



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



In the matter of:)	
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Applicant for Security Clearance)	ISCR Case No. 11-01856

Appearances

For Government: Tovah A. Minster, Esq., Department Counsel
For Applicant: *Pro se*

01/11/2013

Decision

LYNCH, Noreen, A., Administrative Judge:

The Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) alleging security concerns arising under Guideline F (Financial Considerations). The SOR was dated September 6, 2012. The action was taken under 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 in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on October 22, 2012. A notice of hearing was issued on November 9, 2012, scheduling the hearing for December 6, 2012. Government Exhibits (GX) 1-5 were admitted into evidence, without objection. Applicant testified, presented the testimony of two witnesses, and submitted Applicant Exhibits (AX) A-B, which were admitted without objection. I kept the record open until January 8, 2013, for additional documents. Applicant timely submitted two packets of documents, which were marked as (AX C-D). The transcript (Tr.) Was received on

December 13, 2012. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Findings of Fact

In his answer to the SOR, Applicant admitted the factual allegations under Guideline F (Financial Considerations), with explanations.

Applicant is a 39-year-old software engineer employed by a defense contractor. He obtained his undergraduate degree in 1996. Applicant married in 1999, but since July 2010, he has been separated from his spouse. Applicant and his wife have one daughter as a result of the marriage. Applicant has held a security clearance since 1996. (GX 1) He has been with his current employer since 2005. (Tr. 11)

In 2005, Applicant purchased a home for \$648,000. He then earned a salary of approximately \$105,000. His wife was also gainfully employed. When he purchased the home, he obtained two mortgage loans. Applicant had no difficulty paying the monthly payments. (Tr. 67) In 2007, Applicant's wife left her full-time employment and worked as a cosmetics consultant. In 2009, he decided to refinance the home loan for a lower interest rate for a lower monthly payment, not due to any late or unpaid household bills or expenses on his part. (Tr. 34)

Applicant explained that the bank loan modification process that began in October 2009, took more than a year. The bank advised Applicant to pay a reduced monthly amount (\$2,205 instead of \$2,759) and once the process was completed, the arrears would be "rolled into" the new loan. Applicant paid the reduced monthly amount for more than one year. (GX 2) When the loan modification was finally presented (September 2010), Applicant was told that he had to pay \$800 more a month than he was already paying. This amounted to approximately \$30,000. In order for the modification to be complete, Applicant had to pay \$30,000 within a five-day period. He decided not to accept the modification. (Tr. 41) He also sought the help of law group specializing in loan modifications, after the first modification loan bogged down. That was not successful either. He took the advice of a law group which ultimately made matters worse. He was advised to stop paying the second mortgage loan. He paid almost \$6,000 to the group. (Tr. 23) He obtained a short sale contract, but the mortgage lender did not cooperate. (GX 2) As a result, in February 2011, the bank foreclosed on the home. All other accounts were paid timely.

The first mortgage loan for a principal balance of \$536,000 (SOR ¶ 1.a) is allegedly unpaid. Applicant denies that he has a debt. He refers to the fact that it does not appear on the credit report. (GX 2) The notation for the conventional real estate loan provides that "credit grantor reclaimed collateral to settle defaulted mortgage." In addition, Appellant submitted an IRS form 1099 A that reflects that the balance on the first mortgage was less than fair market value. (AX C) Applicant confirmed with the new account holder that there is no longer a loan amount. In the interim, Applicant was paying the second mortgage loan.

The second mortgage loan of approximately \$134,000 is unpaid. (SOR 1.b) Applicant has every intention to satisfy the account. He has been in touch with the new account holder and is in the process of accepting a settlement for \$10,261. (AX A) His wife will help with the settlement funds. Applicant has explained in a post-hearing submission that he has given a \$300 payment to the new account holder. He is now planning to pay the full settlement amount within the next two months. He will borrow against his 401(k) to complete the settlement amount.

Applicant explained that he never had financial difficulties before the home foreclosure. He contacted a debt-relief company to help resolve the issue with the first mortgage. He was credible when he explained that this debt is not the result of poor self-control or improper spending, or unwillingness to abide by laws or regulations. Applicant was trying to avail himself of a process that would modify his real estate mortgage loan.

Applicant's current net monthly income is approximately \$7,677. He has no other delinquent debts. He pays his bills timely. He has a savings account. He uses a budget and is well organized. He has a monthly net remainder. Applicant's credit reports reflect many accounts in "paid as agreed status."

Applicant's employer testified that Applicant has worked for him approximately eight years. He has known Applicant since 1994. He attests to Applicant's integrity, credibility, and ability to protect classified information. Applicant is a valued asset to the company. Applicant's employer has received many letters from clients commending Applicant for his excellent ability to solve their problems. (Tr. 72-75)

Applicant's wife testified that her husband has always been extremely responsible with the family finances. She acknowledged that he handled the money and balanced the checkbook. (Tr. 77) Applicant's wife explained that she learned about a loan modification, which she thought would be a good idea. She confirmed that they completed the paperwork, but the process did not run smooth. After one year, it had not been resolved. She signed the loan modification and has been involved with the foreclosure process. (Tr. 82) She states that she is also responsible for the mortgage and will provide some funds for the settlement offer on the second mortgage loan. (Tr. 84) Finally, she acknowledged that Applicant has consistently provided money for his wife and her daughter during their separation based on a voluntary, amicable agreement between them.

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision.

Under AG ¶ 2(c), this process is a conscientious 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”¹ The burden of proof is something less than a preponderance of evidence.² The ultimate burden of persuasion is on the applicant.³

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 protect classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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.”⁴ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ *Id.*

merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying:

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;
- (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;
- (f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern;
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;

(h) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income; and

(i) compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

Applicant admits to the home foreclosure in 2011 and the resulting debts on the two mortgage loans. Consequently, the evidence is sufficient to raise disqualifying condition ¶ 19(a).

AG ¶ 20 provides conditions that could mitigate security concerns:

(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;

(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; and

(f) the affluence resulted from a legal source of income.

Applicant had not incurred delinquent debt or had other significant financial difficulties before 2009. He purchased his home in 2005 and he was paying both mortgage loans. Applicant's financial difficulty was the result of his attempt to modify his first loan in 2009. He followed the bank's advice and paid a lower monthly mortgage amount during the processing of the loan modification. Due to the bank's inept processing and length of time, Applicant found himself in a position in which he owed almost \$30,000 to have the loan modification approved in 2010. He did not have the

\$30,000 and rejected the modification. He tried to get legal advice, but that was not successful. He paid \$6,000 to a group who did not help remedy his problem. He also obtained a short sale, but the bank did not agree to that sale. During this time, he was paying his second mortgage loan. In February 2011, the bank foreclosed on the home property. Applicant received an IRS Form 1099 A that reflects that the balance left on the first mortgage was less than the fair market value. Applicant's credit report reflects that the account is closed and nothing is owed. Applicant has been responsible in all actions. When he and his wife separated in 2010, he continued to support her and his daughter. This was of his own accord and not court-ordered. As to the second mortgage loan, Applicant is in the process of a current settlement. The account is scheduled to be settled within the next few months. I find that the financial considerations concerns are mitigated. AG ¶¶ 20 (a), (b), (d), and (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 an applicant's conduct and all the 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. 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. Applicant is a 39-year-old employee of defense contractor who has held a security clearance since 1996. He has excellent recommendations from his employer.

He and his wife bought a home in 2005. Applicant had no financial issues before he and his wife decided to modify the mortgage loan. He had a longstanding history of financial soundness. There were circumstances beyond his control due to the bank's lengthy modification process. It was an isolated event in his life. He has a budget, a good job and has taken responsibility in his actions. He was organized and forthright at the hearing. He has mitigated the security concerns under the financial considerations guideline.

