



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



In the matter of:)
)
) ISCR Case No. 10-01756
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: John Griffith, Esq.

April 7, 2011

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has not mitigated Financial Considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On August 19, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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) effective after September 1, 2006.

Applicant answered the SOR on September 24, 2010, and requested a hearing before an administrative judge. The case was assigned to me on October 26, 2010. DOHA issued a notice of hearing on December 7, 2010, and the hearing was convened as scheduled on January 11, 2011. The Government offered Exhibit (GE) 1 through 6,

which were admitted without objection. The Applicant offered Exhibit (AE) A through W, which were admitted without objection, called one witness, and testified on his own behalf. The record was left open for receipt of two additional documents, which were received on January 26, 2011. They were marked and admitted without objection as AE X and AE Y. DOHA received the transcript of the hearing (Tr.) on January 21, 2011.

Findings of Fact

Applicant is a 49-year-old employee of a defense contractor. He is single and has one adult child. He has held a security clearance for approximately ten years through his employment with a government contractor. (GE 1; Tr. 32, 49-50.)

The SOR alleges two delinquent debts. The first debt is a delinquent mortgage, as listed on credit reports obtained in 2009 through 2011. As of a credit report dated January 11, 2011, Applicant was past due \$26,780 on this mortgage (SOR 1.a.). Applicant admitted this debt in his Answer. (Answer; GE 6.)

Applicant's mortgage debt pertains to his second home, purchased in April 2005. He financed the home through a single mortgage of approximately \$382,410. The mortgage had a flexible interest rate that could change on the first day of each month and range from the lowest rate of 3.500% to 9.950%. The loan was a negative amortization loan, which Applicant claims was never revealed to him by the lender. (GE 2; GE 3; GE 4; GE 5; GE 6; AE X; AE Y; TR. 33-36, 54-60.)

Applicant purchased the house for his fiancée to live in. She rented the property from the Applicant for the exact amount of the mortgage payment each month, from the date of purchase in April 2005 through November 2007. However, when their relationship terminated in approximately November or December of 2007, his fiancée moved out of the property and stopped making payments to him. Applicant ceased making payments on the mortgage at that time. He claims that the interest rate had adjusted up and his payments went from \$1,800 per month to \$4,000 a month. He could not afford the payments. Applicant has not made a payment on his mortgage since November 2007. He testified that he applied for a loan modification, but it was denied because the loan was a negative amortization loan. He then decided to "walk away" from the home. He made no attempts to sell or rent the property. He felt that he could not sell the property because the mortgage "had penalties built in" and that the value of the house had declined below what he owed on his mortgage. (GE 2; Tr. 33-40, 53-66, 70-73.)

He testified that in May 2008 the home was sold through a foreclosure sale. He believes that the property was resold; however, he does not know how much money the bank received in the sale. He does not believe he has any further financial obligations on this property and he has taken no actions to investigate or repay the debt as listed on his credit reports. He indicated that the \$27,000 debt listed on his credit reports represented the amount he was past due on his mortgage when the home was foreclosed upon in May 2008. (GE 3; GE 4; GE 5; GE 6; Tr. 40-42 73-77.)

The second debt listed in the SOR (SOR 1.b.), was alleged to be owed to a collections agent for a debt placed by a telecommunications company in the approximate amount of \$295.00. Applicant disputed this delinquent account and it has been removed from Applicant's credit reports. The creditor determined that Applicant was "not responsible for this bill." (Answer; GE 2; AE O.)

Applicant's assets include a home he purchased in 2003 for approximately \$205,000 (which has a second mortgage of \$50,000). He currently lives in his first home and testified that he has never missed a mortgage payment on that property. He earns \$1,836 bi-monthly, after taxes and testified that he makes enough money to cover his monthly expenditures. He has approximately \$11,419 in his saving account and \$7,436 in his checking account. Additionally, he has a 401(k) plan valued at approximately \$100,918. He estimates his total net worth to be \$248,657. (GE 2; AE Q; AE R; AE S; AE T; AE U; AEV; AE W; Tr. 43-47.)

Applicant's credit reports indicate that he is current on all of his other debts. He has taken a number of on-line financial classes offered by American Financial Solutions including: setting financial goals and creating a budget; banking relationships; understanding credit and credit reports; an introduction to borrowing; an introduction to investing; identity theft and predatory lending; and your financial life for young adults. (GE 3; GE 4; GE 5; GE 6; AE G; AE H; AE I; AE J; AE K; AE L; AE M; Tr. 47-48.)

Applicant's witness attested to his trustworthiness and noted that Applicant does not live beyond his means. Applicant also presented a number of letters of recommendation from co-workers, supervisors, and friends. These letters indicate Applicant is a man of "integrity" and performs well at his job. Additionally, he has received a certificate of appreciation from his employer for his efforts on a project. (AE A; AE B; AE C; AE D; AE F; AE N; Tr. 26-32.)

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 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 contained in the record.

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 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.

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, as follows:

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 concern under AG ¶ 19. One is potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts.

Applicant has delinquent mortgage debt and is unwilling to pay his obligations. He has the burden of presenting sufficient evidence to show that he no longer owes on his mortgage and he has failed to do so. He has not presented any documentation from the bank establishing that the home was foreclosed upon or that Applicant has been relieved of liability on the loan.¹ He willingly took on the financial obligation of a second home for his fiancée. When the relationship terminated, Applicant did not take any steps to pay the mortgage or otherwise dispose of the property, other than requesting a loan modification, which was denied. He has assets totaling \$248,657 and has the funds available to satisfy this debt. However, he has elected not to contact the bank or satisfy this debt. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

(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; and

(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.

Applicant took out the mortgage alleged in SOR subparagraph 1.a. to finance the purchase of his second home for the use of his fiancée. He agreed to the terms of the loan. When his fiancée moved out and he was not able to get a loan modification, he defaulted on the loan. While the end of his relationship may have been beyond Applicant's control, it is his behavior after the relationship with respect to the mortgage that is troubling. Applicant made no attempts to make a single payment on the mortgage on his own. He has not contacted the creditor since walking away from the property. He has not presented sufficient documentation to establish that the debt is satisfied through

¹ The Board has previously noted that it is reasonable for a Judge to expect applicants to present documentation about the satisfaction of individual debts. See, e.g., ISCR Case No. 06-17520 at 2 (App. Bd. Sep. 20, 2007).

foreclosure. Applicant's behavior is not responsible. He has not shown himself to be reliable, trustworthy, or exercising good judgment. He has presented nothing from the creditor to indicate that the problem is under control or that he has acted responsibly under the circumstances, with respect to his mortgage debt. AG ¶¶ 20(a), 20(b), and 20(d) are not mitigating.

Applicant has received counseling on his finances through an on-line program in money management. However, his counseling bears little indication that he is acting responsibly with respect to his delinquent mortgage debt. In order to be fully applicable, Applicant must demonstrate that there are clear indications that the problem is being resolved or is under control. He failed to present sufficient evidence that his mortgage debt is resolved or under control. AG ¶ 20(c) is not fully applicable.

Applicant disputed the validity of his indebtedness to the creditor listed in allegation 1.b., and the creditor affirmed that the debt was not Applicant's. AG ¶ 20(e) applies, but is limited in its applicability to allegation 1.b.

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):

- (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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is well respected by his colleagues, managers, and friends. Yet, he has made questionable financial choices that do not demonstrate the judgment, reliability, or trustworthiness needed to hold a security clearance. He did not document any attempt to resolve his delinquent mortgage debt. There are significant unresolved concerns about Applicant's financial choices and judgment.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the 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
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	For 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.

Jennifer I. Goldstein
Administrative Judge