



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



In the matter of:)
)
) ISCR Case No. 11-01073
)
)
Applicant for Security Clearance)

Appearances

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

January 10, 2012

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 51-year-old employee of a defense contractor. He was alleged to be indebted to eight creditors in the approximate amount of \$782,387, which included three defaulted mortgages. Applicant mitigated the Financial Considerations security concerns by acting responsibly with respect to all of his debts. All but one debt was satisfied or is listed as current. The remaining debt was successfully disputed. Eligibility for access to classified information is granted.

Statement of the Case

On August 10, 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 September 16, 2011, and requested a hearing before an administrative judge. The case was assigned to me on November 1, 2011. DOHA issued a notice of hearing on November 3, 2011, scheduling the hearing for November 21, 2011. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 7, which were admitted without objection. Applicant offered Exhibits (AE) A through M, which were admitted without objection. Applicant testified on his own behalf and called four witnesses. The record was left open for Applicant to submit additional exhibits and on November 22, 2011, Applicant presented AE N. Department Counsel had no objections to AE N and it was admitted. DOHA received the transcript of the hearing (Tr.) on December 1, 2011.

Findings of Fact

Applicant denied SOR allegations 1.a through 1. h. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 51-year-old employee of a defense contractor. He has worked for his current employer for the past two years. He is divorced and has custody of his minor daughter, age 12. (GE 1; Tr. 45-47, 122.)

Applicant's credit reports from June 2010, July 2011, October 2011, and November 2011, and his answers to interrogatories show that Applicant was indebted to eight creditors in the amount of \$782,387 as alleged on the SOR. (GEs 1-7.)

Applicant attributes his financial problems to a series of events beyond his control. Applicant had been working as a consultant in the defense industry since approximately 1985. He worked at approximately eighteen different companies and sometimes incurred short periods of unemployment between jobs. The consulting positions offered higher salaries than traditional employment arrangements and Applicant found he had surplus cash. He testified he made between \$120,000 and \$155,000 annually while consulting. However, he was unable to invest in 401(k) plans with the companies he worked for because his consultant positions did not last the full year required to start a 401(k). He decided that he should invest in real estate as a way to save for his future. He intended to purchase properties and resell them quickly, or "flip" them, for a profit. Altogether, he purchased three investment properties, in addition to his personal residence, from 2004 through 2007. He researched and read a lot before he decided to make his first real estate investment. However, he did not anticipate the housing market failure and the declining prices when making his real estate purchases. He also did not predict a decline in the need for consultants, which led to longer-than-anticipated periods of unemployment from October 2006 through April 2007 and May 2009 through November 2009. (GE 2; GE 3; Tr. 48-55, 69-127.)

The first property Applicant purchased was his residence. Applicant purchased it in 2004 for approximately \$240,000 to \$250,000. He put \$17,000 down and secured a 30-year fixed rate mortgage. He is current on this mortgage and still lives in this property. (GE 7; AE M; Tr. 74-75.)

In 2005, Applicant purchased his first investment property. It was a loft, which he purchased for approximately \$750,000. He put down \$75,000. He financed his purchase through a first and second mortgage through the creditors listed in SOR allegations 1.b and 1.c. He planned to “flip” the property in one year, so he had a “funny” mortgage, with an adjustable interest rate. He did not recall the exact terms of the loan. Applicant put this property on the market for sale during the first year he owned it, but it did not sell until August 2011. During the first year Applicant owned this property, he would sometimes stay in the loft. However, after his first year, he leased it to renters. He was unable to rent it for the amount of the mortgage payments, but he was able to pay the difference of approximately \$400 to \$500 per month because his salary was high. Applicant defaulted on his payments on his two mortgages for this property between June 2009 and March 2010. Applicant sold this property for approximately \$450,000 on August 11, 2011, in a short sale. Applicant produced documentation from the creditor that shows the creditor considers both loans to be settled and waived its right to collection of any deficient amounts. He estimated that he owed \$819,000 on this property at the time of sale. (GE 4; AE N; Tr. 75-80, 87, 91-93.)

Applicant’s second investment property was purchased in 2006 for \$700,000 to \$720,000. He put no money down on this purchase. This mortgage also has an adjustable interest rate. He rented this property to tenants, but he incurred a \$600 to \$700 loss on the property each month, which was the difference between the rental income and the mortgage payment. Applicant financed the purchase of this property with the creditor listed in SOR allegation 1.e. However, the creditor sold Applicant’s loan to another creditor and failed to properly record the transfer with the credit reporting agencies. Applicant produced documentation to show that this mortgage was now serviced by another company and has a “current” status. He challenged the entry on his credit report from the creditor in 1.e and it was “deleted.” Currently, Applicant owns this property. He rents it for \$4,171 per month. His mortgage payments are \$4,925 per month. He testified that he has budgeted for the difference between the rental payments and the mortgage payments and is able to make up the difference without incurring any financial problems. He is current on his payments, after obtaining a refinanced mortgage. (AE E; AE L; Tr. 69, 94.)

Applicant purchased his third investment property in February 2007 for \$629,000. It was a single family home. He put \$10,000 down and financed the rest. He considered the mortgage to be a short-term mortgage, because he planned to sell the property. He did not recall the terms of the mortgage. He immediately rented out the property, but it rented for \$700 to \$800 less than he was required to pay monthly on the mortgage. At the time Applicant purchased this property he was unemployed, but he believed he had sufficient savings to make up the difference between the rental payments and the mortgage payments on each of his three properties until he was able to sell them. He was exploring the option of changing his line of work from defense consulting to real estate investing during this period of time. In May 2009, Applicant sold this property in a short sale for \$450,000. He estimates that he owed \$629,000 on this property. He testified that the closing documents included a waiver of his liability for any deficiency on the sale of this property. (Tr. 93-94, 118-120.)

In addition to the three SOR debts discussed above (1.b, 1.c, and 1.e), Applicant was delinquent on five other accounts. They are as follows.

In SOR ¶ 1.a, Applicant was alleged to be indebted on a cable bill in the approximate amount of \$18. Applicant testified that he was unaware that this account was delinquent after a move and that he satisfied this account. He provided a letter from a collection agency that shows this debt was paid in full. (AE B; Tr. 55, 102.)

In SOR ¶ 1.d, Applicant was alleged to be indebted to a creditor in the amount of \$200. Applicant presented a letter from the creditor stating this account was settled in full on August 10, 2010. (AE D; Tr. 58, 103.)

In SOR ¶ 1.f, Applicant was alleged to be indebted to a collection agent for a towing company. Applicant testified that he was unfamiliar with this debt. He researched it and discovered that the towing company was closed pursuant to an investigation into fraudulent credit reporting. Applicant indicated he contested this debt by contacting the local consumer protection department, as instructed on documentation he found on this creditor on the internet and entered into evidence. The debt no longer appears on Applicant's credit report. (AE F; Tr. 60.)

In SOR ¶ 1.g, Applicant was alleged to be indebted to a collection agent for a department store in the approximate amount of \$1,769. Applicant presented a letter from a different collection agent, bearing the same account number as the original creditor, that shows this debt was settled in full on October 31, 2010. (AE A; AE G; Tr. 61, 104.)

In SOR ¶ 1.h, Applicant was alleged to be indebted to a collection agent in the approximate amount of \$192. Applicant presented documentation that his account with the original creditor has a zero balance. Applicant also presented a copy of his bank statement showing a \$192.32 payment to this creditor on August 16, 2010. (AE H; Tr. 61-64.)

When Applicant became unemployed and unable to afford the mortgages in 2009, he cut back his spending. He withdrew his daughter from private school and placed her in public school. He also cut back on his family's expenses such as eating out. He tried to sell his investment properties. He now holds a stable government contracting position and has given up the more volatile consulting work. He earns \$4,171 in rental income monthly. He computed his monthly income, including his salary and rental income, to total \$10,771 net. His expenses are \$9,263 monthly. He indicated that he does not intend to invest in real estate in the future. He now has a retirement account and has saved \$17,248 in this account. (Tr. 74-75, 124-125.)

Applicant is well respected by his supervisor, friends, colleagues, and family as expressed in letters and testimony. He is described as honest, dependable, reliable, and trustworthy. One friend and co-worker indicated "I can confirm that he is a man of great integrity, is extremely dedicated to his family and work, and is entirely a great human being." Another spoke of his "demonstrated honesty, concern for others, and the

love of God and family.” All agreed that Applicant has exceptional character. (AE K; Tr. 10-13, 30-44.)

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 clearance 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 concern under AG ¶ 19. Two are potentially applicable in this case:

(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.

From 2005 to 2007, Applicant purchased three investment properties with untraditional mortgages in hopes of flipping the properties and making a profit. His real estate investments were made prior to the decline of the real estate market in 2008. However, he had difficulties collecting sufficient rent on each of the properties to cover the mortgages prior to the decline of the market. Further, he purchased his third investment property during a period of unemployment, with the knowledge that his other two investment properties were not rented at a rate that would cover his mortgage payments on them. While he was making a good living as a consultant, it was not large enough to support his mortgages on four properties. Applicant's investments were beyond his means and indicated excessive indebtedness. His three investment properties each had a negative cash flow and when he again became unemployed in 2009, he was unable to sustain payments on his debts. The Government established a prima facie case for disqualification under Guideline F.

Five 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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's financial difficulties are recent. He sold his loft investment property approximately three months prior to the hearing through a short sale. Further, he still possesses an investment property which is rented for significantly less than the monthly mortgage payment. While Applicant's financial problems were partially due to conditions beyond his control, such as his 2009 unemployment and the financial strife of the real estate market, Applicant was also responsible for poor judgment in his investment decisions. He continued to invest despite his inability to "flip" the first properties he purchased, his inability to rent his properties for the amount of his mortgage payments, and his unemployment. Thus, neither AG ¶¶ 20(a) nor 20(b) are mitigating.

However, Applicant has initiated a good-faith effort to repay his creditors and there is clear evidence that his financial problems are under control. He presented proof that he satisfied each of the debts listed on the SOR, with the exception of the debts in 1.f, which he successfully contested and 1.e, which has been corrected and now shows as current with the correct creditor. Further, it is clear that Applicant learned his lesson and will avoid any future real estate investments. He has reduced his expenses, taken a secure job, and has started retirement savings. He can be trusted to monitor his finances closely and resolve his debts in the future. Clearly, Applicant's financial problems are under control. AG ¶¶ 20(c), 20(d), and 20(e) 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 that guideline, but some warrant additional comment. Applicant is well respected by his supervisor, friends, colleagues, and family. He performs well at his job. He made several risky investments from 2005-2007 that failed. However, he has done his best to satisfy his financial obligations. He is now able to satisfy his bills, even though he still owns one investment property that he subsidizes with his monthly income. While Applicant's financial investment decisions showed poor judgment, he acted honorably in settling his delinquent accounts. He has pledged to avoid future real estate investments. His witnesses and character reference letters indicate he is a man of his word and can be trusted to closely monitor his finances in the future.

Overall, the record evidence leaves me without questions or 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 concerns.

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
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	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