



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



In the matter of:)	
)	
)	ISCR Case No. 10-00711
)	
Applicant for Security Clearance)	

Appearances

For Government: Kathryn D. MacKinnon, Esq., Deputy Chief Department Counsel
For Applicant: *Pro se*

May 10, 2011

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department's intent to deny his eligibility for a security clearance to work in the defense industry. Applicant is indebted to two mortgage companies for a property that is in foreclosure. Applicant provided no information on the status of the foreclosure or the status of any remaining financial obligation he may have to his creditors. He did not present sufficient evidence to rebut, explain, extenuate, or mitigate the security concerns stemming from foreclosed property. Accordingly, as explained below, this case is decided against Applicant.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on July 13, 2010, the Defense Office of Hearings and Appeals (the Agency) issued a statement of

¹ This case is adjudicated under Executive Order (EO)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 replaces the guidelines in Enclosure 2 to the Directive.

reasons (SOR) explaining that it was not 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.

Applicant answered the SOR and requested a decision without a hearing. Department Counsel submitted the Government's written case on October 1, 2010. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on October 6, 2010. He did not object to the items appended to the Government's brief. These items, with exception of the SOR (identified as Item 1) and the Answer (identified as Item 2), are admitted as Government's Exhibits (GE) 3 through 6.

In turn, Applicant submitted four responses with documents attached, dated October 27, 2010, February 15, 2011, February 28, 2011, and March 28, 2011. These responses with their attachments are admitted as Applicant's Exhibits (AE) A through D, respectively, without objection from the Government.

The case was assigned to me on April 28, 2011.

Findings of Fact

Applicant is a 32-year-old employee of a defense contractor who works as a software engineer. Employed since July 2009 by his current employer, this is Applicant's first application for a security clearance.²

The SOR alleges and Applicant admits that he is indebted to two mortgage companies for \$527,000 on a property that is currently in foreclosure. Applicant purchased the property with his now estranged wife in 2006. The couple made timely payments until February 2007, when Applicant lost his job. Although Applicant found employment relatively quickly, he earned less money, causing his inability to pay the mortgages. The record does not indicate when Applicant began to fall behind on his payments. As a result, the mortgage companies foreclosed on the home. Nor does the record contain information explaining who, if anyone, was living in the property at the time of the foreclosure. According to his security clearance application, Applicant moved out of the residence in early 2007. In his subject interview, Applicant says that his wife also moved out of the property, but he did not indicate when.³

Applicant made at least one attempt with the mortgage companies to rehabilitate the loans. Both lenders rebuffed his efforts. Applicant provided documentation showing that as of March 2011, the holder of the second mortgage charged off his loan account.

² GE 4.

³ GE 2 - 6.

However, he provided no accompanying explanation about how this action affects his obligation to the lender. The home was scheduled to be sold at auction on April 7, 2011. Applicant provided no information confirming if the sale actually occurred, and if it did, how it affected his obligations.⁴

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 to be 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, administrative judges apply the guidelines 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant 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 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.

⁴ GE 3; AE A, AE C, AE D.

Section 7 of EO 10865 provides that adverse 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 under AG ¶ 19. Two are potentially applicable in this case:

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

Due to the loss of a higher-paying job sometime in 2007, Applicant became unable to pay his mortgage loans. As a result, the lenders foreclosed on the property. To date, foreclosure remains unresolved. The evidence is sufficient to raise the above disqualifying conditions.

Under AG ¶ 20, there are six conditions that may mitigate security concerns:

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;

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.

Applicant's circumstances merit partial mitigation under AG ¶ 20(b). Two life events beyond his control may have contributed to Applicant's financial problems: his employment issues and his marital separation. Although Applicant made an attempt to rehabilitate or modify his mortgages, he has not provided information on his other efforts, if any, to resolve these debts. Similarly, Applicant failed to provide any evidence explaining what happened with the property after he and his wife moved out. I do not know if Applicant continued to help his wife pay for the home, if the couple rented the home to a third party, or if the couple just walked away. Lacking more substantial information, I cannot apply the second prong of AG ¶ 20(b), that he acted responsibly under the circumstances.

The lack of information also makes it difficult for me to determine the applicability of AG ¶¶ 20(a), (c), and (d). AG ¶¶ 20(e) and (f) are not raised by the circumstances of this case. While it appears that Applicant had good credit and the ability to maintain his financial obligations before he lost his high-paying job in February 2007, I do not know if he was stretched to his financial limits when he purchased his home. Consequently, I cannot ascertain whether the loss of his home was truly an isolated event caused by his change in income or if the change in income just hastened the inevitable. Applicant has not submitted any evidence that he has received financial counseling or that the financial issues caused by his foreclosure are resolved or under control. He has not presented any evidence about the current status of the foreclosure. I do not know if the home was actually sold at auction, thus creating a deficiency balance for which Applicant is responsible, or if the lenders have forgiven the loan balances as indicated by tax form 1099-C. Therefore, I cannot find that he has made a good-faith effort to resolve his indebtedness.

In light of the sparse evidence provided by Applicant, I find that his financial problems are recent and ongoing. I am unable to determine that they are unlikely to recur. They continue to cast doubt on Applicant's current reliability, trustworthiness, and good judgment. In sum, I find that financial concerns remain despite the presence of some mitigation.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. In doing so, I have also considered the whole-person concept. The limited information has not convinced me that Applicant's finances are sufficiently in order to warrant a security clearance. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and

suitability for a security clearance. I conclude Applicant has not mitigated financial considerations security concerns.

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
Subparagraphs 1.a-1.b:	Against Applicant

Conclusion

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

Nichole L. Noel
Administrative Judge