



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



In the matter of:)
)
) ISCR Case No. 11-01351
)
Applicant for Security Clearance)

Appearances

For Government: Raashid S. Williams, Esquire, Department Counsel
Richard A. Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

August 4, 2011

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ Applicant’s clearance is granted.

On 5 April 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.² Applicant timely answered the SOR, requesting a hearing. DOHA assigned the case to me 20 May 2011, and I convened a hearing 28 June 2011. DOHA received the transcript (Tr.) 6 July 2011.

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-3, and Applicant exhibits (AE) A-C. AE C was timely received post hearing.

²DOHA acted 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) effective within the DoD on 1 September 2006.

Findings of Fact

Applicant admitted the SOR allegations. He is a 41-year-old electrician employed by a defense contractor since May 2001. He has not previously held an industrial security clearance, but had one from 1989 to 1995 when he served in the military.

The SOR alleges, Government exhibits confirm, and Applicant admits, delinquent first and second mortgages that were \$30,000 past due on loan amounts of \$350,000. The property secured by the mortgages has since been foreclosed upon, and the status of the foreclosure is unknown.

Applicant and his first wife were married in October 1990, separated in July 2001, and divorced in February 2005. They had three children together, for whom they shared legal custody. Applicant remarried in April 2005, a woman with two children from her previous marriage.

When Applicant remarried, he and his new wife were living in separate rental houses. In May 2005, they bought a 2,800 square foot house with 3/4 bedrooms to live in, recognizing that the house would be large enough for all the children for the time being, but they would eventually outgrow it. The house was secured by a first mortgage of \$317,000 and a second mortgage of \$37,000. The monthly mortgage totaled about \$2,900, a figure they had no trouble meeting.

In about May 2008, Applicant and his wife had the opportunity to buy a new house that was under construction in a desirable neighborhood, at what they considered to be a good price. Thinking they would have no problem selling their current house, they bought the new house. However, this was at the beginning of the decline in local housing prices and they were unable to sell the house. Eventually, they tried to rent their house, and in January 2010 rented the house to a military member at a rate that did not cover their entire mortgage, but was a shortfall they were able to cover.

The lease Applicant entered into contained a standard "military clause," that permits a military member to break the lease without penalty if the military member receives orders out of the area. In April 2010, the military member was ordered to Iraq and broke the lease. Applicant was unable to find another renter, and his efforts to make alternate arrangements with the lenders (AE A, C; Tr. 40) provided inadequate relief. He fell behind on the mortgage payments and eventually the house went into foreclosure. He reported these details on his November 2010 clearance application (GE 1).

Applicant does not know the status of the foreclosure, and has been unable to obtain the information from the lender. He requested copies of the loan modification documents (AE C), but since the house was in foreclosure, the lender would not commit to providing the documents. Applicant has about \$40,000 in a 401k account, and is otherwise current on family expenses. His work and character references consider him honest and trustworthy (AE C).

Policies

The adjudicative guidelines (AG) list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline F (Financial Considerations).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the government.³

Analysis

The Government established a case for disqualification under Guideline F, but Applicant mitigated the security concerns. Applicant and his wife experienced financial problems when they were unable to sell their first house and the tenant they obtained broke the lease after only four months. They could not find another tenant or get other relief from their lender and the house was foreclosed upon.⁴ However, it appears that the financial fallout from this situation has been limited to the house and the two mortgages.

Applicant meets significant mitigating factors for financial considerations. While his financial difficulties are recent, they were limited to the one house, and the circumstances under which they occurred are unlikely to recur.⁵ Applicant and his wife

³See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁴¶ 19.(a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations;

⁵¶ 20 (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

proceeded reasonably in buying a larger home for their family. Losing their tenant was a circumstance beyond their control, and Applicant acted responsibly in addressing his debts under the circumstances.⁶ Although the one house was foreclosed upon, he remained current on his other expenses. While there is no evidence that he sought credit counseling, it does not otherwise appear that Applicant and his wife were living beyond their means in any regard.⁷ The only unknowns in the case are whether there will be a deficiency when the house is sold at foreclosure and whether the lender will forgive the debt, resulting in income to Applicant that may be taxable. However, given that Applicant has substantial retirement savings, it appears that he will be able to resolve any remaining liability on his first house.⁸ Finally, given Applicant's favorable work and character references, his otherwise clean financial record, and the peculiar convergence of events that lead to the financial problems, the record does not suggest that Applicant's financial problems will recur. I conclude Guideline F for Applicant.

Formal Findings

Paragraph 1. Guideline F:	FOR APPLICANT
Subparagraphs a-b:	For Applicant

Conclusion

In view of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

JOHN GRATTAN METZ, JR
Administrative Judge

⁶¶ 20.(b) the conditions that resulted in the financial problem were largely beyond the person's control . . . and the individual acted responsibly under the circumstances;

⁷¶ 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;

⁸¶ 20.(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.