



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



In the matter of:)
)
) ISCR Case No. 10-02803
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

November 30, 2011

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, Financial Considerations and Guideline E, Personal Conduct. Applicant's eligibility for a security clearance is granted.

Statement of the Case

On March 2, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations and Guideline E, Personal Conduct. 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), effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR (Answer) on March 22, 2011. He requested a hearing before an administrative judge. I was assigned to the case on June 10, 2011. A notice of hearing was issued on August 2, 2011, setting the hearing for August 23, 2011. The hearing was convened as scheduled. The Government offered exhibits (GE) 1 through 6, which were admitted into evidence without any objection. Department Counsel's exhibit index was marked as hearing exhibit (HE) I. Applicant testified and offered exhibits (AE) A through H that were admitted into evidence without any objections. The record was left open for submission of additional evidence. Applicant timely submitted AE I through P that were admitted into evidence without objection. Department Counsel's transmittal letter and emails between the parties related to the post-hearing submissions are marked as HE II through V. On November 16, 2011, Applicant submitted one additional exhibit (AE Q) after the record closed, and I allowed its inclusion into the record. DOHA received the hearing transcript (Tr.) on October 19, 2011.

Findings of Fact

In Applicant's Answer, he admitted all the Guideline F allegations, but denied deliberately falsifying his financial information in his security clearance application. The admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits, I make the following findings of fact.

Applicant is 47 years old. He is married and has four children, including one step-child. He has worked as a station chief for a defense contractor since August 2009. He holds a master's degree. He is a retired Air Force fighter pilot. He served in both Desert Storm and Operation Iraqi Freedom (OIF) flying combat sorties. He was awarded three Distinguished Flying Cross (DFC) decorations for his aerial actions during OIF. He also received the Purple Heart as a result of receiving wounds during the Khobar Towers bombing in 1996. He currently holds a clearance and has held a security clearance for 20 years.¹

Applicant's conduct raised in the SOR includes: (1) being delinquent on a mortgage loan of over \$1,608,000, a charged off account for \$96,181, a collection account for \$104,000. (SOR ¶¶ 1.a - 1.c); and (2) making false statements in response to security clearance application questions in December 2009 concerning his financial record (SOR ¶ 2.a). The debts are reflected in credit reports dated December 29, 2009, and February 8, 2011.²

In 2006 Applicant retired from the Air Force. He decided to move to an island location to begin his retirement life. In December 2006, he bought a 56 foot sailboat to live on. He paid about \$155,000 for it and his monthly payments were about \$1,200. He financed the boat through Bank K. While he was living in this location, he became

¹ Tr. at 5-6, 44, 47; GE 1; AE A..

² GE 4-5.

acquainted with a businessman who owned a shopping center and other real estate interests. The shopping center had 12 businesses located within it, which produced the revenue for the shopping center. Applicant decided to purchase the shopping center and become its property manager. The property was purchased in June 2007 by Applicant for over \$14 million. Although the purchase agreement³ refers to a \$2.8 million down payment by Applicant, he states he did not pay any down payment amount. He did secure a loan from a Bank (Bank B) to finance the purchase. There is no documentation for this loan in the record and it does not appear on any credit reports. He and his wife formed a limited partnership as the owners of the shopping center.⁴

Applicant also purchased a home from the same businessman who owned the shopping center. The financing of the home was tied into the financing for the shopping center. The home had mortgages in the amount of about \$1.8 million. These are the debts reflected in SOR ¶¶ 1.a and 1.c. These loans were also received from Bank B.⁵

In early 2008, after purchasing the shopping center, Applicant began to feel like something was wrong with the transaction. He worked hard at filing the empty tenant locations in the shopping center and was using the rental income to meet all of his obligations. However, the recession hit in 2008 and 2009 which significantly affected the shopping center. Additionally, it appeared that several of the shopping center tenant leases had been fabricated. He believed that the seller of the shopping center and the appraiser colluded to arrive at an unreasonable value for the shopping center. He was not represented by his own attorney when he purchased the property. The seller's attorney acted for both parties. In March 2009, Applicant received a report from an accountant hired to review the books of the shopping center. This report showed that the shopping center's assets were overvalued and its liabilities were undervalued. Applicant continued to make his payments through the summer of 2009. Shortly thereafter, he received a letter from Bank B indicating that all future tenant payments would be made directly to Bank B. He hired an attorney in September or October of 2009. His attorney has been negotiating with Bank B since October of 2009 to arrive at a settlement whereby Applicant would execute deeds in lieu of foreclosure and consent to confession of judgment on both the shopping center property and his residence and in return Bank B would not hold Applicant responsible for any deficiency judgments. This settlement has yet to be executed. The most recent correspondence from Applicant's attorney on August 19, 2011, indicated that he planned to meet with the new bank manager after Labor Day. That meeting confirmed that, as of November 16, 2011, the bank was still willing to have Applicant execute a deed in lieu of foreclosure on the residence and the bank would dismiss the foreclosure action and waive any deficiency judgment. He also contacted the FBI about possible fraudulent practices by the sellers.⁶

³ The purchase agreement contains only the seller's signature, See AE M.

