



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



In the matter of:)
)
) ISCR Case No. 10-11079
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

October 26, 2011

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated the Financial Considerations concern. He established that his financial problems were due to matters outside of his control and he has resolved his past indebtedness in a responsible manner. Clearance is granted.

Procedural History

On April 4, 2011, the Defense Office of Hearings and Appeals (DOHA) made a preliminary determination to deny Applicant access to classified information.¹ The basis for this decision is set forth in a Statement of Reasons (SOR), which alleges the security concern under Guideline F (Financial Considerations). Applicant responded to the SOR on April 27, 2011 (Answer). He requested a determination on the administrative record.

On June 9, 2011, Department Counsel submitted the Government's File of Relevant Material (FORM). The FORM contains Government Exhibits (GE) 1 through 6,

¹ This action was taken pursuant to 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) implemented by the Department of Defense on September 1, 2006.

which are admitted into evidence without objection. Applicant filed his Response to the FORM on July 15, 2011 (Response).² With his Response, Applicant attached a copy of a mortgage loan modification agreement and payment history. These documents have been marked as Applicant's Exhibits A and B, and are admitted into evidence without objection.³ I was assigned the case on August 8, 2011.

Findings of Fact

Applicant is 55 years old. He worked as a corrections officer for a major metropolitan city from 1989 to 2009, when he retired. He has been married since 1982 and has two adult children. He has lived at the same address since 1990 and one of his children still lives with him. He has been working as a security officer for a government contractor since July 2010.⁴

In 2004, Applicant's son was severely injured in a car accident that resulted in his hospitalization for nearly a month and left him requiring round-the-clock care. Applicant converted his house to make it accessible for his son and his wife left her job to care for their son fulltime. Applicant had to switch to the overnight shift and was unable to make extra money working overtime because he needed to be home to help care for his son. As a result, Applicant's expenses increased sharply and his income decreased. Applicant was able to meet his financial obligations, but "the financial stress spilled over for several years."⁵

By April 2009 Applicant's wife was working again. Applicant retired from his state corrections job and planned on supplementing his retirement income with a job in the security field. Applicant expected that between his wife's pay and his retirement income that he could pay the family's bills until he found a fulltime job. Unfortunately, Applicant's wife suffered a devastating back injury that left her disabled and required her to take a leave of absence from her job in about June 2009. Applicant was forced to set aside his own job hunt and stay home to care for his ailing wife. Applicant's wife was able to receive corrective back surgery in the fall of 2009 and returned to work in January 2010. Applicant's income during this period was about \$2,000 less than before he had to stay home to care for his wife. He started a part-time job in January 2010, but his income was still \$800 less than when he was working fulltime. He did not secure a fulltime job until he was hired by his current employer. By that point, he had accumulated some past due debt, including falling behind on his mortgage.⁶

² DOHA did not receive Applicant's Response until on or about August 16, 2011.

³ The Government did not object to AE A and B, but did submit a Reply, dated August 18, 2011. As the Reply does not contain any indication on the face of the document that it was served on the Applicant and there is no other proof of service in the file, I will not consider the Reply.

⁴ GE 3; GE 4 at 124, 127, and 131.

⁵ GE 2 at 2-3; GE 4 at 127.

⁶ GE 2 at 3; GE 4 at 124-125 and 127-132.

Applicant revealed his financial problems on the security clearance application he submitted in August 2010.⁷ He then discussed his debts in detail during his subsequent background interview.⁸ When DOHA inquired about the status of seven delinquent debts in February 2011, Applicant provided documentary proof that he had either resolved the debts or was working with his creditors to resolve them, to include his past-due mortgage account.⁹

By the time the SOR was issued in April 2011, Applicant's delinquent debts were down to three. Applicant has resolved the three delinquent debts listed in the SOR. He settled the credit card debt alleged in ¶ 1.a in April 2011. He provided documentary proof of his efforts to resolve this debt prior to the issuance of the SOR and that the debt was paid.¹⁰ He also satisfied the judgment debt alleged in ¶ 1.c and provided documentary proof that this debt was satisfied.¹¹ The debt in ¶ 1.c was originally for a past due amount owed for the family's cell phone service and additional fees that the wireless carrier wanted to charge. Applicant and his wife disputed the additional fees the wireless carrier was proposing to charge. The wireless company forwarded their claim to a collection company, which was able to procure a judgment against Applicant and his wife. They settled the judgment for the amount that was past due,¹² and the debt was satisfied prior to the issuance of the SOR.¹³

Applicant's only remaining bad debt was his delinquent mortgage account, as alleged in ¶ 1.b. Applicant fell behind on his mortgage when he was unemployed and underemployed from April 2009 to July 2010. He was initially able to enter into a deferred payment arrangement with the lender where the lender agreed to take less than the monthly mortgage amount owed. From August 2009 to August 2010, Applicant made the partial payments agreed to by the lender. The lender then stopped accepting Applicant's partial payments while it reviewed his application for a loan modification through the Home Affordable Modification Program (HAMP). Applicant hired a professional to assist in the process, because the lender had a significant backlog of applications. He also set aside about \$10,000 to eventually satisfy any delinquency owed to the lender. He has \$23,000 in savings and \$150,000 in equity in his home to

⁷ GE 3 at 39-44.

⁸ GE 4 at 127-132.

⁹ See GE 4 at 94-106, 114, 117 – 120 (2/11 credit report notes that second mortgage on home, which was previously delinquent, was current).

¹⁰ GE 2, attached statement from creditor, dated April 21, 2011 (noting that debt was settled in full); GE 4 at 104 (settlement offer, dated February 14, 2011).

¹¹ See GE 2, attached *Satisfaction of Judgment*, dated February 24, 2011.

¹² GE 4 at 129.

¹³ GE 2, attached *Satisfaction of Judgment*, dated February 24, 2011.

satisfy the approximate \$28,000 that was past due on the mortgage. The lender approved the loan modification application in May 2011. Applicant submitted proof of payment per said agreement and this debt is no longer past due.¹⁴ Applicant also submitted documentary proof of his efforts to resolve this debt, the loan modification approval, and payments made towards this debt over the past two years.¹⁵

Applicant and his family are now financially stable. He has not taken a vacation outside of the country in the past seven years and there was no evidence that he has been financially irresponsible. Applicant's personal financial statement and recent credit report reveal that Applicant and his family do not live beyond their means.¹⁶

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 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 Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, an 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." Directive ¶ E3.1.15. An applicant has the ultimate burden of persuasion to obtain a favorable security decision. In resolving this ultimate question, an administrative judge must resolve "[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security." AG ¶ 2(b).

¹⁴ GE 4 at 95, 120-121, 124-125, 127-132; Response.

¹⁵ GE 4 at 102-103 (lender acknowledges receipt of loan modification application on 11/3/10); GE 2, attached consultant agreement (loan modification professional hired on 3/14/11 to help with process); AE A (acceptance into HAMP on 5/6/11); AE B (partial payments made from 8/09 – 8/10 per prior modification agreement and proof of payment during HAMP trial period).

¹⁶ GE 4 at 107-121. See also GE 5 (only derogatory accounts are those that have been paid).

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.

Analysis

Guideline F, Financial Considerations

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

One aspect of the concern is that an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Applicant's past indebtedness raises this concern and establishes the following disqualifying conditions under AG ¶ 19:

- (a) inability or unwillingness to satisfy debts; and

- (c) a history of not meeting financial obligations.

However, Applicant's past indebtedness is not the end of the analysis, because "[a] security clearance adjudication is not a proceeding aimed at collecting an applicant's debts. Rather, it is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness."¹⁷ Accordingly, Applicant may mitigate the financial considerations concern by establishing one or more of the mitigating conditions listed under AG ¶ 20. I have considered all the mitigating conditions, and find that the following warrant discussion:

¹⁷ ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). See also ISCR Case No. 09-07916 at 3 (App. Bd. May 9, 2011).

(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's financial problems were due to matters beyond his control. Namely, his son's medical issues due to a horrific car accident and, most recently, his wife's disability. Applicant's income decreased dramatically starting in the summer of 2009 when he was forced to stay home to care for his ailing wife. Even after his wife was able to return to work in January 2010, Applicant was unable to secure fulltime employment. Applicant's financial problems were not self-inflicted because he retired from his well-paying job prior to his wife's disability.¹⁸ This is also not a case where an applicant simply walks away from his/her financial obligation.¹⁹ Instead, Applicant paid his delinquent debts and tirelessly worked with his lender to modify his loan so he could satisfy his mortgage obligation. He made partial payments for a year as agreed to with his lender and afterwards saved a significant amount of money to satisfy any delinquency owed. The delay in processing his modification application was not Applicant's fault. Through his tireless efforts, Applicant was able to save his home and bring his mortgage account current. Applicant's past debts no longer cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and (b) apply.

Applicant's financial situation is under control. He satisfied multiple delinquent debts prior to the issuance of the SOR. As for the two non-mortgage related debts listed in the SOR, one was satisfied even before the SOR was issued (¶ 1.c). As for the other debt (¶ 1.a), Applicant entered into a payment arrangement with the creditor prior to the issuance of the SOR, and fully satisfied the debt shortly after the SOR was issued.

¹⁸ *Contrast with* ISCR Case No. 09-08108 (App. Bd. Feb. 15, 2011) (The applicant's decision to change jobs, which resulted in financial problems, was not a matter beyond his control. Further, Applicant in this case did far more than merely stay in contact with his overdue creditors, he actually paid his past due debts and resolved his delinquent mortgage account).

¹⁹ *Contrast with* ISCR Case No. 10-01978 (App. Bd. Aug. 24, 2011) (The applicant purchased multiple homes obligating himself to mortgages well beyond his means and, when he was unable to pay, simply walked away from his mortgage debts).

Applicant was working to resolve his delinquent mortgage account well before DOHA questioned him about his financial problems.²⁰ He paid his mortgage on a consistent basis for a year per the terms of a prior temporary modification agreement. He has now secured a modification of his mortgage through HAMP, and provided proof of payment per the terms of the modification agreement.²¹ Although there was no evidence presented that Applicant received financial counseling, he has put his financial house in order by repaying overdue creditors and negotiating his past due debts in good-faith. AG ¶¶ 20(c) and (d) apply. Applicant mitigated the financial considerations concern and his financial problems no longer raise a security concern.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).²² I incorporate my Guideline F analysis herein and highlight some additional whole-person factors. Applicant worked as a corrections officer in one of this nation's busiest and most dangerous corrections facility for over 20 years. He has also lived in the same home, where he raised a family, for over 20 years. Applicant's financial problems are due to his family's medical issues that severely impacted his finances. When faced with such financial hardship, Applicant exhibited the

²⁰ *Contrast with* ISCR Case No. 10-0780 (App. Bd. Oct. 12, 2011) (The applicant failed to demonstrate that he acted responsibly under the circumstances because, after years of inactivity, he decided to resolve his delinquent debts only after the SOR was issued); ISCR Case No. 10-01209 (App. Bd. Apr. 28, 2011) (The applicant took remedial efforts to resolve her delinquent debts only to placate security concerns versus a true commitment to pay her financial obligations).

²¹ *Infra.* n. 15. See generally Making Home Affordable.gov website available at <http://www.makinghomeaffordable.gov/programs/lower-payments/Pages/hamp.aspx> (general information on the eligibility requirements for HAMP); Treasury.gov, *August 2011 Making Home Affordable Reports*, available at http://www.treasury.gov/initiatives/financial-stability/results/MHA_Reports/Documents/August%202011%20MHA%20Report%20FINAL.PDF (76% of those entering HAMP trial program through Applicant's lender received a permanent modification); Treasury Department, Office of Financial Stability, *Citizens Report on the Troubled Asset Relief Program for FY 2010* at 10-11 available at http://www.treasury.gov/initiatives/financial-stability/briefingroom/reports/agency_reports/Documents/OFS%20CR_2010_Feb11_last.pdf (discussing origins of HAMP and 85% success rate of homeowners in the HAMP modification program); KnowYourOptions.com available at <http://www.knowyouroptions.com/options-to-stay-in-your-home/modification-option> (official website by Fannie Mae explaining some of the benefits of HAMP, including "adding any past-due amounts . . . to the unpaid principal balance, which is then reamortized over the new term" of the loan). See also *Warren v. Bank of America*, et al., 2011 U.S. Dist. LEXIS 55777 (S.D. Ga. May 24, 2011) (providing background information on HAMP); *Min'gate v. Bank of America*, et al., 2011 U.S. Dist. LEXIS 114026 (D. Minn. Sept. 20, 2011) (no private cause of action authorized by HAMP against lender for issues involving the processing of modification application).

²² (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.

