



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



In the matter of:)
)
) ISCR Case No. 10-05886
)
Applicant for Security Clearance)

Appearances

For Government: Candace Le'i Garcia, Esq., Department Counsel
For Applicant: *Pro se*

06/27/2012

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On February 8, 2012, 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 March 26, 2012, and requested a hearing before an administrative judge. The case was assigned to me on May 1, 2012. DOHA issued a notice of hearing on May 18, 2011, scheduling the hearing for June 12, 2012. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 9 were

admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A and B, which were admitted without objection. DOHA received the hearing transcript (Tr.) on June 19, 2012.

Findings of Fact

Applicant is a 54-year-old employee of a defense contractor. He has worked for his current employer since March 2010. He is applying for a security clearance for the first time. He attended college for a period but did not obtain a degree. He is married with two adult children and two minor children.¹

Applicant has had financial issues for a number of years. He and his wife filed Chapter 7 bankruptcy in 1994, and their debts were discharged in 1995. He stated that he was laid off from work on a number of occasions between 1984 and 1999.²

Applicant bought a house in about 1999. Applicant testified that he paid about \$185,000. Credit reports show a mortgage of \$152,140. If there was a second mortgage, it is no longer on his credit report. He refinanced the mortgage on several occasions. Credit reports show a \$191,900 mortgage that was opened in 2001, followed by a \$242,250 mortgage that was opened in 2002, and a \$300,000 mortgage that was opened in December 2004. One of the refinances was in order to build a swimming pool.³

Applicant and his wife filed Chapter 7 bankruptcy in July 2004. The bankruptcy petition listed \$257,000 in secured claims and \$12,370 in unsecured claims. Their debts were discharged in November 2004. Applicant stated that his second bankruptcy was also related to sporadic employment and lay-offs. He has had stable employment since 2004.⁴

Credit reports indicate that Applicant refinanced again with a \$406,000 mortgage that was opened in 2005. Applicant stated that the equity obtained from his last refinance was to use as a down payment on his "dream house," which he purchased in 2005 for \$650,000. He stated that he paid for the house with the \$100,000 obtained from the last refinance of his first house and a \$550,000 mortgage. Credit reports show a \$557,439 mortgage that was opened in November 2005 and closed in September 2006. He refinanced the mortgage, with a \$675,000 mortgage that was opened in September 2006.⁵

¹ Tr. at 34-35, 48-49; GE 1.

² Tr. at 20-21, 33-36; Applicant's response to SOR; GE 2, 4.

³ Tr. at 21, 28, 30; GE 2, 3, 7-9.

⁴ Tr. at 35-37; Applicant's response to SOR; GE 1, 2, 5, 6.

⁵ Tr. at 22-24, 29-30, 49-50; Applicant's response to SOR; GE 3, 7-9.

Applicant bought his second house before he sold his first house. The real estate market was still booming, and he hoped to sell it quickly. Applicant was unable to sell the first house, and he could not afford either mortgage. He stopped paying the mortgages. After about a year, he moved back into the first house. He moved to a nearby state with a lower cost of living in 2007. He lost the second house to foreclosure in 2007. The holder of the 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 August 13, 2007. The balance of the principal on the mortgage at that time was listed as \$675,000, and the fair market value of the property was listed at \$734,362. He lost the first house to foreclosure in about 2008.⁶

Applicant did not receive an accounting from the mortgage companies indicating what the mortgage companies received for the houses when they were sold or auctioned. He believes the mortgage company sold his second house for between \$450,000 and \$550,000. He does not know how much the mortgage company received for his first house. He has not received an IRS form 1099-C (Cancellation of Debt) for either property. The mortgage companies have never contacted him attempting to collect any deficiency owed on the mortgages.⁷

Applicant bought a pickup truck in November 2006 that was financed through a \$33,170 loan. SOR ¶ 1.a alleges a delinquent debt of \$11,473 for the deficiency on the loan for the pickup truck after it was voluntarily repossessed in about December 2010. Applicant stated that his wife was making less money in their new location. He still worked in the state where they used to live, and he commuted between states until he was hired by his current employer in 2010. Applicant took out a loan to settle this debt and the debt alleged in SOR ¶ 1.b. He negotiated to settle the pickup truck loan for \$7,102, which he paid in about May 2011. Credit reports continue to list a \$3,766 balance, but I am convinced the \$7,102 was paid as a settlement for the full amount.⁸

SOR ¶ 1.b alleges a delinquent debt of \$8,646 for a loan Applicant took out in about 2006 to buy carpeting for his first house. He was unable to maintain the payments, and the loan became delinquent in 2010. Applicant settled the debt in about June 2011.⁹

Applicant has never received financial counseling, but he stated that his finances are currently in better shape. He has stable employment in the area where he lives, and he testified that he has “learned a lesson on housing.” He bought a house in 2009 for about \$210,000. He is current on his mortgage payments and his other accounts.¹⁰

⁶ Tr. at 23-31, 50-51; Applicant’s response to SOR; GE 2, 3.

⁷ Tr. at 27, 30-32, 56; GE 3.

⁸ Tr. at 37-46; Applicant’s response to SOR; GE 2, 3, 7-9; AE B.

⁹ Tr. at 40-41; Applicant’s response to SOR; GE 2, 3, 7-9; AE A.

¹⁰ Tr. at 28, 32-33, 46-48, 52; GE 3.

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 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 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;

Applicant had periods of unemployment and underemployment before he obtained stable employment in 2004. His employment problems qualify as conditions

that were outside his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

Applicant's debts were discharged in bankruptcy in 1995. He bought a house in about 1999. He refinanced his mortgage on several occasions, once to build a swimming pool. He again filed bankruptcy, and his debts were discharged in 2004. In 2005, he again refinanced in order to obtain a down payment on his "dream house," which he purchased for \$650,000, before selling his first home. He refinanced the mortgage on his second home, with a \$675,000 mortgage that was opened in September 2006. He bought a pickup truck in November 2006 that was financed through a \$33,170 loan.

Applicant lost both houses to foreclosure and his pickup truck was voluntarily repossessed. He borrowed money and paid \$7,102 to settle the deficiency owed on the loan for the pickup truck, and he settled another delinquent debt. When the mortgage company obtained the second property, the fair market value of the property was listed on IRS form 1099-A at \$734,362, which was \$59,362 more than the \$675,000 balance of the principal on the mortgage. There is no indication that the mortgage companies are attempting to collect any deficiencies that might be owed on the mortgages, and the state has an anti-deficiency statute.¹¹ Applicant has not received financial counseling, but he stated that his finances are in better shape and he is paying all his current obligations.

I find that Applicant has a history of making questionable financial decisions. I am unable to find that he acted responsibly under the circumstances or that he made a good-faith effort to pay his debts.¹² His financial issues are recent and ongoing. I am unable to determine that they are unlikely to recur. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(c), and 20(d)

¹¹ See ISCR Case No. 10-07393 at 4 (App. Bd. Jun.12, 2012):

Even if a delinquent debt is unenforceable under state law, a Judge must consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner.

¹² 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 [good-faith mitigating condition], 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 [or an anti-deficiency statute]) in order to claim the benefit of [good-faith mitigating condition].

(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)).

are not applicable. AG ¶ 20(b) is partially applicable. I find that financial concerns remain despite the presence of some mitigation.

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's financial history includes two bankruptcies, two foreclosures, and a repossessed pickup truck. He settled one debt, and he paid \$7,102 as a settlement for the pickup truck loan deficiency. It is unlikely that he will ever be sued for any deficiencies on his foreclosed mortgages. Applicant's finances may be currently on track. However, his history of questionable financial decisions raises doubts that he can keep them on track.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has not mitigated 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
Subparagraphs 1.a-1.e:	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.

Edward W. Loughran
Administrative Judge