



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



In the matter of:)
)
) ISCR Case: 10-01242
)
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: *Pro se*

June 13, 2011

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the record evidence, eligibility for access to classified information is denied.

On October 12, 2009, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On September 1, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns 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 Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the adjudicative guidelines effective within the Department of Defense for SORs issued after September 1, 2006.

On September 28, 2010, Applicant filed an answer to the SOR and requested that the case be decided on the written record in lieu of a hearing. On January 30, 2011, Department Counsel prepared a File of Relevant Material (FORM) containing nine Items

and mailed Applicant a complete copy on January 31, 2011. Applicant received the FORM on February 9, 2011, and had 30 days from its receipt to file objections and submit additional information. Applicant did not submit other documents. On April 4, 2011, DOHA assigned the case to me.

Findings of Fact

In his answer to the SOR, Applicant admitted the sole allegation contained in ¶ 1a. His admission is incorporated into the following findings.

Applicant is 46 years old. He is married. He has two children and two step-children. He served in the U.S. Air Force from July 1982 to September 1983, while attending the Air Force Academy. He earned a bachelor's degree in 1988 and a master's degree in 2002. He did additional graduate work from 2005 to 2007. From 1988 to 1995, he worked as an electronics engineer for the U.S. Air Force. He was a project manager for an electronics company from 1995 to 2009. He began a Director of Engineering position with a federal contractor in June 2009. He held a security clearance while working for the U.S. Air Force. (Item 4.)

After submitting an e-QIP in October 2009, Applicant met with a government investigator in November 2009 to discuss information in it and delinquent accounts listed on an October 2009 credit bureau report (CBR.). During that interview, he stated that he purchased a home in October 2005 with zero down and an adjustable rate mortgage. He also secured a second mortgage on the property. In December 2008 the adjustable loan rate increased to \$1,800 a month and he was not able to manage the mortgage payments. Both mortgages became delinquent in January 2009 after he stopped making payments. Applicant contacted the mortgagors, attempting to revise the terms of the second loan and arrange a short sale to resolve the first loan. He was unsuccessful, as the housing market began experiencing a serious collapse. At the time of the interview, the property was in foreclosure. The balance on the first loan was \$537,000 with a past due amount of \$35,000. The balance on the second mortgage was \$130,000 with a past due amount of \$12,000.¹ (Items 2, 8.)

In June 2010 Applicant responded to Interrogatories regarding the \$130,000 debt owed on the second mortgage that appeared on a March 2010 CBR. He acknowledged that his last payment was in January 2009. Because that mortgage was tied to the first mortgage, he asserted that it was forgiven under the applicable state law when the first mortgage was foreclosed. (Item 7.) He did not provide documentation from the mortgage company supporting that assertion, such as an Internal Revenue Service Form 1099-C (Cancellation of Debt) or other material indicating that the matter was resolved.

¹In his October 2009 e-QIP, Applicant stated that he owed \$850,000 on said home, but that the value was \$370,000. (Item 4.)

Applicant submitted his monthly budget. The family's net income is \$7,900. Their expenses are \$6,120, which includes a \$2,600 mortgage payment.² He also pays approximately \$1,147 on other monthly debts, leaving a remainder of \$670 at the end of the month.

Applicant offered no evidence of a plan to resolve the debt owed on the second mortgage. He repeatedly indicated that he is not obligated to pay it. (Item 2.) He has not obtained credit counseling. He provided no evidence concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability.

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 (AG) 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, 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(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 contained in the record.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." 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."

²This mortgage payment is made on a home that Applicant has owned since August 2000. He rented out that house when he purchased and moved into the house, which is the subject of the SOR, in October 2005. That is the house which went into foreclosure in January 2009. (Items 4, 7.)

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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline 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.

AG ¶ 19 notes two disqualifying conditions that could potentially raise security concerns in this case:

- (a) inability or unwillingness to satisfy debts; and

- (c) a history of not meeting financial obligations.

In January 2009 Applicant defaulted on a \$130,000 second mortgage. He asserted that he is no longer responsible for paying or resolving it. He provided no documentary evidence supporting his contention. The evidence is sufficient to raise these two potentially disqualifying conditions.

After the Government produced substantial evidence of those two disqualifications, the burden shifted to Applicant to produce evidence and prove a mitigating condition. AG ¶ 20 sets forth conditions that could mitigate financial security concerns:

- (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;

(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;

(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;

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

(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

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

Because Applicant's delinquent mortgage debt is ongoing and unresolved, there is insufficient evidence to support a finding that the indebtedness is unlikely to recur or continue. Hence, AG ¶ 20(a) does not apply. Although Applicant's mortgage problems are the consequence of a national housing crisis, a situation beyond his control, he did not submit sufficient evidence documenting his attempts to responsibly manage the debt once it accrued, as required under AG ¶ 20(b). Applicant established no mitigation under AG ¶ 20(c), AG ¶ 20(d), or AG ¶ 20(e). He did not submit evidence that he received credit counseling or that that \$130,000 debt is under control. He did not present evidence that he made a good-faith effort to pay or resolve this debt.³ He asserted that the second mortgage was forgiven, but did not submit proof to support that assertion. AG ¶ 20(f) is not applicable.

³ The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of Financial Considerations Mitigating Condition 6 [now Mitigating Condition 20(e)], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of Financial Considerations Mitigating Condition 6.

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).

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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They include the following:

- (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. Applicant is a mature individual, who has worked for a defense contractor since June 2009. He worked as a civilian for the U.S. Air Force from November 1988 to November 1995. He held a security clearance during those years.

In November 2009 Applicant learned of the Government's concerns relating to his delinquent second mortgage. In June 2010 he completed interrogatories seeking information regarding the resolution of said debt. In September 2010 he received an SOR that notified him that the \$130,000 unpaid second mortgage debt raised a security concern. In January 2011 the Government filed the FORM. For over a year, he has been on notice that said debt was creating security concerns and potentially affecting his employment. Despite that knowledge, he did not provide proof to corroborate his statements that the second mortgage was resolved with the foreclosure action on the first loan. The record contains insufficient other evidence about his character, trustworthiness, or responsibility to mitigate these concerns or make their continuation less likely.

Overall, the record evidence creates sufficient doubt as to Applicant's present eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, 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.

SHARI DAM
Administrative Judge