



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



In the matter of:)	
)	
)	ISCR Case No. 10-05448
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: Christopher Graham, Esq.

November 21, 2011

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated financial considerations and handling protected information security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On June 13, 2011, 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on July 12, 2011, and requested a hearing before an administrative judge. On August 8, 2011, Department Counsel amended the SOR, adding an allegation under Guideline K, handling protected information. Applicant responded to the amendment on September 12, 2011. The case was assigned to

another administrative judge on September 16, 2011. DOHA issued a notice of hearing on September 21, 2011, scheduling the hearing for October 17, 2011. The case was reassigned to me on October 17, 2011. The hearing was convened as scheduled. The Government offered exhibits (GE) 1 through 5, which were admitted without objection. Applicant testified and submitted exhibits (AE) A through H, which were admitted without objection. DOHA received the hearing transcript (Tr.) on October 24, 2011.

Findings of Fact

Applicant is a 50-year-old employee of a defense contractor. He has worked for his current employer since July 2011. He is applying for a security clearance. He served on active duty in the U.S. military from 1983 until he was retired in the pay grade E-8 in 2006. He has a bachelor's degree. He is married with four adult children.¹

Most of Applicant's military service was in the intelligence field. He was hired by a defense contractor after he retired from the military. He had a top secret clearance with eligibility for access to sensitive compartmented information (TS/SCI). In March 2007, he was administered a polygraph as part of the process to upgrade his security clearance. Based upon the test and Applicant's responses, the investigators asked Applicant if he would permit a search of his home for classified materials. Applicant voluntarily consented to the search of his home. The searching agents seized a number of documents that were marked "For Official Use Only (FOUO)."² The evidence custody documents report that the following additional items were seized:

- One white three ring binder containing documents, some marked Secret//SI.
- One brown folder with various documents marked Confidential.
- One large yellow envelope containing a manual and various documents with classified markings, found in ammunition can in garage.
- Two envelopes containing various Secret, FOUO and restricted documents seized from downstairs study.
- One envelope containing three course syllabuses from [- - -] dated Fall 2000, one course syllabus from Summer 2001 and Winter 2001, all with Top Secret classification seized from downstairs study.
- One envelope containing a Top Secret email dated 04 Nov 04 from [- - -] to [Applicant] seized from downstairs study.

¹ Tr. at 20, 23, 29, 67-68; GE 1, 3.

² Tr. at 20-33; GE 3.

- One envelope containing two course syllabuses from [- - -] dated Winter 2001, with Top Secret classification seized from downstairs study.³

Applicant admitted that the items were seized from his home. He submitted into evidence the custody documents reporting what was seized from his home. He denied intentionally bringing the classified documents home. He was unaware they were in his house. He explained that the seized items were mixed in with documents he accumulated during his military career, and he inadvertently took them with him when he left various duty stations and positions. He stated that most of the items only had a handwritten classification on them and should never have been classified. He acknowledged that did not justify removing the documents, which he stated he would not have done intentionally.⁴ I found his testimony to be candid and credible.

Applicant did not obtain the upgrade to his clearance and lost his job with the defense contractor. He was unemployed for a short period before finding a job at a substantially lower salary than he was earning with the defense contractor. In November 2005, Applicant's wife was diagnosed with cancer. The disease, her treatment schedule, and her surgical procedures left her unable to work for several years. Applicant could no longer pay all his bills, including the first and second mortgages on the house he purchased in 2005, at the height of the real estate boom. He was laid off his job in December 2010 and was unemployed for about six months.⁵

The SOR alleges Applicant's first and second mortgage in foreclosure and two delinquent debts with balances totaling about \$657.

Applicant established that the \$499 medical debt alleged in SOR ¶ 1.a has been paid. On August 2011, he paid the \$158 debt to a telephone company, as alleged in SOR 1.b.⁶

Applicant financed the purchase of his home in 2005 with a first mortgage of about \$471,000 and a \$118,000 second mortgage. After he was no longer able to pay the mortgages, Applicant attempted to "short sell" the property or arrive at some other mutually agreed upon resolution. He was unable to sell the property, and it was lost to foreclosure.⁷

The holder of Applicant's first mortgage issued an Internal Revenue Service (IRS) form 1099-A (Acquisition or Abandonment of Secured Property) for tax year 2007. The form indicated that the lender acquired the property on November 27, 2007. The balance of the principal on the mortgage at that time was listed as \$469,633, and the

³ AE H.

⁴ Tr. at 26-33, 40-46, 67; GE 3; AE H.

⁵ Tr. at 34-36, 63-69; GE 2, 3.

⁶ Tr. at 33; GE 2; AE A, D.

⁷ Tr. at 35-36; GE 2, 3.

fair market value of the property was listed at \$600,000. Applicant believed that the 1099-A cancelled the debt in the same way that a debt is cancelled through an IRS form 1099-C (Cancellation of Debt). He has not received a 1099-C. The fair market value of the home was listed as more than \$130,000 higher than the first mortgage. Applicant did not receive an accounting from the mortgage company indicating what the mortgage company received for the house when it was sold or auctioned. The mortgage company has never contacted him attempting to collect any deficiency owed on the first mortgage.⁸

Applicant's second mortgage has been transferred at least once since the foreclosure, which made it difficult for Applicant to coordinate a payment plan. He has been in contact with the current holder of his second mortgage. The company sent him a letter on October 4, 2011. The principal balance on the loan was listed as \$117,270. The company stated the payment due was \$1,173 for 53 months. It listed the total due as \$88,147. Applicant stated that he will probably not be able to pay \$1,173 per month to the mortgage company unless he obtains a security clearance. He stated that if he receives his clearance, he will earn enough to pay that amount.⁹

Applicant and his wife completed a financial counseling course in November 2010. His wife had her last operation in 2008 and returned to work the same year. He has made payments on other debts that are not alleged in the SOR.¹⁰

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 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

⁸ Tr. at 53-61; GE 2; AE G.

⁹ Tr. at 38-40, 47-53, 62; GE 2-5; AE B, C.

¹⁰ Tr. at 37, 39, 47-53, 64, 69-74, 84-85; GE 2; AE E, F.

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 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 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:

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 accumulated a number of delinquent debts and was unable or unwilling to pay his financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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; and

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

A security clearance adjudication is not a debt collection procedure. It is a process designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

In November 2005, Applicant's wife was diagnosed with cancer. She was unable to work a full-time job for several years. Her medical condition qualifies as a condition that was beyond Applicant's control. Applicant lost his job after classified documents were discovered at his home. That does not qualify as a condition that was beyond his control. AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

Applicant worked for a period at a substantially lower salary than he earned with the defense contractor after he retired from the military. He was also unemployed for about six months. If he obtains a security clearance, his salary will be greatly increased. His wife is back to working a full-time job. He completed a financial counseling course in November 2010. He paid the two non-mortgage debts, and he has made payments on other debts that are not alleged in the SOR. The status of the first mortgage on his foreclosed home is unclear, but it appears that it has been resolved through the sale of

the property. In any event, the lender is not pursuing any deficiency that might be owed. Applicant has been in contact with the current holder of his second mortgage. He has a proposed payment schedule. He credibly testified that he will likely not be able to afford the payments without a clearance, but he would do so if he is granted a clearance.

I find that Applicant has made a good-faith effort to pay his unsecured debts. AG ¶ 20(d) is applicable to his unsecured debts. He does not receive full mitigation under AG ¶ 20(d) because he did not pay his mortgage debt. However, Applicant has sufficiently managed his finances to convince me that there are clear indications that his financial problems are being resolved and are under control. They occurred under circumstances that are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(c) are applicable. AG ¶ 20(b) is partially applicable.

Guideline K, Handling Protected Information

The security concern for handling protected information is set out in AG ¶ 33:

Deliberate or negligent failure to comply with rules and regulations for protecting classified or other sensitive information raises doubt about an individual's trustworthiness, judgment, reliability, or willingness and ability to safeguard such information, and is a serious security concern.

AG ¶ 34 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

(b) collecting or storing classified or other protected information at home or in any other unauthorized location; and

(g) any failure to comply with rules for the protection of classified or other sensitive information.

Applicant had classified information stored in his home. The evidence raises the above disqualifying conditions.

Conditions that could mitigate handling protected information security concerns are provided under AG ¶ 35. The following are potentially applicable:

(a) so much time has elapsed since the behavior, or it has happened so infrequently or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

(b) the individual responded favorably to counseling or remedial security training and now demonstrates a positive attitude toward the discharge of security responsibilities.

The classified information in Applicant's house was obtained during his military career which ended in 2006. The materials were discovered in March 2007, more than four years ago. Applicant credibly testified that the materials were accumulated through negligence and not through design. I am convinced that Applicant is remorseful for his actions, and he will not repeat the behavior. He possesses a positive attitude toward the discharge of his security responsibilities. I find both mitigating conditions to be applicable.

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 Guidelines K and E in this whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

I considered Applicant's honorable military service. I found Applicant to be honest and candid about his finances and his security violations. I believe he is sincere about resolving his remaining financial issues. As indicated above, an applicant is not required to establish that he has paid every debt listed in the SOR. All that is required is that an applicant establish a plan to resolve the financial problems and take significant actions to implement the plan. I find that Applicant has established a plan to resolve his financial problems and has taken significant action to implement that plan. His finances do not constitute a security concern.

Applicant had classified documents among the materials he accumulated during his military career. Security violations are one of the strongest possible reasons for denying or revoking access to classified information, as they raise very serious questions about an applicant's suitability for access to classified information. Once it is established that an applicant has committed a security violation, he or she has a very

heavy burden of demonstrating that he or she should be entrusted with classified information. Because security violations strike at the very heart of the industrial security program, an administrative judge must give any claims of reform and rehabilitation strict scrutiny. In many security clearance cases, applicants are denied a clearance for having an indicator of a risk that they might commit a security violation (e.g., alcohol abuse, delinquent debts, or drug use). Security violation cases reveal more than simply an indicator of risk.¹¹ The frequency and duration of the security violations are also aggravating factors.¹²

I am convinced that the classified materials were accumulated through negligence rather than intentional design. I further believe the discovery of the materials and the experience of going through the adjudicative process had an additional value, in that Applicant is more cognizant that he must be more diligent in his responsibilities for safeguarding classified information. He has met his heavy burden of demonstrating that it is clearly consistent with the national interest to grant his security clearance.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has mitigated financial considerations and handling protected information 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:	FOR APPLICANT
Subparagraphs 1.a-1.d:	For Applicant
Paragraph 2, Guideline K:	FOR APPLICANT
Subparagraph 2.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.

Edward W. Loughran
Administrative Judge

¹¹ ISCR Case No. 03-26888 (App. Bd. Oct. 5, 2006).

¹² ISCR Case No. 97-0435 at 5 (App. Bd. July 14, 1998).