



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 11-00982

Appearances

For Government: Melvin A. Howry, Esq., Department Counsel

For Applicant: *Pro se*

03/29/2012

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

On September 12, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) noting security concerns arising 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 (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG).

On October 7, 2011, Applicant responded to the SOR, admitted the sole allegation raised, and requested an administrative determination without a hearing. On January 6, 2012, Department Counsel submitted a File of Relevant Material (FORM), which included 12 attached items. Applicant responded to the FORM on February 7, 2012, within 30 days after his receipt of the FORM. The case was assigned to me on March 22, 2012. Based on a review of the case file, I find Applicant failed to meet his burden regarding the security concerns raised under Guideline F. Security clearance is denied.

Findings of Fact

Applicant is a 31-year-old engineer working for a defense contractor. He has worked for the same employer since 2006. He has earned a master's degree.

Applicant has worked full-time since 2006, the same year he bought an investment home as a potential rental property. In October 2009, he became delinquent on his investment property.¹ He became delinquent after his tenants could not afford the full rent and Applicant could not afford to pay the difference owed on his monthly mortgage payment.² Consequently, he stopped making payments on the property, the value of which had decreased to less than half of its purchase price due to poor market conditions.³ Applicant married and moved out of the area in mid-October 2009.⁴ He told his security officer he decided to let the property go to foreclosure.

With the exception of the debt at issue, which was originally a \$59,582 second mortgage on the property used to pay for closing costs, Applicant has not had any other significantly adverse financial issues. There is no evidence indicating he has received financial counseling. In September 2011, after the SOR was issued, Applicant contacted his lender. He was told the conveyance and foreclosure had not been completed, therefore, it was unclear how much, if anything, was owed on the loan. As of the February 2012 date when he responded to the FORM, that issue had not been resolved. Applicant does not gamble. He leads a simple life, seldom entertains, and does not have cable television.

In his response to the FORM, Applicant cited to his state's civil procedure code. The section cited that a "nonjudicial initiated foreclosure causes the first and second mortgages [on a home] to not be collectible. . . ."⁵ Evidence was provided showing that the loan at issue was used to pay for closing costs.

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the AG. The AG lists potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in

¹ FORM, Item 7, Testimony (Jun. 24, 2010) at 1.

² FORM, Item 7, Testimony (Jun. 24, 2010) at 1.

³ FORM, Item 7, Testimony (Jun. 24, 2010) at 1. Applicant bought the property with \$299,000 in financing; by 2009, its value was about \$140,000. At issue is the second mortgage, representing a debt balance of \$57,793. *See also* FORM, Item 3, Response to the SOR (Oct. 7, 2011).

⁴ Based on the facts supplied by Applicant, it is unclear whether the notice of foreclosure was received before or after the wedding.

⁵ Response to the FORM (Feb. 7, 2012) at 1.

conjunction with the factors listed in the adjudicative process. An administrative judge's over-arching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a scrutiny of a number of variables known as the whole-person concept. An 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.

The United States Government (Government) must present evidence to establish controverted facts alleged in the SOR. It is an applicant's responsibility to present "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." ⁶ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant. ⁷

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 about 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." ⁸ "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials." ⁹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information. ¹⁰ A security clearance denial does not necessarily reflect badly on an applicant's character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

⁶ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁷ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁸ See also EO 12968, § 3.1(b) and EO 10865 § 7.

⁹ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

¹⁰ *Id.*

Analysis

Guideline F – Financial Considerations

In this case, Guideline F is the appropriate guideline for consideration. Under that guideline, “failure or an 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.”¹¹ The burden in these proceedings is placed squarely on an applicant. Here, Applicant admitted that he is indebted to a lender for a second mortgage (\$57,793) that went into collection as the property went into foreclosure. Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts) and AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to mitigate security concerns.

Applicant bought a house in 2006, which he hoped to use as a rental property. The real estate market began its recent decline. Applicant’s tenants could not afford to pay the full rent amount contemplated, and Applicant could not afford to make up the difference owed on his mortgage. At some unspecified time, presumably in early 2009, Applicant stopped making payments on the mortgage at issue. It went into foreclosure in October 2009. That same month, Applicant got married and moved out of the area. He is currently awaiting resolution as to what, if any balance, is owed on the debt.

Applicant presented no evidence that he tried to find new tenants who could pay the rental amount that would relieve him of personally contributing toward his monthly obligation to his lender. There is no evidence Applicant tried to work with his lender, sought refinancing, tried to sell the house, secured permission to attempt a short sale on the home, received financial counseling, explored alternative methods for disposing of the property, or contemplated utilizing the investment property as his residence. Instead, the evidence shows that he stopped making payments on the property, got married, saw the home go into foreclosure, moved out of the area, and let the foreclosure process continue on its own. To use the common parlance, he “walked away” from the property in 2009. As of 2012, that issue remains unresolved. Although this incident is apparently Applicant’s only adverse financial incident, neither Financial Considerations Mitigating Conditions AG ¶ 20(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*), AG ¶ 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*), nor AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies.

¹¹ AG ¶ 18.

Applicant's financial predicament stems from three incidents. First, he bought the investment property at the crest of the real estate market. Second, he collected less than the amount required from his tenants to preclude his having to make up the difference on his monthly loan payment. Third, a real estate market downturn.

However, purchasing real estate is always speculative; there is no assurance that the real estate market will continue to soar, or even stay even in its course, year to year. Investing in such circumstances demands that an investor not be so extended or underfunded that the investor not be able to weather market ebbs and flows. Moreover, Applicant was unprepared for a rental market that would not sustain the rental price upon which it was necessary for him to reap in order to stay financially afloat. Further, when it became clear that his tenants could not pay sufficient rent to relieve him from contributing more than he could afford to meet his monthly payments, Applicant apparently made no efforts to refinance the home, find new tenants, or explore alternative methods for addressing his debt. Indeed, in 2009, Applicant simply let the foreclosure process dictate his circumstances passively. Therefore, while adverse and unpredictable events may have contributed to Applicant's acquisition of debt, the evidence shows no efforts on his part to alleviate, ameliorate, or mitigate the effect of his passive response to the circumstances. His lack of action was irresponsible and his decision to simply walk away from the problem demonstrated poor judgment. AG ¶ 20(b) (*the conditions that resulted in the behavior 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*) does not 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 an applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. In choosing a decision without a hearing, however, there are scant facts of record. It is noted that Applicant is a 31-year-old man with a both a bachelor's and master's degree. He is married. Applicant has been continuously employed since 2006. He does not lead an extravagant life and eschews such extras as entertaining and cable television, although little more is known of his finances.

In his mid-20's, Applicant bought the home at issue as an investment. At the time, however, he lacked sufficient funds to cover his closing costs, necessitating the need to take out the second mortgage now at issue. There is no evidence related to

any attempts to investigate the viability of investment, the real estate market, or the property's potential to generate sufficient income to cover whatever amount was needed to relieve him from overextending himself on meeting his monthly mortgage obligation.

Applicant correctly cites to his state's statute, under which he incurs no collectable liability on his second mortgage, due to its use to satisfy closing costs. However, security clearance reviews consider not only the disposition of the debt at issue, but also the circumstances surrounding its acquisition. In so doing, the burden remains squarely on the Applicant.

Here, although what Applicant's balance might be on the loan remains unresolved, it appears that any debt will be covered under state law. However, based on the few facts available, it appears that Applicant's purchase was a dubious speculation from the beginning in terms of the fact he assumed a second loan to cover home purchase-related costs. Moreover, Applicant's judgment since 2009 is questionable. Applicant made no effort to explore options to avoid foreclosure or minimize his potential liability. Although his state might forgive any balance owed, that does not put all parties back into their previous position; the obligation he abdicated is merely passed on to others to absorb. Applicant, for his part, exercised no reasonable effort to mitigate this debt or the situation his inaction helped create. While it will never be known if such efforts would have been successful, they would have at least demonstrated an effort to minimize losses and rehabilitate the situation.

As noted by the DoD Appeal Board, a security clearance adjudication is not a proceeding aimed at collecting an applicant's personal debts; rather, it is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness.¹² In this case, Applicant demonstrated questionable judgment in purchasing the property, and poor judgment in addressing his related-obligations since 2009. Applicant failed to meet his burden in this matter. The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials. Given the scant facts of record, I conclude that Applicant failed to meet his burden and that financial considerations security concerns remain unmitigated. Clearance is denied.

¹² See, e.g., ISCR Case No. 07-09966 (App. Bd. June 25, 2008) in which an applicant's reliance on the unenforceability of his debts under an Arizona statute of limitations failed to demonstrate that Judge erred. Even if a delinquent debt is legally unenforceable under state law, the federal government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring and failing to satisfy the debt in a timely manner. See also, e.g. ISCR Case No. 01-09691 at 3 (App. Bd. Mar. 27, 2003), ISCR Case No. 00-0345 at 3 (App. Bd. Dec. 12, 2001), ISCR Case No. 99-9020 at 5-6 (App. Bd. 4, 2001). Consequently, Applicant's reliance on his state's statute does not prohibit an examination of the overall circumstances.

