



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



In the matter of:)
)
) ISCR Case No. 10-09080
)
Applicant for Security Clearance)

Appearances

For Government: Fahryn Hoffman, Esquire, Department Counsel
For Applicant: Leslie M. Gordon, Esquire

December 21, 2011

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ Applicant’s clearance is granted.

On 16 May 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.² Applicant timely answered the SOR, requesting a hearing. DOHA assigned the case to me 9 September 2011, and I convened a hearing 18 October 2011. DOHA received the transcript (Tr.) 26 October 2011.

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-6, and Applicant exhibits (AE) A-D.

²DOHA acted 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) effective within the DoD on 1 September 2006.

Findings of Fact

Applicant denied the SOR allegations. He is a 30-year-old capital planning coordinator employed by a defense contractor since January 2009. He seeks to retain the industrial security clearance he obtained with his current employment. He also had a clearance from 1999 to 2005, when he served in the military.

The SOR alleges, and Government exhibits confirm, a \$227 collection account for a public storage unit and a nearly \$320,000 foreclosed mortgage. Applicant's evidence shows that the balance on the mortgage had grown to about \$338,000 in May 2010 (AE B) and was sold at a foreclosure sale in September 2010 for about \$280,000, leaving Applicant with a potential deficiency of about \$58,000 (AE B). Applicant paid the storage debt in July 2011 (AE A).

Applicant was unaware of the storage unit debt until he received the SOR. He had cosigned a lease for the unit with a military friend who was getting off active duty and needed a place to store his property, but who did not have a job at the time. The friend was responsible for paying the rent, but failed to pay the small balance which Applicant has resolved.

Applicant married in February 2003 and has two children ages 8 and 10. Both Applicant and his wife served in the military. Applicant was released from active duty in 2005; his wife was released in 2007. Later in 2007, they bought a house. Things were fine until September 2008, when his wife lost her job and with it 60% of their monthly income. Applicant and his wife contacted the mortgage lender to discuss what actions they could take to address their sudden drop in income. The lender told them there was nothing they could do until the account was 90 days past due. Once the account was 90 days past due, Applicant and his wife applied for a mortgage modification, but never heard from the lender.

Applicant's wife was recalled to active duty from her reserve status in January 2009 and again in June 2009. Her pay for those recalls has not been resolved. Applicant and his wife separated in October 2009. There is no formal separation agreement or court-ordered child support. Neither Applicant nor his wife have filed for divorce.

After their mortgage became 90-days past due. Applicant and his wife resumed payments to keep the account 90 days delinquent. They continued to try to work with their lender, without success. Their lender froze the account in January 2010 and foreclosed on the house in May 2010.³ The house was sold in September 2010 for \$280,000, resulting in a potential deficiency of \$58,000. However, final resolution of the

³Applicant's May 2011 credit report (GE 6) largely corroborates this history. The lender reported the loan as 30 days past due in November and December 2008, 60 days past due from January through May 2009, 30 days past due from June through August 2009, 60 days past due in October and November 2009, and over 150 days past due from January through August 2010, resulting in foreclosure.

foreclosure sale has been postponed until at least November 2011. Documentation is not yet complete and resolution was being postponed because the home was in a state where the foreclosure documents may have been improperly robo-signed.

Applicant has about \$30,000 in his retirement fund with his employer that he can use to resolve any outstanding deficiency. In addition, the mortgage was covered by private mortgage insurance which may satisfy any deficiency. Applicant's credit reports (GE 3, 4, and 6) show several accounts which were previously delinquent, but which were now either paid or being paid as agreed. He is otherwise current on family expenses. He got some financial counseling from his aunt (a certified public accountant) in late 2009. He also consulted a financial counselor in summer 2011. His character and work references, including references from his company and the client agency, uniformly recommend him to retain his clearance.

Policies

The adjudicative guidelines (AG) list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline F (Financial Considerations).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter 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 judgement, reliability, and trustworthiness of those who must protect national interests as their 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.⁴

Analysis

The Government established a case for disqualification under Guideline F, but Applicant mitigated the security concerns. Applicant and his wife experienced financial

⁴See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

problems when she lost her job for 3½ months and was subject to two military recalls in 2009. Their financial problems were exacerbated by their separation and a mortgage lender who was neither forthcoming nor helpful in dealing with their sharp decline in family income.⁵ However, it appears that the financial fallout from this situation has been limited to the house and the mortgage.

Applicant meets significant mitigating factors for financial considerations. While his financial difficulties are recent, they were limited to the house and mortgage, and the circumstances under which they occurred are unlikely to recur.⁶ The wife's unemployment and later recalls to active duty were circumstance beyond her control, and they acted responsibly in addressing the mortgage under the circumstances.⁷ Although the house was foreclosed upon, Applicant remained largely current on his other expenses, and brought other delinquent accounts current. Applicant has received credit counseling on two occasions, and it does not otherwise appear that Applicant and his wife were living beyond their means in any regard.⁸

Department Counsel argues that I give extra weight to Applicant's credit reports—which show numerous accounts that were past due, but are now current—to conclude that Applicant remains an ongoing financial risk. Department Counsel's argument overlooks two important points. First, the previously past due accounts were not alleged in the SOR precisely because they have now been brought current. Second, a Guideline F case is only alleged when applicants have experienced financial problems. So, the mitigating conditions only come into play when disqualifying conditions have been met. The Government expects Applicants who have fallen into financial difficulty to address their delinquent debts responsibly. When they do so, that works in their favor, not against them. The fact that those accounts are now current shows that Applicant takes his financial obligations seriously, and can be expected to deal responsibly with the potential deficiency on his mortgage.

The only unknowns in the case are whether Applicant's private mortgage insurance will cover any of the potential deficiency and whether the lender will forgive the debt, resulting in income to Applicant that may be taxable. However, given that Applicant has substantial retirement savings, and the deficiency may be covered by mortgage insurance, it appears that he will be able to resolve any remaining liability on

⁵¶ 19(a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations;

⁶¶ 20(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

⁷¶ 20(b) the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances;

⁸¶ 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;

the house.⁹ Finally, given Applicant's favorable work and character references, his otherwise clean financial record, and the peculiar convergence of events that lead to the financial problems, the record does not suggest that Applicant's financial problems will recur. I conclude Guideline F for Applicant.

Formal Findings

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraphs a-b: For Applicant

Conclusion

Under the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

JOHN GRATTAN METZ, JR
Administrative Judge

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