⁴ Tr. at 49-52, 78-79; GE 3; AE M.

⁵ Tr. at 54, 118, GE 3-4.

⁶ Tr. at 54, 56, 118- 121; AE C-D, Q.

In August 2009, Applicant sought a moratorium from Bank K for his sailboat payments. He was about to embark on a new job located overseas where he would be out of the United States for several weeks at a time. He believed he reached a verbal agreement with Bank K whereby it would place a 90-day payment moratorium on his sailboat payments. While he was overseas working his new job, the boat was repossessed for nonpayment and taken over by a collection company (SOR ¶ 1.b). He began making regular payments to the collection company on this debt beginning in August 2010 and has continued those payments through September 2011. Most payments were \$250, but two payments were for \$5,000 and \$3,642. He intends to continue paying this debt until it is resolved.⁷

On December 13, 2009, Applicant completed his security clearance application. He answered “no” to the questions asking if he had defaulted on any loans or was currently 90 days delinquent on any loans. He did not intend to deceive the government about his finances at the time he filled out the application. His August 7, 2009, credit report shows no delinquent accounts. He believed the boat loan payments were under a moratorium and not past due. He was told by Bank B that while they negotiated the outcome for the shopping center property and his residence, the bank would not report these delinquencies. He filled out the application after just coming back from his overseas job and without the benefit of a recent credit report. He knew based upon his past experience in the Air Force that a credit check would be conducted. Based upon this knowledge, it would be foolish for him to attempt to deceive the government about his financial condition. He stated “no” to the questions because he believed those were the correct responses at the time. I find Applicant’s testimony credible.⁸

Applicant is current on all his other debts. He has borrowed some money from his father, but there is no time deadline for repayment. He owns a home in another state that is currently being rented. He rents a home in his state of residence. His current position requires him to be working overseas for six weeks, and then return home for six weeks on a continuous cycle. He recently received an advance from the publisher of a book he wrote about his combat missions in the Air Force.⁹

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 used in evaluating an applicant’s eligibility for access to classified information.

⁷ Tr. at 67-84; AE K, N.

⁸ Tr. at 65-70, 125-126; GE 6.

⁹ Tr. at 47, 139, 143-144; AE P.

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.

Under Directive ¶ E3.1.14, the Government must 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 applicant or proven by Department Counsel, and 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 that an applicant may deliberately or inadvertently fail to 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 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." 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 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.

Applicant was unable to pay his two home mortgages and had a sailboat repossessed for nonpayment. The evidence is sufficient to raise the above disqualifying conditions.

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

Applicant's financial difficulties were caused when he decided to purchase a shopping center as a business enterprise. Evidence supports his belief that this transaction may have involved fraud by the sellers. Nevertheless, Applicant purchased a residence with two mortgages that were tied to the shopping center transaction. Because of the recession and possible fraudulent leases, the shopping center failed in August 2009. Applicant was unable to pay his mortgages or a sailboat he purchased in 2007. Although the debts are on-going, it is unlikely Applicant will be involved in a similar type of business in the future. His achievements as an Air Force fighter pilot support his reliability, trustworthiness and good judgment. AG ¶ 20(a) partially applies. The business downturn and the possible fraud by the sellers concerning the tenant

leases for the shopping center were conditions beyond Applicant's control. He acted responsibly when he hired an accountant to examine the initial transaction, he hired an attorney to represent his interests in the foreclosure action, and he sought employment soon after the business collapse to take care of his family and pay his bills. AG ¶ 20(b) applies. There is recent correspondence indicating Bank B is willing to accept a settlement on the home mortgages (SOR ¶¶ 1.a and 1.c), relieving Applicant of all liability. He has also established a 14-month track record of repayment on the sailboat debt. He has not received financial counseling. AG ¶ 20(c) partially applies. Applicant's efforts to reach a settlement with Bank B over the home mortgages and his repayment plan for the sailboat qualify as good-faith efforts to resolve the debts. AG ¶ 20(d) applies.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying in this case. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire.

Applicant did not deliberately provide false information about his financial condition on his security clearance application. At the time Applicant filled out his application, he was unaware of the delinquent status of the debts. In August of 2009, he was told by representatives of both Bank B and Bank K that his loans would not be put into delinquency. He then went overseas with his new job. Upon returning in December 2009, he filled out the application without the aid of a credit report. He completed the application with what he knew at the time. The government did not meet its burden to establish deliberate falsification. AG ¶¶ 16(a) does not 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 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 considered Applicant's outstanding and decorated service to his country. I also considered the circumstances by which he bought the shopping center property, which may have included fraud by the sellers. I considered the efforts he has made to resolve the shopping center matter along with his two home mortgages and his track record of repayment of the sailboat debt. Applicant's evidence is sufficient to mitigate the security concerns in this case.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline F, Financial Considerations and Guideline E, Personal Conduct,

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-1.c:	For Applicant
Paragraph 2, Guideline E:	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 eligibility for a security clearance. Eligibility for access to classified information is granted.

Robert E. Coacher
Administrative Judge