



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



In the matter of:)	
)	
-----)	ISCR Case No. 10-01014
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro se*

October 27, 2010

Decision

LYNCH, Noreen A., Administrative Judge:

On June 2, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). DOHA acted 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).

Applicant timely answered the SOR and requested a hearing. He admitted the single allegation in the SOR. DOHA assigned the case to me on July 26, 2010. DOHA issued a Notice of Hearing on August 16, 2010, and I convened the hearing as scheduled on September 10, 2010. Department Counsel offered seven exhibits, which were admitted without objection as Government Exhibits (GE) 1-7. Applicant testified and presented one exhibit, which was admitted without objection as Applicant Exhibit (AE) A. DOHA received the transcript (Tr.) on October 19, 2010. Based upon a review

of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is a 66-year-old employee of a defense contractor. After high school, he attended a community college, earning an associate's degree. He served in the United States Army (USA) from March 1967 until 1969. He held a security clearance during his military service. He has held a current clearance since 2004. Applicant has been with his current employer since January 2004. (GE 1)

After his discharge from the Army, Applicant began employment in the manufacturing field. He also attended college classes. He advanced from a stock clerk position to Vice President of Operations for four companies. (AE A) As part of his position responsibilities, he was accountable for millions of dollars in sales and budgets.

Applicant married in 1974. He has two adult children from his marriage. (Tr. 17) His wife left the family in 2002. They divorced in 2002. Applicant incurred many expenses as a result of the separation and divorce. Applicant's wife was awarded \$1,800 a month in alimony based on Applicant's income at the time. Shortly after that, his salary was cut due to economic downturns. He was unemployed from February 2003 until September 2003. (GE 1) Applicant used his savings and retirement account to support himself and pay for his home and the alimony.

Applicant's son and daughter moved into the family home in order to pool resources. Applicant's daughter and son were gainfully employed, and they contributed to the house payment. The three of them lived in the family home. The home had been purchased in 2001 for a price of \$240,000. The mortgage payment was \$1,200. Applicant's daughter would have a share in the future equity of the home in return for her financial contributions. (Tr. 52)

Applicant refinanced his home in 2006. His daughter, who works for a bank, decided to purchase her own home. The proceeds from the refinancing loan were used for her to purchase her own home. She testified at the hearing that the loan was approximately \$400,000, with an adjustable rate. In approximately 2007, the rate increased such that the mortgage payment increased to \$2,500 a month. Applicant was able to pay the greatly increased mortgage payment until about February 2009. (Tr. 42).

Applicant's son was still living in the home, but his business failed. He built custom race and sand cars. The business was profitable until the market turned and then the market for luxury items disappeared. As a result, Applicant's son had no income. He could not afford to help pay the mortgage payment. Applicant had planned to turn the house over to his son, but his son could not afford the payment.

Also in 2007, Applicant's parents needed care due to their declining health. Applicant's father was diagnosed with cancer and his mother was in final stages of

Alzheimer's disease. His father could no longer work. Applicant helped them financially and moved in with them to help care for them. When his parents died, Applicant remained in the home. He and his siblings will eventually sell the home. He will receive his share of the inheritance. For the current time, he is living in his parent's home. He is also paying the rent because the house is still mortgaged.

Applicant found himself in a difficult financial situation. He was helping his son pay the mortgage on the family home and helping his parents financially. He knew that the family home needed to be sold. Applicant contacted the bank and asked for a loan modification. The bank refused. (AE A)

In June 2009, Applicant, with his daughter's help, decided to start a process with the bank for a "short sale" of the family home. The process is a lengthy one. The bank is slow to process the paper work and some people who have been interested in buying the home have been discouraged and decided to look for another home to buy. Applicant testified that at least four different people wanted to buy the house but could not wait for the process.

Applicant consulted an attorney who advised him to file for bankruptcy. Applicant believed that he had a duty to pay his debt. He had lived within his means for 47 years and had been responsible with his financial affairs. He did not want the stigma. Applicant has concentrated on expediting the "short sale." He has done everything he could possibly do at this time. He is current on his debts. Applicant earns approximately \$50,000 a year. He has about \$8,000 in savings. (GE 2) He owes less than \$1,000 on his car note.

The SOR alleges one delinquent debt, a past-due mortgage account for \$27,555. (GE 7) The home has not been foreclosed. Applicant does not know the reason. Applicant's state has an anti-deficiency statute. When the home is sold in a short sale, Applicant is not responsible for any difference or note amount that might remain. (Tr. 38)

Applicant's current employer describes him as an exemplary employee. Applicant displays a high level of trust and confidence. He exhibit the highest level of professionalism. He accomplished his duties in a reliable manner. He recommends Applicant for retention of his security clearance.

Applicant submitted other letters of reference from colleagues who have known him for many years. Applicant is described as someone who is flawless in his responsibilities. He is very conscientious. Applicant takes pride in his work. He is intelligent and trustworthy.

At the hearing, Applicant was forthright and candid about his financial situation. He believes that he has shown that he is trustworthy and has managed his affairs his entire life in a responsible manner. After his divorce, he incurred unexpected expenses. He had no idea that his son's business would fail and that he would not be able to pay a

part of the mortgage on the family home. At the same time, Applicant had a duty to help his elderly parents. He acted responsibly in trying to sell the house.

In the last month, Applicant has had another set of potential buyers for the “short sale.” His daughter, who has professional experience in the banking field, is helping Applicant. Applicant’s daughter testified that the potential buyers made an offer and are very interested in the home. The bank is helping to expedite the “short sale” given Applicant’s situation.

Policies

When evaluating an applicant’s suitability for a security clearance, the 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, which must be considered 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, 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, 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 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.

Section 7 of Executive Order (EO) 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. Under AG & 19(a), an inability or unwillingness to satisfy debts[@] is potentially disqualifying. Similarly under AG & 19(c), Aa history of not meeting financial obligations[@] may raise security concerns. Applicant has approximately \$30,000 past due on his mortgage account. His credit reports confirm the debt. The evidence is sufficient to raise these disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where Athe 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.[@] Applicant has never had any financial difficulties prior to a divorce, alimony, unemployment, and downturn in the real estate market which has affected his ability to pay the mortgage. These events were beyond his control. They are not likely to recur. This mitigating condition applies.

Under AG & 20(b), the disqualifying condition may be mitigated where Athe 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.[@] Applicant’s divorce, and separation, as noted above, were beyond his control. He acted responsibly when his mortgage increased to \$2,500 a month. His son’s business failed and he could no longer help with the payments. Applicant was unable to sell the house due to the real estate market. He has acted responsibly by trying to get a loan modification. He is now in the process of a “short

sale.” He consistently showed reliability. Applicant consistently acted responsibly in paying his other debts. His separation and divorce exacerbated any financial difficulties. He helped his son and daughter and his elderly parents. This mitigating condition applies.

Evidence that 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 is potentially mitigating under AG & 20(c). Similarly, AG & 20(d) applies where the evidence shows the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. Applicant has not obtained formal financial counseling. Applicant has a history of good-faith efforts in paying bills until this unusual situation occurred in 2009. He has sufficient income to pay his current bills. His efforts are sufficient to carry his burden in this case. I conclude these mitigating conditions partially 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 must 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 and conclude they are sufficient to overcome the Government’s case. Applicant is a mature, responsible individual. He served in the military from 1967 until 1969. He held a security clearance during his service without incident. He has held a current clearance since 2004 with his employer. He is praised by his employer for his exemplary work.

Applicant’s first marriage ended in divorce. He paid \$1,800 a month in alimony to his wife. He has risen in his professional field. He has had unemployment which caused him to use his savings and retirement account in 2003. He refinanced his home and found himself unable to pay the huge increase in the monthly mortgage due in part to

his son's failed business. Applicant has been a good father and son. He helped his elderly parents until they died. At the hearing, Applicant was candid that this has been the only time in his life that he has an unpaid debt. He believes this is a single, isolated event. I agree with him. Counsel did not dispute the fact that Applicant acted responsibly nor that Applicant has made good faith efforts. Applicant expects to complete a "short sale." He will also receive money from his inheritance.

Overall, the record evidence leaves me without questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising under 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: FOR APPLICANT

Subparagraphs 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 eligibility for a security clearance. Eligibility for access to classified information is granted.

NOREEN A. LYNCH
Administrative Judge