



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



In the matter of:)
)
) ISCR Case No. 10-06668
)
Applicant for Security Clearance)

Appearances

For Government: Candace Le'i Garcia, Esquire, Department Counsel

For Applicant: *Pro se*

July 29, 2011

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 July 10, 2009, Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP) to request a security clearance (Item 4). After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to grant Applicant's request.

¹ Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

On December 24, 2010, DOHA issued to Applicant a Statement of Reasons (SOR) that specified the basis for its decision: security concerns addressed in the Directive under Guideline F (Financial Considerations) of the Adjudicative Guidelines (AG) implemented by the Department of Defense on September 1, 2006. Applicant received the SOR on January 17, 2011. (Items 1, 2)

Applicant responded to the SOR on January 21, 2011, denying SOR allegation 1.d and 1.e, and admitting allegations 1.a, 1.b, and 1.c. He also requested a decision without a hearing. Department Counsel submitted the Government's written case, in a file of relevant material (FORM) dated March 22, 2011.² In addition to the documents already identified, the FORM contained Applicant's response to DOHA interrogatories (Item 5), his Personal Financial Statement (Item 6), and four credit bureau reports (Items 7 - 10). Applicant received the FORM on April 17, 2011, and was given 30 days from the date he received the FORM to file a response. Applicant timely submitted a one-page response. Department Counsel did not object, and I admitted it as Applicant's Exhibit (AE) A. The case was assigned to me on July 12, 2011, 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, 49 years old, was born in Afghanistan, and became a naturalized U.S. citizen in 1990. He married a citizen of Afghanistan in 1996, and they separated in 2009.³ Applicant has three children: twins aged 11, and a third child aged 4. Applicant's mother, three children, three brothers, and two sisters are all U.S. citizens, and as of 2009, they all lived in the United States. Applicant earned an associate's degree from a U.S. college in 1996. (Item 4)

Since 1992, Applicant has worked as a plant engineering technician for a shipping company, and as a maintenance specialist for a county housing authority. In his security clearance application, Applicant listed continuous employment from 1992 to the present, except for a period of about one and one half years between 2005 and 2007, when he listed his employment as "landlord" of an apartment complex. It is unclear whether this was paid employment. Currently, he works for a defense contractor in Afghanistan. (Item 4)

² See Directive, Enclosure 3, Section E3.1.7. The FORM included ten documents (Items 1 - 10) proffered in support of the Government's case.

³ Applicant's July 2009 security clearance application indicates he separated in January 2009. His subject interview of January 2010 refers to his wife. It is unclear whether this reference is to his first wife, or he has divorced and remarried since completing the security clearance application in July 2009. (Items 4, 5)

Applicant's credit bureau report of July 2009 shows approximately 50 accounts, most designated as "pays as agreed." His July 2009 credit report shows 24 separate credit card and store charge accounts, as well as numerous mortgage loans, and/or personal loans.. Most were in good standing at that time.

The same credit report also lists 17 mortgage accounts. Some of the accounts are likely duplicates, but I cannot determine from the record evidence which loans are duplicates that were sold to different lenders over time. Three of the listings do have the same balance and likely refer to the same loan. (Item 8)

Applicant began to have financial problems in 2009. He had a sub-prime mortgage loan on a property, and the interest rate adjusted. As a result of the rate increase, his monthly payments doubled, and he was no longer able to afford the payments. He notes that his marriage was also going through a difficult period, which contributed to his financial issues. However, he does not explain how his marriage difficulties affected his ability to pay his mortgage. He has not received financial counseling. He claims that he was the victim of unjust lending practices that occurred during the subprime mortgage crisis. He also stated during his security interview that he has sufficient funds to pay his debts, but before paying, he requires that the lenders waive all penalties and interest charges. (Items 3, 5)

Applicant's annual gross income as of June 2009 was approximately \$74,600. He also received an additional \$2,500 per month in rental property income. His monthly net remainder was \$1,830. He listed several debts on his personal financial statement (PFS), but indicated that he was not making payments on any of the listed debts. (Items 5, 6)

Applicant's income more than doubled in 2010. In October 2010, Applicant listed a gross income of \$185,000. His monthly net income was \$9,000, with monthly expenses of \$6,110. His monthly net remainder was approximately \$2,890. He did not list any debts, or any debt payments on his PFS. He had assets of \$558,000, including \$55,000 in savings and a 40 percent share in an apartment building. In September 2010, he vacationed in Dubai for approximately two weeks. (Items 5, 6)

Four of the five debts listed in the SOR total approximately \$22,503. That does not include any amounts related to the \$600,000 mortgage that was foreclosed (allegation 1.c). Applicant has paid three of the debts. The delinquencies appear in Applicant's credit reports of July 2009, April 2010, and November 2010. (Items 7 – 10)

Equity line of credit (\$19,000), allegation 1.a - UNRESOLVED. During his security interview, Applicant stated that he did not receive these funds, which were part of the financing for his home. He states in his interrogatory response of October 2010,

This money was never received by me. They opened this account as equity line of credit and they used the money in order to make the loan work. This was one of the dirty tricks that creditors were using during the

sub-prime mortgage crisis. The actual loan was \$600,000. They made two loans one for \$580,000 and one for \$19,998. They used the \$19,998 for closing costs and other expenses. (Items 3, 5)

The latest credit report, dated November 2010, shows that \$19,000 is delinquent. Applicant stated that, "The house had been foreclosed and they kept my \$100,000 down payment. I have talked to a lawyer and was advised that I am not obligated to pay, since the house has been foreclosed." However, Applicant has not provided documentation from the lender showing that this debt is resolved. (Items 3, 10)

Credit card (\$3,266), allegation 1.b – RESOLVED. In June 2009, Applicant was having marital problems, his mortgage payment had doubled when his interest rate adjusted, and he was making only \$3,000 per month. He was contacted by the creditor about the delinquency, but was unable to pay the debt. During his January 2010 security interview, he stated he would pay it the following month, but did not. Later, Applicant accepted a settlement offer of \$2,200 from the creditor. He submitted bank statements showing a payment of \$700 on January 19, 2011, and a payment of \$1,500 on January 20, 2011. (Items 3, 5, 7-10)

Mortgage (foreclosure), allegation 1.c – UNRESOLVED. Applicant bought a home for \$600,000, using a sub-prime loan with an adjustable interest rate. The evidence indicates he financed 100 percent of the loan, with a loan for approximately \$580,000 and another for approximately \$20,000. Applicant stated in his security interview that he bought the house intending to improve it and then sell it quickly. In 2009, the interest rate adjusted, and his mortgage payment doubled. He had a temporary job at the time, and was earning only \$3,000 per month. He was unable to sell the house because the real estate market had collapsed. The lender foreclosed on the loan in 2009. Applicant's November 2010 credit report lists \$3,000 past due on the mortgage when the foreclosure process started. Applicant states in his Answer that because the loan is foreclosed, and the bank kept his down payment, he has no further obligation to pay the debt. However, he failed to provide any documentation from the lender indicating that the debt is resolved. (Items 3, 5, 10)

Utility bill (\$170), allegation 1.d – RESOLVED. Applicant paid the collection agent for this debt and provided a letter from the agent dated January 2011 showing it is paid in full. (Item 3)

Parking debt (\$67), allegation 1.e – RESOLVED. Applicant paid this debt and provided a January 2011 email confirming a \$70 payment. (Item 3)

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.⁴ 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 interest⁵ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of 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.⁶ 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.⁷

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-

⁴ Directive. 6.3.

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

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

Applicant has paid three of the five debts alleged in the SOR. The two largest debts, related to mortgage loans, remain unresolved. Applicant purchased a house for \$600,000 and obtained two loans for the total amount, representing 100 percent financing. He intended to improve the house and sell it quickly for profit. However, the real estate market collapsed, and he was unable to sell it. In 2009, he was earning only \$3,000 per month at a temporary job, had approximately 24 open credit card/charge accounts, and he was unable to keep up with the mortgage loan payments. The following disqualifying conditions under AG ¶19 apply:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

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 the two largest debts remain unresolved. His decision to seek 100 percent financing of a \$600,000 debt, with the hope of quickly selling the property, does not demonstrate good judgment.

The real estate market crash had a negative effect on Applicant's financial situation in 2009. Applicant had no way to foresee the crash. Therefore, starting in 2009, he was affected by events beyond his control. However, his financial difficulties also stem from his knowing decisions to take on excessive credit card and other debt, so that when his situation deteriorated, he was unable to meet his obligations. He did not act reasonably in relation to these debts. In the years since 2009, he did not make

an effort to work out payment plans or otherwise resolve these debts. He can claim only partial credit under AG ¶ 20(b). In addition, he did not seek any financial counseling during the time his debts remained delinquent. Although he paid three debts, the two largest debts remain unresolved, and his financial situation is not under control. 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, prudence, honesty, and adherence to duty or obligation.”⁸ Applicant has not demonstrated good faith in regard to the SOR debts. He paid the three paid debts in January 2011, just weeks after he received the SOR. He was responding primarily to the security clearance process, rather than demonstrating a good-faith desire to meet his financial obligations. The record contains no indication that he made good-faith efforts to work with the lenders who hold the two mortgage loans. In 2009, when Applicant had a substantial monthly net remainder of \$1,830, he was making no payments on his debts. In 2010, his income increased dramatically. Although he took a two-week vacation in another country in September 2010, his PFS still shows no debt payments. He admits that he can afford to pay his debts, but will not do so until the lenders waive the interest and penalty charges. Applicant's history in regard to his debts does not demonstrate a good-faith effort to meet his obligations. AG ¶ 20(d) does not apply.

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.

Applicant is a mature adult of 49 years. It appears that he was financially stable before 2009. Although he had a large number of credit cards, charge accounts, and mortgage accounts, most were up-to-date, and he was able to qualify for mortgage loans. Although Applicant's credit bureau reports show a large number of mortgage

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).

loans, the record evidence alone is insufficient to determine if Applicant was speculating in real estate or flipping properties.

Applicant's fortunes changed when his income decreased, the real estate market crashed, and he could not sell a heavily-mortgaged property. The lender foreclosed. Applicant claims that he was "a victim of the sub-prime mortgage crisis" and suffered from unscrupulous practices by lenders. However, without further information and evidence, I am unable to determine whether or how Applicant was affected by such practices.

Since at least 2009, when Applicant completed his security clearance application, he has been on notice that delinquencies are a security concern. Yet there is little evidence that he made efforts in regard to his debts. He did not contact creditors, arrange payment plans, or otherwise deal with his delinquencies. Under the Appeal Board's jurisprudence, an applicant does not have to show that he paid every debt, or paid every debt in full; but he does have to show that he has taken steps to implement a viable plan to resolve them. Applicant's decision to avoid resolving his mortgage debts fails to demonstrate reliability and good judgment.

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	Against Applicant
Subparagraph 1.b	For Applicant
Subparagraph 1.c	Against Applicant
Subparagraph 1.d	For Applicant
Subparagraph 1.e	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