



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



In the matter of:)	
)	
)	ISCR Case No. 10-02947
)	
Applicant for Security Clearance)	

Appearances

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

11/06/2012

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings and exhibits, I conclude that Applicant has not mitigated the security concerns raised under the guideline for financial considerations. Accordingly, his request for a security clearance is denied.

Statement of the Case

On May 22, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) implemented by the DoD on September 1, 2006. The SOR listed security concerns addressed in the Directive under Guideline F (Financial Considerations). In his June 26, 2012 Answer to the SOR, Applicant admitted SOR allegations 1.a through 1.f. However, because of a numbering error, two different

allegations were numbered "1.c" and Applicant admitted only the second "1.c."¹ Department Counsel, in his File of Relevant Material (FORM), deemed Applicant's answer to the first allegation 1.c. to be a denial. In his Answer, Applicant requested a decision without a hearing. (GE 1, 2)

Department Counsel's FORM, dated August 24, 2012, included 13 documents. I take administrative notice of the information contained in GE 11 through 13, as requested by Department Counsel. Applicant received the FORM on September 5, 2012, and was given 30 days from the date he received it to file a response. Applicant timely submitted a package consisting of two documents. Department Counsel did not object, and I admitted them as Applicant's Exhibits (AE) A (10 pages) and B (141 pages). The case was assigned to me on October 24, 2012, for an administrative decision based on the record.

Findings of Fact

Applicant's admissions in response to the SOR are admitted as findings of fact. After a thorough review of the pleadings, the FORM, and Applicant's response to the FORM, I make the following additional findings of fact.

Applicant is 59 years old. He served in the U.S. Army from 1974 to 1980. He has been married since 1988, and has three children ranging from 20 to 26 years of age. From 2002 to 2005, he was an aircraft mechanic for a major airline. Following four months of unemployment, he began his current position with a defense contractor in 2005. He received his first security clearance in 1985. (GE 5; AE B)

Applicant has purchased real estate for investment purposes since the 1980s. He began having problems meeting his financial obligations in 2009. His credit report of November 2009 lists approximately 60 accounts, of which 20 were credit card or charge accounts; 15 were loans including automobile, home improvement, and home equity loans; and several were student loans. He also had 13 mortgage loans. Many of the accounts were paid or in a current status. However, two mortgage loans were past due or delinquent, and three mortgage loans were in foreclosure status; three home improvement or home equity loans were delinquent or in collection status; one student loan was delinquent; and five credit card or charge accounts were delinquent or closed by the creditor. The FORM contains no evidence that Applicant received financial counseling. Among the loans in collection or foreclosure status were the loans cited in the SOR at allegations 1.b through 1.f. (GE 9 at pp. 285-286; GE 6; AE B)

In about March 2009, as three of his properties were heading for foreclosure, Applicant tried to sell the properties. He sought assistance from an investment company that promised to negotiate with the lenders and assist him with short sales. He paid the company \$1,000 per property, for a total of \$3,000. The company failed to take any action to assist him. He later learned that the company engaged in fraudulent practices,

¹ To distinguish the two allegations marked "1.c," I have re-numbered them as "1.c-1" and "1.c-2."

and he filed a complaint with the local police department. His credit was compromised, which he believed resulted from working with the company. He tried unsuccessfully to obtain a refund of his money. In May 2009, he sought assistance from an attorney to negotiate loan modifications on his investment properties. The attorney took no action on his behalf, and after several months, Applicant learned that the attorney had lost his license to practice law. He received no response to his demand for a refund of the \$5,400 he had paid. (GE 9 at pp. 227-238, 268, 285-286; AE B at pp. 2-49)

Applicant provided information on his financial status in his personal financial statement (PFS) of July 2011. He and his wife earned approximately \$6,591 in net monthly income, and \$1,300 in monthly rental income, totaling \$7,891 per month, or \$94,692 in annual net income. He listed \$1,506 in monthly expenses. He also listed payments of \$4,406 on four mortgage loans and three other debt payments. His expenses plus debt payments total \$5,912 per month, leaving a monthly net remainder of \$1,979. In his July 2011 interrogatory response, he listed \$597 in monthly payments on seven credit cards and his daughter's student loan, which were not listed on the PFS. With these additional debt payments, his monthly outlay is \$6,509, and his monthly net remainder is \$1,382. (GE 9 at pp. 136, 221, 287, 278-281)

The SOR lists seven allegations, which total approximately \$758,365. Six of the seven debts are real estate mortgages or home equity loans. They appear in Applicant's credit reports dated August 22, 2005; November 20, 2009; June 13, 2011; December 28, 2011; and August 27, 2012. The status of Applicant's debts follows. (GE 4, 6-8, 9, 10)

PAID: Allegation 1.a. Satellite cable company, \$310 – Applicant disputed what he believed to be an overcharge. He worked with the creditor, and negotiated a settlement. On May 17, 2012, he paid \$201.87. He provided proof that the balance was zero as of that date. (GE 3 at p.9; GE 9 at 285; AE B at pp. 50-52)

FORECLOSED: Allegation 1.b. Mortgage, \$122,000. In the early 1990s, Applicant purchased this property as an investment. In 2008, he rented it out for \$1,750 per month. In 2009, he started to have problems keeping up with the mortgage payments, and was delinquent three times. In 2011, he dropped the rent to \$1,350 because of the soft rental market. Also in 2011, he hired a realtor who was unsuccessful in negotiating either a mortgage loan modification or a short sale. The realtor submitted a letter dated April 2012, noting that he received no assistance from either the mortgage company or the bank. However, Applicant's credit reports of June and December 2011 show that the loan was modified. His August 2012 credit report shows the property was foreclosed. (GE 3 at pp. 10-21, 47-48; GE 7, 8; GE 10; AE B at pp. 54-67)

UNPAID: Allegations 1.c-1: Home equity loan, \$50,000; and 1.c-2: Home equity loan, \$76,000. In March 2007, Applicant obtained two home equity loans from the same lender, both secured by the property listed in allegation 1.b. Applicant requested a payment plan, and in July 2011, the lender offered "long term repayment plan agreements" for each loan. The lender stated that it, "agreed to allow you to cure

your default and reinstate your account, by making a 'partial reinstatement payment'...and by complying with the payment plan set forth below, in order to complete the total reinstatement." Applicant was required to pay \$607 per month on the \$50,000 loan, and \$1,105 monthly on the \$76,000 loan, with both plans to start on July 20, 2011. Applicant provided evidence of three payments between April and June 2011 of approximately \$306 each on the \$50,000 loan. On the \$76,000 loan, Applicant documented payments of \$507 in February, 2011; \$603 in April, May, and June 2011; and \$1,105 in July 2011. Applicant's August 2012 credit report shows that both loans are charged off, with outstanding balances of \$50,582 and \$76,515. (GE 3 at pp. 23-62; GE 10; AE B at pp. 68-90)

DEBT CANCELLED: Allegation 1.d. Home equity loan, \$78,000. In January 2007, Applicant bought a single-family house for \$398,000, to use as a rental property. The monthly payments were \$2,100. He later obtained this home equity loan, secured by the property. Eventually, he could not obtain renters, and could not afford the mortgage payments. In 2009, he tried to sell it through the company discussed previously, which he states engaged in fraudulent practices. Applicant provided an Internal Revenue Service (IRS) Form 1099-A (Acquisition or Abandonment of Secured Property), dated January 28, 2010, which indicated the property was foreclosed on July 6, 2009. The 1099-A notes that the outstanding balance was \$78,721.79, and "the borrower was personally liable for repayment of debt." However, Applicant also received a Form 1099-C (Cancellation of Debt), dated January 26, 2010. It shows that on July 6, 2009, the debt of \$78,721.79 was cancelled, and "the borrower was not personally liable for repayment of debt." Applicant's August 2012 credit report shows no outstanding balance on this loan. (GE 3 at pp. 50-62; GE 9 at p. 284; GE 10; AE B at pp. 91-96)

FORECLOSED: Allegation 1.e: First mortgage loan, \$351,000; and DEBT CANCELLED: Allegation 1.f: Home equity loan, \$81,055. In May 2007, Applicant purchased an investment property for \$438,000. His mortgage loan was \$351,000, and he obtained a home equity loan of \$87,795. He rented out the property for \$2,200 per month. In 2009, he could not find renters, and could not afford the monthly payments. He failed in his efforts to short-sell the property through the investment company discussed previously. He then sought a loan modification, with the assistance of the attorney discussed above. After Applicant paid \$5,400, the attorney lost his license to practice. By November 2009, the first mortgage was in foreclosure and the home equity loan was more than four months late. The collateral was subsequently sold. Applicant received a 1099-A from the IRS, dated April 4, 2011, showing foreclosure on the \$351,000 loan on February 10, 2010. It lists a fair market value of \$207,000; however, the file does not provide information on the amount the lender may have received through a sale. Applicant did not provide evidence that he received a 1099-C for this property, which would have cancelled the mortgage debt.

Applicant provided evidence that in August 2012 that the lender forgave the home equity loan as part of "a principal forgiveness program offered as a result of the Department of Justice and State Attorneys General global settlement with major mortgage services....You will receive a full forgiveness of the remaining principal

balance of \$87,795 on your Home Equity Loan account.” (GE 3 at pp. 63-68; GE 6; GE 9 at pp. 202, 284-285; GE 10; AE B at pp. 97-103)

Applicant did not offer evidence on the effect of his state’s anti-deficiency statute on his property debts. Generally, anti-deficiency statutes relieve a debtor of the obligation to pay the balance of a mortgage after the lender forecloses and sells the property. However, under Cal. Code Civ. Proc. § 580(b):

No deficiency judgment shall lie in any event after a sale of real property or an estate for years therein for failure of the purchaser to complete his or her contract for sale, or under a deed of trust or mortgage given to the vendor to secure payment of the balance of the purchase price of that real property or estate for years therein, or under a deed of trust on a dwelling for not more than four families given to a lender to secure repayment of a loan which was in fact used to pay all or part of the purchase price of that *dwelling occupied, entirely, or in part, by the purchaser.* (emphasis added)²

As indicated by the italicized portion, the California statute provides relief only on a property in which the debtor resides. Because the properties in the SOR were investments, not Applicant's residence, the statute does not relieve Applicant of responsibility for any deficiency balances on the foreclosed mortgage loans. (GE 12, 13)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.³ Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the guidelines, commonly referred to as the “whole-person” concept. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines are followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guideline F (Financial Considerations).

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁴ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of

² See California Code of Civil Procedure, §§ 580a – 580d.

³ Directive. 6.3.

⁴ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the Government's case.

Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.⁵ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.⁶

Analysis

Guideline F, Financial Considerations

AG ¶18 expresses the security concern regarding financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds.

Applicant paid one of the debts alleged in the SOR, and the lenders cancelled two home equity loans. However, two mortgage loans and two home equity loans totaling \$600,000 remain unresolved. In a five-month period in 2007, Applicant applied for and received five loans, totaling \$642,000. However, in 2009, when the real estate market was collapsing, Applicant could not meet the mortgage payments on his multiple properties. By November 2009, the real estate loans were in foreclosure, and the home equity loans were delinquent. The following conditions under AG ¶19 apply:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.⁷

⁵ See *Egan*, 484 U.S. at 528, 531.

⁶ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

⁷ It appears that Applicant may have assumed significant debt beyond his means, especially in 2007. However, he chose to have a decision without a hearing. Therefore, I cannot obtain the additional details necessary to determine with certainty that the following disqualifying condition applies: ¶ 19(e) consistent

The financial considerations guideline also contains conditions that can mitigate security concerns. The following conditions under AG ¶ 20 are relevant:

(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; and

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

AG ¶ 20(a) does not apply. Applicant's delinquencies are not distant in time, as several of the debts remain unresolved. Moreover, his decisions to take on significant additional debt, including the mortgage and home equity loans in 2007, do not demonstrate good judgment.

The real estate market crash had a negative effect on Applicant's financial situation in 2009. He had no way to foresee the crash, and that event was beyond his control. However, his financial difficulties also stem from his decisions to assume excessive mortgage and home equity debts, so that when the market deteriorated, he was unable to meet his obligations. He made some efforts at payments on two home equity loans, and he secured a loan modification on one mortgage. He receives partial credit under AG ¶ 20(b).

There is no evidence Applicant sought financial counseling during the time his debts remained delinquent. Although he paid one small debt, and liability for two home equity loans was cancelled, two mortgage loans and two home equity loans totaling \$600,000 remain unresolved. Applicant's financial situation is not under control, and AG ¶ 20(c) does not apply.

Mitigation under AG ¶ 20(d) requires a good-faith effort to repay debts. The Appeal Board has defined "good faith" as acting in a way that shows "reasonableness,

spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.

prudence, honesty, and adherence to duty or obligation.”⁸ In 2011, Applicant sought and apparently received a loan modification of the mortgage listed at allegation 1.b. Also in 2011, he negotiated an agreement with the lender on the two home equity loans at allegations 1.c-1 and 1.c-2. He provided evidence of three payments on one loan, and four payments on the other. However, as of April 2012, the \$122,000 mortgage had been foreclosed, and the \$127,000 in home equity loans had been charged off. He made efforts to sell the properties, but retained an apparently fraudulent company and an attorney who lost his license. However, Applicant provided no information on a current plan to resolve his debts, and receives only partial mitigation under AG ¶ 20(d).

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate the applicant’s security eligibility by considering the totality of the applicant’s conduct and all the circumstances. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited guideline. I have also reviewed the record before me in the context of the whole-person factors listed in 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.

From about 2006 to 2009, the United States experienced one of the most difficult financial periods in its history. Real estate was hit particularly hard when the housing bubble burst. Applicant was affected by the loss of value in housing, and the inability to maintain the rents he needed to meet his property loan payments. However, security clearance adjudications are not actions to collect debts, but determinations about an applicant's judgment and reliability. There is no record evidence that Applicant had financial problems resulting from his property investments in the 1980s and 1990s. But it appears that in the 2000s, he was caught up in the bubble when he decided to take on significant debt: in one short period between January and May 2007, he obtained three home equity loans totaling \$204,000, and purchased an investment property for \$438,000 that was 100 percent financed.

In 2009, when he was unable to meet his obligations, he could not short-sell the houses or otherwise salvage his investments. At the same time, along with his mortgage and home equity loans, Applicant had a large number of credit cards and charge accounts. By November 2009, a total of nine real estate-related loans were delinquent or in foreclosure, and a student loan and five credit card accounts were

⁸ ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004), quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001).

delinquent or closed by the creditor. To his credit, Applicant made efforts to resolve the situation, including obtaining a loan modification on one property, and a reduced payment agreement on two home equity loans. He also suffered financial losses by hiring a company that he believes engaged in fraudulent activity, and an attorney who lost his license. However, Applicant showed poor judgment by overextending himself, so that he was in a precarious position when the market crashed and he could not keep up with the payments on his numerous properties. Applicant remains deeply in debt, with no evidence of a plan to resolve it.

A fair and commonsense assessment of the available information bearing on Applicant's suitability for a security clearance shows he has not satisfied the doubts about his ability and willingness to protect the Government's interests.

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c-1:	Against Applicant
Subparagraph 1.c-2:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge