. Applicant was successful in the military. He was successful in his second career. He bought and sold four homes successfully. He and his wife decided to buy a last property, but due to the housing market, the home did not sell. They paid the mortgage on the house for two years. They acted reasonably under the circumstances.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Applicant provided evidence of attempts to sell the property that he bought in 2006. He tried reducing the price, short sales, and a loan modification. He and his wife paid the mortgage for two years. He did not waver in his efforts.

The home was foreclosed and the debt was forgiven. Applicant completed financial counseling, developed a budget, and pays his monthly expenses. FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control) applies.

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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case as well as the whole-person factors. Applicant is 58 years old. He served honorably in the U.S. Air Force for more than 20 years. He is praised for his dedication to his country. He is described by his employer as an outstanding employee. He is a responsible parent and had no financial difficulties before 2008. Applicant was successful in the military and after leaving the military, in his employment with a contractor.

Applicant and his wife had a plan of investment strategies. After their military careers, they decided to enter the real estate market. They were successful. Applicant sold four homes. He purchased a new home for his family in 2005. He and his wife also bought a business. They invested their money after researching the market. Applicants's wife had previously purchased properties that she now rents. They had sufficient income to purchase the 2006 property with the expectation that it would sell in a short time and realize a profit.

The unexpected failed investment, combined with the housing market crisis in 2008, left Applicant with an inability to maintain his home mortgage and the monthly mortgage on the 2006 investment property. He documented and testified credibly that he did everything possible to sell the house. He worked to get the mortgage modified. He paid the mortgage for two years. At no time did he act in an unreasonable manner. Applicant was candid and forthright in the entire security clearance process. He disclosed his financial delinquency on his security clearance application. He was organized at the hearing and has shown that he is responsible with his finances. Applicant impressed me as a professional who is ethical and trustworthy. I have no doubts about his sincerity and find that it is clearly consistent with the national interest to grant him a security clearance.

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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Clearance is granted.

NOREEN A. LYNCH.
Administrative Judge