



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



In the matter of:)	
)	
)	ISCR Case No. 10-09595
)	
Applicant for Security Clearance)	

Appearances

For Government: Fahryn Hoffman, Esq., Department Counsel
For Applicant: *Pro se*

November 4, 2011

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guidelines F, Financial Considerations and E, Personal Conduct. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On June 20, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F, J, and E. 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 (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR on July 20, 2011, and requested a hearing before an administrative judge. The case was assigned to me on September 9, 2011. DOHA issued a Notice of Hearing on September 13, 2011. I convened the hearing as

scheduled on October 6, 2011. The Government offered Exhibits (GE) 1 through 6, which were admitted into evidence without objections. Applicant offered Exhibits (AE) A through F, which were admitted into evidence without objections. The record was held open until October 12, 2011, to permit Applicant to submit additional documents, which he did. They were marked as AE G through I. Department Counsel had no objections, and they were admitted into evidence. Department Counsel's memorandum was marked as Hearing Exhibit I. DOHA received the hearing transcript (Tr.) on October 13, 2011.

Findings of Fact

Applicant admitted all of the allegations in SOR and provided explanations. I incorporated his admissions into the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 41 years old. He married in 2005 and has twin sons born in 2006. He has been employed by a government contractor since May 2010. Before then he was employed by a different government contractor for six years. He has held a secret security clearance since 2005. Applicant earned a certificate in cyber security from the local community college. His wife works as a nursing assistant.¹

Applicant provided a budget worksheet where he lists his monthly gross income as \$5,689 and his net income as \$3,618. He lists his wife's monthly income as \$1,800, and he estimated he earns about \$400 monthly from part-time handy work he performs. He estimated his total monthly net income as \$5,818. He estimated his total monthly expenses as \$3,557. He stated he has about \$3,300 in cash on hand and another \$4,900 in the bank. He and his wife own a home they purchased in 2004 for \$243,000.²

Applicant began investing in residential real estate in 2000. He and his cousin purchased property. His cousin's annual salary was about \$70,000. His was about \$50,000 at the time. They purchased four residential properties in 2000, 2003, 2004, and 2005. The first house they purchased they put a 3% down payment of \$5,000. The mortgage on the house was \$280K. Applicant obtained a line of credit from the lender and received \$101,000 (SOR ¶1.a). He made \$400 payments on the line of credit until he experienced financial problems. He defaulted on the mortgage loan and the house was sold by "short sale" for \$145,000 creating a deficiency on the mortgage he owed. He stated he received an Internal Revenue Service (IRS) Form 1099-C from the mortgage company and was advised they forgave the deficiency amount. He filed the Form 1099-C with his federal income taxes. The amount of the debt that was canceled was \$254,931. Applicant stated he thought the \$101,000 line-of-credit debt was part of the mortgage and when the house was sold he did not know he still owed that debt. He contacted the creditor and they wanted him to pay a settlement amount of \$40,000. He could not afford to pay the amount. He was permitted to pay \$60 a month for six months

¹ Tr. 96-101, 108-110.

² Tr. 34, 49-52, 89, 105.

as a temporary agreement and then a settlement amount would be negotiated later. He stated his intent is to settle the debt for \$10,000 to \$15,000. He completed the six months of payments and is waiting for the creditor to contact him and negotiate a settlement. The debt in SOR ¶ 1.a is not resolved.³

The cost of the house Applicant purchased in 2004 was \$145,000. He obtained a loan from the creditor. In 2005, he obtained a line-of-credit from the same creditor in the amount of \$84,000. He used the line-of-credit money to purchase another house and make his mortgage payments on the purchased house. He failed to make two mortgage payments in 2009. He contacted the creditor, and they did a "short sale" and sold the house for \$130,000. Applicant indicated the creditor issued him an IRS Form 1099-C for the deficiency on the mortgage, which he filed with his 2010 federal income tax returns. He owed \$900 for the tax debt and arranged an installment agreement with the IRS to pay \$100 month. He has paid four months and the amount is automatically withdrawn from his account. Applicant stated he still owes about \$81,000 on the line-of-credit. He stated he is paying \$52.83 a month on this debt. He is negotiating with the creditor to settle the debt. They have offered to settle for \$9,000 and Applicant has countered with \$7,000. Applicant plans to take a loan from his 401k retirement account to pay the settlement. Applicant did not disclose this delinquent debt on his security clearance application.⁴

Applicant purchased residential property in 2005. He took \$27,000 from the \$84,000 line-of-credit he had to use as a down payment. There were two mortgages on the property, one financed 80% for \$219,000 (SOR ¶ 2.a (4)) and the other financed 20% for \$26,920 (SOR ¶ 2.a (5)). The loans were adjusted variable rates, so the interest rate was subject to change. It did, and Applicant had difficulty paying the mortgages. He had been paying \$1,650 monthly, and the payment rose to approximately \$1,916. He had tenants renting the residence until about 2007, and then he was unable to rent the house. He contacted the creditor in an attempt to modify the loan. He began negotiating with the creditor in 2009. He paid \$900 a month for six months, but the creditor would not modify the loan. He placed the house for sale and did a "short sale". The house sold in February 2011 for \$110,000. There is also a deficiency of \$110,000 on the mortgages. Applicant indicated the creditor offered to settle the deficiency for \$10,000. He agreed to settle for \$2,000. He said they opted to send a Form 1099-C instead. He has not yet received the Form 1099-C. He estimated his annual income at this time to be \$50,000.⁵

³ Tr. 29, 31, 33-49, 54-65.

⁴ This debt was not alleged under Guideline F, Financial Consideration in the SOR, but was alleged under Guideline E, Personal Conduct. It will not be considered for disqualifying purposes, but will be considered when analyzing the whole person and Applicant's total financial situation.

⁵ Tr. 67-89.

Applicant stated he was unaware of the small debts in SOR ¶¶ 2.a (1) (\$26) and 2.a (3) (\$75). He has paid them and provided documentation.⁶

Applicant did not use any of his own money to purchase the residential properties. He financed and borrowed the money to purchase the properties. At different times, he had difficulty finding tenants and some of the properties needed to be renovated due to damage caused by the occupants. At one time, he had four pieces of residential property. He estimated his monthly mortgage payments on the properties were about \$7,000. In the best circumstances, he estimated he earned about \$150 a month on each residence. From about 2008 to 2010, he estimated his monthly losses were about \$3,000.⁷

Applicant admitted he was aware of his delinquent mortgages and delinquent lines-of-credit when he completed his SCA on May 24, 2010. His explanation for failing to list any of his delinquent debts, foreclosures, defaulted loans, or charged-off accounts was because he made a mistake. He stated his real estate debts were complicated and he knew he would be interviewed by an investigator, and he decided he would explain it to the investigator at that time. Applicant's explanation was not credible. Applicant could have answered the questions "yes" and later explained his real estate debts. When he consciously and intentionally stated he did not have any delinquent debts, he knew his answer was not correct. I find he deliberately failed to disclose his delinquent debts.⁸

Applicant stated he intends to file the Form 1099-C with his federal income taxes when he receives it. He stated he lives within his means and does not have any delinquent consumer debt. He has one credit card with a small balance that he pays. He has not had any financial counseling. He stated he has a budget. Since holding a security clearance he has had no infractions. He stated he is a hard worker. He stays out of trouble and attends church and supports his community. He does not drink or smoke.⁹

Applicant provided three character letters. In them he is described as a person of character and integrity. He is considered a morally sound person whom people look to for counseling and direction. He is a responsible person who is involved with his community and church. He is a team player and leader with a positive attitude towards his job and coworkers. He is considered mature, focused, diligent, and disciplined. Applicant's supervisor since May 2010, describes him as displaying a high degree of responsibly and ambition. He is a dependable and trustworthy person.¹⁰

⁶ Tr. 53-54, 65-67; Answer to SOR.

⁷ Tr. 88-93.

⁸ Tr. 28-31, 101-104, 110-119.

⁹ Tr. 119.

¹⁰ AE D.

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 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, these guidelines are applied 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 and 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 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." 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 relating to the guideline 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 several disqualifying conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (e) consistent spending beyond one's means which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.

Applicant overextended himself financially by purchasing real estate with loans he could not pay. He has not paid the debt alleged in the SOR. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following five mitigating conditions under AG ¶ 20 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 has not resolved the line-of-credit debt for \$101,000 alleged in the SOR. Applicant's has other delinquent debts related to his real estate purchases that are also not resolved. These debts were not alleged in the SOR. He purchased property and financed mortgages with other loans to purchase more property. His finances continue to be a concern because he has not resolved his large delinquent debt. His financial problems were not beyond his control. He went into the real estate business by securing mortgages and lines-of-credit. He did not have the resources to handle the enormity of his debts when circumstances changed. Although, some of his problems were the result of tenants leaving, this is not an unusual circumstance when working in the market, rather it is part of the business. Applicant defaulted on his loans and failed to pay his other creditors. He addressed his real estate problems with "short sales" and canceled debts by the creditors. I find AG ¶¶ 20(a) 20(b) do not apply. There is no evidence Applicant received financial counseling. He is attempting to negotiate and settle the debt in SOR ¶ 1.a, but has not done so at this time. He also has other debts he is addressing. At this juncture, Applicant's finances remain a concern. I find AG ¶¶ 20(c) and 20(d) do not apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct;

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant failed to disclose he had any delinquent debts on his SCA. He failed to disclose he defaulted on loans or had bills that were in collection. He failed to disclose

he had debts that were charged-off or canceled for failure to pay. He failed to disclose he had debts that were over 180 days or 90 days delinquent. Applicant's explanation that he made a mistake and intended to discuss his financial issues with an investigator at a later date was not credible. I find he deliberately and intentionally failed to disclose his financial delinquencies. I find the above disqualifying condition applies.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant did not make a prompt, good-faith effort to correct his omissions. There is no evidence he received improper advice. His actions were not minor and reflect poorly on his reliability, trustworthiness, and judgment. He has not acknowledged his behavior. He has not taken positive steps to reduce his vulnerability to exploitation, manipulation, or duress. I find none of the mitigating conditions apply.

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 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.

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 Guidelines F and D in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant began buying real estate and later defaulted on mortgages and line-of-credit loans he obtained. Some of the mortgage debt was forgiven and created tax consequences. Some of the debts he is still attempting to settle. Applicant was well aware of his financial difficulties when he completed his SCA, yet he failed to disclose any of his delinquencies or past due debts. His questionable judgment and untruthfulness during the security clearance process is a cause of concern. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the guidelines for Financial Considerations and Personal Conduct.

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	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a (1)-(5)	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 a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge