



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



In the matter of:)
)
) ISCR Case No. 11-02128
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Esq., Department Counsel
For Applicant: *Pro se*

January 20, 2012

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, Financial Considerations. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On July 15, 2011, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns 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 Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on August 30, 2011, and elected to have his case decided on the written record. On September 30, 2011, Department Counsel submitted

the Government's file of relevant material (FORM). The FORM was mailed to Applicant on October 5, 2011, and it was received on October 24, 2011. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not provide additional information. The case was assigned to me on January 12, 2011.

Findings of Fact

In Applicant's answer to the SOR, he denied all of the factual allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 46 years old. He served in the military from 1986 to 1990 and was honorably discharged. He married in 2001 and has three children. He has worked for a federal contractor since September 2007.

Applicant purchased a home in May 2006. He obtained two mortgages with his wife from the same creditor. They intended to sell the home in three years and buy a larger home with the equity from the home they purchased. The housing market fell, so they kept the house longer than three years, and the value of the home continued to drop. The original purchase price was \$575,000, and the value dropped to \$355,000. Applicant decided to do a "strategic foreclosure" or "strategic default." He explained he "could have stayed in the home but would have been throwing money away due to the decreased value of the home."¹ He further stated that he "could have stayed in the home until [the] 5 year (2011) mark at which time the mortgage was scheduled to adjust."² Applicant provided the following response to his interrogatories:

The subject would not have been able to continue payments at the adjusted rate as it was never the intent to stay in the home this long, as noted by the desire to sell after 3 years. Furthermore, with a new addition to the family in 2009, the size of the home was no longer sufficient for the subject. The loan offered payment options (minimum, interest only, full, and 15 year) allowing a minimum payment to be made. The minimum payment was made during the subject's entire 4-year occupancy in the home. The subject never missed, or was late on a payment until the decision to walk away was made. The house was unoccupied from September 2009 until the bank assumed it on May 24, 2010. The mortgage included the "Power of Sale" clause. The home sold 4 months later, on September 15, 2010, for \$346,000. The house depreciated \$229,000 (40%) over 4 years.³

¹ Item 7.

² *Id.*

³ *Id.* In his response to the interrogatories, Applicant refers to himself as "subject."

Applicant told the government investigator that he was a first-time home buyer, and the broker told him the home would gain equity and he could use the equity to buy a bigger house for his growing family. The home was financed 100%, and the two mortgages were opened to cover the entire amount of the loan. The entire amount could not be financed with one loan.

Applicant voluntarily decided to default on his mortgage in September 2009 and moved out of the home. The amounts in collection were \$537,141 and \$114,990. The home was foreclosed in May 2010, and the amount of both of the mortgages at the time was \$632,000.

Applicant intends to rent a home for awhile and not to make the same mistake with the housing market. He is saving money for a down payment on a home in the future. He plans to wait for the right time to buy. He indicated he did not have any other financial problems or delinquent accounts. He indicated that he was capable of meeting his financial obligations but let the house go into foreclosure for “business/strategic” reasons. He has never had financial counseling or debt consolidation counseling because he has not needed it. His current financial situation is good and he is conservative with his money.⁴

In Applicant’s response to the SOR allegation ¶1.a he indicated:

As stated, this amount is the second taken against the property that was sold under “Power of Sale” [state] Code of Civil Procedure Section 580b applies as stated below as this was our primary residence.⁵

In response to SOR allegation ¶1.b he indicated:

As stated, the house sold under “Power of Sale” in the state of California. In accordance with [state] Code of Civil Procedure Section 580b, there is no deficiency balance.⁶

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 used in evaluating an applicant’s eligibility for access to classified information.

⁴ Item 7.

⁵ Item 3.

⁶ *Id.*

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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, and has the ultimate burden of persuasion as to obtaining a favorable security 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 that an applicant may deliberately or inadvertently fail to 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 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." 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: 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 conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19 and the following are potentially applicable:

(a) inability or unwillingness to satisfy debts.

Applicant defaulted on two mortgages he had obtained on a home he purchased, essentially breaching his contract with the creditor. He made a decision to “walk away” from the loans because the value of his home had depreciated. He was unwilling to pay the loans on the home he purchased. I find there is sufficient evidence to raise this disqualifying condition.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under 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;

(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 purchased a home speculating that it would gain value and he would be able to purchase a larger home from the equity in the first home. He paid his mortgage each month, but made a conscious decision that, because the value of the home was depreciating, he would breach his contract with the creditor and do a “strategic foreclosure” or “strategic default.” Other payment options were offered to him. Applicant stated in his interrogatories that he always paid his mortgage. His decision to “walk away” from his legal obligation casts doubt on his reliability, trustworthiness, and good judgment. I find AG ¶ 20(a) does not apply. Although, the downturn in the real estate market was beyond Applicant’s control, it does not appear that Applicant was

unable to pay his mortgage. When he purchased the house, he was speculating that it would increase in value. It did not, and instead of honoring the contract, he decided it was now a bad investment, and he chose to default on it. His actions do not fall within the scope of AG ¶ 20(b) as a condition that was beyond his control. Applicant indicated he has not received financial counseling because he does not need it. Because Applicant has no other delinquent debts alleged and his defaulted loans are unenforceable, I find AG ¶ 20(c) applies. However, Applicant's actions do not constitute a good-faith effort by him to pay his overdue creditors. His actions are akin to one having debts discharged in bankruptcy. Although his debts may not be legally enforceable 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. There is insufficient evidence to conclude Applicant made a good-faith effort to satisfy his debts or otherwise resolve them.⁷ I find AG ¶ 20(d) 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 the 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.

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 bought a house and then made a decision to "walk away" from it when its value depreciated. He was making monthly mortgage payments. No evidence was provided to indicate that Applicant could not afford to make his monthly payments. He indicated his decision was

⁷ See ISCR Case No. 07-09966 (App. Bd. June 25, 2008); ISCR Case No. 01-09691 (App. Bd. Mar. 27, 2003); ISCR Case No. 00-0345 (App. Bd. Dec. 12, 2001); ISCR Case No. 99-9020 (App. Bd. June 4, 2001).

a “strategic foreclosure.” Although his actions may have been legal under his state’s law, they raise questions about his reliability, trustworthiness, and good judgment. Applicant defaulted on a contract he made and his personal obligation to pay the mortgage. In essence, he chose to make a business decision over a personal obligation. His actions raise questions about how he might handle situations in the security area when it would be more beneficial to him personally, rather than doing what he is obligated to do. Overall, the record evidence leaves me with serious questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, Financial Considerations.

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:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge