



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



In the matter of:)
)
) ISCR Case No. 10-06913
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

May 18, 2011

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has one debt of over \$55,000, which is past due, on a second mortgage. The property was sold in a short sale and Applicant thought the sale legally satisfied this debt. However, he has begun payments to this creditor and is attempting to negotiate a payoff amount. He made a good-faith effort to address the financial security concerns. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

On January 6, 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 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 for Determining Eligibility for Access to Classified Information* that went into effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on February 1, 2011, and requested a hearing before an administrative judge. The case was assigned to me on April 6, 2011. DOHA issued a notice of hearing on April 20, 2011, scheduling the hearing for May 2, 2011. Applicant waived the 15-day notice requirement. The hearing was convened as scheduled. The Government offered Exhibit (GE) 1 through 7, which were admitted without objection. The Applicant offered Exhibit (AE) A through D, which were admitted without objection. Applicant testified on his own behalf. The record was left open for receipt of an additional document. On May 9, 2011, Applicant presented a six page post-hearing exhibit marked and admitted without objection as AE E. DOHA received the transcript of the hearing (Tr.) on May 13, 2011.

Findings of Fact

Applicant admits allegation 1.a. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 39-year-old employee of a defense contractor. He has a graduate degree in electrical engineering. He has been employed in his present position since February 2002. He has had a security clearance since 2002, with no security clearance violations. He has never been married and has no children. (Tr. 26-28; GE 1.)

As stated in the SOR, Applicant is alleged to be indebted to one creditor in the approximate amount of \$55,000. (SOR.) His alleged debt is as follows:

In approximately 2001 or 2002, Applicant purchased a home. He made a down payment of 20% of the purchase price and financed the rest of the home through an adjustable rate mortgage. He lived in the property for a few years and then converted it to a rental property. In 2007, Applicant realized that the interest rate was about to adjust upward and sought to refinance the property. He did so through a first mortgage of approximately \$412,000 and a \$55,000 home equity line of credit (HELOC) second mortgage on the property. The HELOC loan is the subject of the single allegation on the SOR. (Tr. 21-24, 29-45; GE 2; GE 3; GE 4; GE 5; GE 6; GE 7.)

After the refinance, his new payment was \$1,000 more than he was able to rent the property for, but still less than it would have been had the interest rate adjusted upward on his initial loan. He made payments on the refinanced mortgage and the \$55,000 HELOC loan for 18 months. However, he was struggling during this time to afford the payments. As a result, he decided to sell the property. He listed the property with an agent, but the real estate prices in his area were "falling faster than he could reduce the price." He consulted a real estate attorney who advised him to consider a short sale. Prior to negotiating a short sale with the bank, Applicant approached his division manager, deputy, and his security manager to seek information as to whether a short sale could jeopardize his clearance, and he was told that others in his office had successfully participated in short sales and were able to keep their clearance. (Tr. 21-24, 29-45; GE 2; GE 5.)

On January 20, 2009, Applicant sold the house for \$370,000. The payoff for the first mortgage was \$337,381.41 and satisfied the primary mortgage lender. The HELOC mortgage holder received a payoff of \$3,163.99 from the sale, as evidenced by the seller's closing statement/HUD statement. Applicant's attorney and the closing documents led Applicant to believe that the payoff sent to the HELOC creditor settled the debt and that he was no longer indebted for repayment of the loan. He has attempted to contest the debt with the creditor, but to no avail. Applicant has contacted the creditor and has reached an agreement with the creditor to accept payments of \$100 per month until he is able to negotiate a larger lump sum payoff. He provided documentation establishing payments from January through April 2011, under this agreement. (Tr. 21-24, 29-45; GE 2; AE A; AE B; AE C; AE D; AE E.)

Excerpts from Applicant's performance review indicate he "is a hardworking and detail-oriented individual who [*sic*] excited about his research," and "is a valuable member of the [contractor's] team." (AE E.)

Policies

When evaluating an applicant's suitability for a security clearance, the 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, 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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, as follows:

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 concern under AG ¶ 19. The following is potentially applicable in this case:

(a) inability or unwillingness to satisfy debts.

Applicant had one delinquent account listed on his credit reports. The debt entered collections and has not been satisfied. The evidence is sufficient to raise the above disqualifying condition. The burden accordingly shifts to Applicant to rebut, explain, extenuate, or mitigate these facts and the resulting security concerns.

The guideline includes three conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant’s financial problems:

(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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

The conditions which caused the Applicant's debt were largely beyond his control. His debt is directly attributable to a market downturn, in which the housing market suffered. He acted responsibly by listing his house and trying to sell it rather than completely defaulting on the mortgages, which he could no longer afford. Based on the Seller's closing statement, which the Applicant provided as AE D, he thought he had a reasonable basis to dispute this debt. He acted reasonably, in contacting the creditor and arguing his case to the creditor. Despite his belief that he no longer owes anything on his HELOC loan, he has set up payments of \$100 per month and has successfully made payments under this agreement. He has made a good faith effort to resolve this debt. The Appeal Board has ruled concerning the successful mitigation of security concerns arising from financial considerations, "[a]n applicant is not required to show that [he] has completely paid off [his] indebtedness, only that [he] has established a reasonable plan to resolve [his] debts and has 'taken significant actions to implement that plan.'"¹ Applicant's actions with respect to his HELOC loan are reasonable. AG ¶¶ 20(b), 20(d), and 20(e) are mitigating.

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.

¹ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)).

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 those guidelines, but some warrant additional comment.

Applicant's debt was caused by unforeseen circumstances beyond his control. His honesty and high standards are reflected in the self report he made to his security office as he went through the short sale. He is a valued employee and his promises to continue to work with his creditor are credible.

Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Financial Considerations security concern.

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
Subparagraph 1.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.

Jennifer I. Goldstein
Administrative Judge