



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



In the matter of:)
)
) ISCR Case No. 10-10833
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeffrey Nagel, Esq., Department Counsel
For Applicant: Joseph Testan, Esq.

December 9, 2011

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 31-year-old employee of a defense contractor. He is alleged to be indebted to four creditors in the approximate amount of \$553,248.15 on four defaulted mortgages. Applicant mitigated the Financial Considerations security concerns, because the debts were caused by unforeseen circumstances beyond his control, and he has acted responsibly with respect to each of his debts. Eligibility for access to classified information is granted.

Statement of the Case

On May 16, 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 (EO) 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 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 October 5, 2011. DOHA issued a notice of hearing on October 13, 2011, scheduling the hearing for November 1, 2011. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 6, which were admitted without objection. The Applicant offered Exhibits (AE) A through I, which were admitted without objection. Applicant testified on his own behalf and called three witnesses. DOHA received the transcript of the hearing (Tr.) on November 9, 2011.

Procedural Rulings

At the hearing on November 1, 2011, Department Counsel made a motion to amend the SOR, by adding three allegations, pursuant to Directive ¶ E3.1.17. Applicant had no objections to the amendment and the motion to amend was granted to include the following allegations: (Tr. 6-7, 25.)

1.b Your [creditor] Mortgage account was foreclosed upon in about August 2009, when you could not make the required loan payments on a loan of \$195,250.

1.c Your [creditor] first mortgage account was surrendered in your Chapter 7 bankruptcy that was discharged on July 1, 2011, when you could not make the required loan payments on a loan of \$87,000.

1.d Your [creditor] second mortgage account was surrendered in your Chapter 7 bankruptcy that was discharged on July 1, 2011, when you could not make the required loan payments on a loan of \$19,000.

Findings of Fact

Applicant admitted SOR allegations 1.a through 1.d, in part. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 31-year-old employee of a defense contractor. He has worked for his current employer since June of 2010. He possesses a bachelor's degree and a master's degree in electrical engineering. He has never been married and has no children. (GE 1; Tr. 67-68.)

As stated in the SOR, Applicant is alleged to be indebted on four accounts in the approximate total amount of \$553,248.15. Each debt was established through the credit reports and his admissions. (Answer; GE 2; GE 3; GE 5; Tr. 25.)

In early 2005, Applicant had been saving up his "hard-earned money" and started to look into investing it for his future. He began looking into real estate, because he had friends that were successful in their real-estate investments. In the summer of 2005 he took a seminar taught by a finance professor (Professor) who he considered to be an

expert in real estate. Professor formed a network to help people invest and offered free lectures all around Applicant's state. Applicant did not know much about real estate, so he attended the lectures to educate himself on investing. Applicant estimated that he attended half-a-dozen to a dozen seminars each week the summer of 2005. Applicant indicated that he attended so many lectures because it had taken him many years to accumulate his savings and he was trying to be prudent. (AE D; Tr. 47-65, 69-73.)

One of the instructors at the investment seminars (Instructor) offered his own separate course on how he had become a successful real estate investor. Applicant and Instructor struck-up a friendship after Applicant attended a number of his lectures. Applicant decided to trust his friend, and invest with him. Instructor testified on Applicant's behalf at the hearing. At the time he met Applicant, Instructor held approximately 40 properties. (AE D; Tr. 47-65, 69-73.)

Together they purchased three properties. For each of the properties, Applicant and Instructor entered into an equity-share agreement. The equity-share agreement was drafted by Professor and the investment classes focused on how it worked. Essentially, for each property Applicant agreed to secure mortgages solely in his name, but both Applicant's name and Instructor's name were on the deeds to each property. Applicant and Instructor were each responsible for 50% of the expenses associated with the property, from the down payment and closing costs, to the monthly mortgage payments. However, the equity-share agreement also included a clause to permit the withdrawal of a party, should the party be unable to satisfy his share for two consecutive months. The property would then be owned solely by remaining party. The goal of the partnership was to purchase properties and hold onto them. In theory, the rental of the properties would cover the mortgage payments. (GE 4; Tr. 51-56, 72-85.)

The first property they purchased was located in state A. Instructor had already started the purchase of the property, so Applicant repaid him for half of the earnest money, totaling \$2,500. The total purchase price of the property was approximately \$190,000. Applicant financed the purchase with a first mortgage (alleged in ¶ 1.c of the SOR) and a home equity line of credit (alleged in ¶ 1.d of the SOR). Applicant and Instructor split the closing costs of \$20,000 equally. (GE 4; Tr. 73-75, 82-83.)

The second property purchased for approximately \$220,000 was located in state B. Applicant and Instructor each put down five percent of the purchase price, or approximately \$10,000 each. Applicant financed approximately \$200,000 of the purchase price in a single mortgage (alleged in ¶ 1.a of the SOR). (GE 4; Tr. 76-77, 85.)

The third property was also located in state B and was purchased for approximately \$220,000. Applicant and Instructor each put down five percent of the purchase price, or approximately \$10,000 each. Applicant financed approximately \$200,000 with an \$180,000 mortgage (alleged in ¶ 1.b of the SOR) and a \$20,000 home equity line of credit (not alleged in the SOR). (GE 3; GE 4; Tr. 78-81.)

Applicant purchased three properties with Instructor because he believed he could afford the payments and had faith in Instructor as a financial adviser. He

anticipated periods where tenants would move and the properties would remain unoccupied. He believed he was making enough to pay his half of the expenses and maintain the properties. He had savings to support him if he encountered difficulties. Applicant noted that the rental income received was always deficient, not covering the full cost of the mortgages and the home owner's association fees, but that he was easily able to pay his share of the difference. (GE 4; Tr. 83-84.)

In 2006, a year after purchasing the properties, he experienced several hardships. The second property he purchased became vacant in summer of 2006 and remained vacant for over ten months. At the same time, Instructor failed to satisfy his half of the expenses and began making his payments to Applicant six months to a year late. In March of 2007, Instructor told Applicant he could no longer make his payments and Instructor signed his share of all of the properties over to Applicant. Applicant was able to rely on his savings and salary, and continued to make payments on the properties through March of 2008.

In March of 2008, the interest rate on the third property adjusted upward. At the same time, Applicant's employer reduced employee salaries by 20% and reduced their hours by 20%. Applicant found he could no longer make the payments on the two properties in state B. He applied for a loan modification on each of his mortgages for the properties in state B. However, the bank did not approve his request. He attempted to sell the second property, but indicated he was unable to find a trustworthy real-estate agent in state B. Applicant defaulted on the loans for the two properties in state B. The third property was foreclosed upon. (GE 4; Tr. 81-89, 93.)

Applicant consulted an attorney about his options. He was advised that he should file for Chapter 7 bankruptcy and include all of his mortgages, including the property in state A, on which he was current on his payments. Applicant took his attorney's advice. On March 1, 2011, Applicant filed Chapter 7. He listed \$684,861 in liabilities, which consisted of the secured mortgage debts for the three properties and several student loans that he maintained in a current status, despite the bankruptcy proceedings. As part of his bankruptcy proceedings, Applicant completed a financial counseling course. He discharged the mortgage debt on July 1, 2011. He did not discharge any other debt through bankruptcy. Applicant estimates that he lost approximately \$100,000 of his own money on the three properties. (GE 4; AE A; AE B; AE C; Tr. 97-100.)

Applicant is current on all of his other debts. His credit report from 2006, reflects that prior to 2006, he was current on all of his accounts. His more recent credit reports reflect that although he had delinquent mortgage debt, he maintained his other accounts in good standing. They display no other negative history. His budget shows that he has \$916 left over after he meets his monthly expenses. He pledged that he will do "a lot of research" before investing again. He indicated that he is currently focusing on satisfying his student loans faster than his repayment plan calls for. (GE 5; AE E; AE F; Tr. 100-107.)

Applicant is well respected by his supervisor, friends, and colleagues, as expressed in letters and testimony from them. He is classified as a, "very reliable

employee” and a person who is, “not a risk taker.” He demonstrates a “high level of professionalism and integrity,” and has “impeccable character.” (AE G; Tr. 9-22.)

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 concerns under AG ¶ 19. One is potentially applicable in this case:

(a) inability or unwillingness to satisfy debts.

Applicant was unable to satisfy his four mortgages totaling approximately \$553,248.15, as alleged on the SOR. His default on the loans for the properties in state B led to the foreclosure of one of Applicant's properties in state B. Ultimately, Applicant relinquished all three properties to the bank and discharged his real estate debts by filing Chapter 7 bankruptcy. The Government established a case for disqualification under Guideline F.

Four Financial Considerations 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 meets significant mitigating factors for financial considerations. While his financial difficulties are recent, they were isolated to his investment in the three real estate properties and did not cause Applicant's other accounts to become delinquent. Further, the circumstances under which Applicant's financial problems occurred are unlikely to recur. Applicant proceeded reasonably in buying the properties. He invested a great deal of time and energy into researching his investment. He found a partner, who he believed in. However, he could not predict the financial difficulties of his partner, a reduction in his salary at work, or the market downturn. Applicant's financial problems are directly attributable to these unforeseen circumstances. He continues to remain current on his other financial obligations. It does not appear that Applicant was living beyond his means in any regard. When he found that he could not refinance the property, and could not afford the payments based on his income alone, he consulted an attorney to find the most responsible solution to his inability to meet his mortgage payments. He followed the advice of his attorney and filed Chapter 7 bankruptcy, in good faith. All of his delinquent debts were discharged and are now resolved. He now has a monthly surplus of \$916. As part of his bankruptcy, he completed consumer credit counseling classes. Applicant learned his lesson and will be more careful in any future financial investments. He can be trusted to monitor his finances closely and resolve his debts in the future. Applicant has acted responsibly by following the advice of his counsel. Clearly, Applicant's financial problems are under control. AG ¶¶ 20(a), 20(b), 20(c), and 20(d) 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 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.

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 was younger at the time he first invested in the three properties. He is now older and more

cautious. Applicant is well respected by his supervisor, friends, and colleagues. He performs well at his job. His integrity and his financial track record, mortgages aside, show Applicant is trustworthy.

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
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	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