



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



In the matter of:)	
)	
)	ISCR Case No. 10-06100
)	
)	
Applicant for Security Clearance)	

Appearances

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

August 24, 2011

Decision

LYNCH, Noreen A., Administrative Judge:

On May 10, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested an administrative decision on the record. Department Counsel notified Applicant that under Enclosure 3 of DoD Directive 5220.6, the Government would request a hearing for the case. DOHA assigned the case to me on June 16, 2011. A notice of hearing was issued on June 27, 2011, and the case was heard on July 26, 2011. Department Counsel offered six exhibits (GE) 1-6, which were admitted without objection. Applicant testified and submitted seven exhibits (AE) A-G at the hearing, which were admitted without objection. I kept the record open until August 5, 2011, and Applicant timely submitted four exhibits, which were marked and accepted into the record as AE H-K. DOHA

received the hearing transcript on August 3, 2011. Based on a review of the pleadings, submissions, and exhibits, I find Applicant has not met his burden of proof on mitigation regarding the security concerns raised. Security clearance is denied.

Findings of Fact

In his answer to the SOR, Applicant denied two debts and admitted the remaining debt with explanation.

Applicant is 37 years old. He obtained his undergraduate degree in 1999. He is married and has no children. (GE 1) Applicant has been employed with his current employer since March 2009. This is his first request for a security clearance.

In 2000, Applicant purchased his first home. After living in the home for three years, he sold it for a profit. (Tr. 46) He gave half the profit to his parents. He kept approximately \$50,000 profit for himself. (Tr. 46)

In February 2005, Applicant purchased another home for \$425,000. His down payment was approximately \$30,000 which resulted in a monthly mortgage of \$2,400. (Tr. 38) The mortgage was a two-part loan. The primary mortgage loan was 80% and the home equity loan was 20%. Applicant had an investment partner who advised him that the property was in a good location and in a promising new development. (Tr. 67) After living in the property for one year, he decided to rent the property in 2006. After one year, the renters moved. The property remained vacant as Applicant could not find renters. (Tr. 41)

In June 2006, Applicant purchased another property as an investment. Applicant's salary at the time he bought this property was approximately \$50,000 to \$67,000. The purchase price of the home was \$540,000. Applicant financed the entire amount. He believed the rate was an adjustable rate mortgage (ARM). At the time of the loan, he had an investment partner. The partner's name was not on the loan but on the deed. His partner (his cousin) experienced financial difficulties and did not help Applicant with the mortgage. (Tr. 68)

In 2007, Applicant could not maintain the two mortgages. His two properties were foreclosed. (AE C) Applicant does not owe any money on the primary mortgages for the two investment properties. (AE G) He submitted documentation that the loans were paid in full. (AE C)

The SOR lists two delinquent debts, including two home equity loans that total \$142,100, and two foreclosures. The primary mortgages on the two properties noted above have been resolved. (AE C and AE D) The credit reports in the record confirm the SOR debts. (GE 2, 5)

Initially, Applicant disputed the validity of the two home equity debts. In his answer to the SOR, he stated that he would not assume any responsibility for the debts until they were validated. He noted that the debts should not be on his credit report until

they are proven. When Applicant received information that the debts were valid, he offered a settlement.

Applicant noted that he was naive about the real estate market, but listened to his cousin who was in the business. He believes he fell victim to the real estate crash. He depleted his savings to sustain the properties, but ultimately he could not afford two mortgages. (GE 2) He did not want to file for bankruptcy. He has made some efforts in the last two years to resolve the issues with the home equity loans. He is concerned about his credit history and wants to purchase a home again under good credit terms. He learned a valuable lesson and believes this situation will not recur. (GE 2) He has no other delinquent debts. He submitted a current credit report that confirms he has accounts that are "paid as agreed."

At the hearing, Applicant noted that when a downward spiral occurred in 2006-2007, at one point he "did not want to bother with it any more." He just wanted to let it go and deal with the problems later on. (Tr. 90) He realized that with his current position, it was important to fix his mistakes. He researched his accounts with the help of his brother, who works for the company reviewing Applicant's two home equity debts. (Tr. 19) His brother has agreed to negotiate a settlement for Applicant, which has not been easy or quick. (AE B) However, Applicant did not start the process until late 2010. Applicant did not know who bought the home equity loans, and he wanted to validate the debts. He received a letter on June 27, 2011, from the collection agency that they are pursuing settlement of the home equity loans.

On July 19, 2011, Applicant sent a letter offering a "one time settlement of 10%" on the two account balances that are listed in the SOR. Applicant provided documentation that he has a "temporary payment arrangement" for the debt in SOR ¶ 1a. (\$60,700). He provided a letter showing that he promises to make three payments of \$469 a month for three months. The payments are to begin in August 2011. He submitted a copy of an electronic debit for the first payment. (AE J)

Applicant provided documentation dated August 5, 2011, showing a "temporary payment plan" for the debt alleged in SOR ¶ 1.b. (\$81,400). The payments are \$334 monthly for three months beginning in August 2011. Applicant did not provide any documentation that he has made the first payment. (AE K)

Applicant signed up for credit counseling- free credit report.com. Applicant may have obtained some financial counseling from the consolidation agency. He has a detailed budget. His monthly net income is \$10,743, which includes his wife's income. Applicant has a net monthly remainder of \$1,400. He is current on all his expenses, including his car payment. He maintains a savings and checking account. Applicant has a savings account that he can use for emergency items. (AE I)

At the hearing, Applicant noted that his salary with his current employer has increased from approximately \$90,000 to \$97,000 in the past two years. He provides some financial support for his parents, who are now retired. (Tr. 35)

Applicant submitted six letters of recommendation. His supervisor described Applicant as a system engineer who is reliable and trustworthy. Applicant is a key performer in his unit. His performance, attendance and commitment to the group have been outstanding. In addition, he noted that Applicant demonstrated the qualities needed to be a trusted contractor employee for the Navy. His peers described him as a person of excellent character. He is highly recommended for a security clearance. (AE F) Applicant has received several awards and recognition from his current employer in a short period of two years.

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The Government must present evidence to establish controverted facts alleged in the SOR. 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. . . ." ¹ The burden of proof is something less than a preponderance of evidence. ² The ultimate burden of persuasion is on the applicant. ³

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

the applicant may deliberately or inadvertently fail to protect 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 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.”⁴ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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.” It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant acknowledged two home foreclosures in 2007 and two delinquent home equity loans for a total of \$142,100. His credit report confirms them. Consequently, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

Applicant had financial difficulties when he could not maintain mortgages on two properties in 2007. His investment partner did not help him with the mortgages. Applicant purchased the two properties on the advice of his cousin. However, Applicant financed the second property for \$540,00 with no money down and a variable interest rate on an income of approximately \$60,000. He did make early attempts to pay both

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ *Id.*

mortgages, but he did not follow through on the home equity loans. They are still unresolved. Consequently, Financial Considerations Mitigating Condition (FCMC) AG ¶ 20(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) applies in part.

FC MC AG ¶ 20(b) (the conditions that resulted in the behavior 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) applies in part. As noted, Applicant purchased two homes before the real estate crash. He had renters in the first home, but when they left he could not find more renters. He purchased the second property soon after. When his partners disappeared, he could not pay both mortgages. The homes went into foreclosure. The primary mortgages were paid. It was not until 2010, that Applicant began to address the home equity loans. He acknowledged that he did not "want to bother with it" for a period of time. He began in earnest when he realized that he needed the matters resolved for his employment. He did not act as responsibly as he should have in the circumstances. This mitigating condition applies in part.

FC MC AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies in part. Applicant provided documentation of a recent temporary payment plan for both home equity loans. He provided evidence of one payment on one account from August 2011. He has not addressed what follows after the temporary plan. He did not show that he has made any payments on the other account. FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control) applies in part.

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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case as well as the whole-person factors. Applicant is 37 years old and married. He is a responsible citizen and employee. Applicant also helps his parents financially. He has received excellent references from his employer. He received awards and recognition, as well as promotions, in a short span of time with his current employer.

Applicant used a profit from his first home to buy an investment property. He relied on advice from his cousin (partner) who was in the real estate field. Applicant put a down payment on his first investment property. He had renters in the home for at least one year. When they left the home, he could not find new tenants. In the interim, Applicant had purchased another property for investment purposes. He financed the entire amount. When the real estate market crashed and he could not afford the two mortgages on his own, he tried to get some help. However, after the primary mortgages were resolved, he did not attempt to contact creditors for the two home equity loans. He has just recently started a temporary payment arrangement for the two delinquent accounts.

Applicant has not submitted sufficient information to show that he has resolved the two home equity delinquent loans. He provided documents that note a “temporary payment plan” with no specific settlement amount. It is impossible to ascertain whether the plans will continue and will resolve the two home equity loans. He has not provided evidence that he has made more than one payment on the one account. He has no document to show that he made the first payment on the other account. He has not met his burden to mitigate the security concerns raised under the financial considerations guideline. He is on the right track, but any doubt must be resolved in favor of the Government. Clearance is denied.

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.b:	Against Applicant
Subparagraph 1.c:	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 a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge