



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



In the matter of:)
)
) ISCR Case No. 11-07551
)
)
Applicant for Security Clearance)

Appearances

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

October 24, 2012

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 58-year-old employee of a defense contractor. He is alleged to be indebted on five delinquent accounts in the approximate amount of \$422,935. Applicant has mitigated the Financial Considerations security concerns because the debts were caused by unexpected events beyond his control and he has acted responsibly by negotiating repayment agreements on all of his outstanding accounts. Eligibility for access to classified information is granted.

Statement of the Case

On May 29, 2012, 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 for cases after September 1, 2006.

Applicant answered the SOR on July 20, 2012, and requested a hearing before an administrative judge. The case was assigned to me on September 12, 2012. DOHA issued a notice of hearing on September 18, 2012, scheduling the hearing for October 10, 2012. The hearing was convened as scheduled. The Government offered Exhibit (GE) 1 through 6, which were admitted without objection. The Applicant offered Exhibit (AE) A through T, which were all admitted. Of those, AE G, AE I, and AE S, were presented for administrative notice and such notice was taken. Applicant called one witness, and testified on his own behalf DOHA received the transcript of the hearing (Tr.) on October 22, 2012.

Findings of Fact

Applicant admitted to SOR allegations ¶¶ 1.a, 1.b, 1.c, 1.d, and 1.e. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 58-year-old employee of a defense contractor. He has worked in the same contracting position for 31 years. He also served on active duty in the Air Force from 1975 to 1980 and achieved the rank of Staff Sergeant (E-5). He held a security clearance while in the Air Force and during his entire career as a government contractor without any security violations. He is married and has no children. (GE 1; AE M; Tr. 39, 92-95.)

As stated in the SOR, Applicant is alleged to be indebted on five delinquent accounts (allegations 1.a through 1.e) in the approximate amount of \$422,935, as established by credit reports dated February 9, 2011; March 27, 2012; May 17, 2012; and September 10, 2012. His wife testified that the debts were largely attributable to the decline in the real estate market and the unexpected death of her mother. (GE 4; GE 5; GE 6; Tr. 39-53.)

Applicant purchased property A in 1984, prior to marrying his wife. They lived together in property A until March 30, 2007. In 1991, they had contracted to purchase a second home, but when they heard there would be lay-offs at their respective jobs, they cancelled the sale. However, in 2007, they decided that their neighborhood had declined and they wanted to move elsewhere. Homes in their neighborhood were selling despite the fact the home was in an undesirable neighborhood. Applicant had two mortgages on property A, which totaled approximately \$300,000. Applicant made \$1,200 payments per month on the first mortgage and \$227 per month payments on the second mortgage. (GE 2; Tr. 39-44, 74-75.)

Applicant and his wife found a new home, property B, in a safer area. It was in a new development and contracts were not accepted with contingency requirements. Applicant and his wife purchased property B for \$560,000. They put 15% down and financed the rest of the purchase price with two mortgages, both of which had 30-year fixed interest rates. Their monthly payment on both mortgages totaled \$4,300 per month. They had sufficient savings to cover both mortgages on properties A and B while they fixed up property A to be sold, which they planned to do after they moved into

property B. They closed escrow on property B on March 30, 2007. (GE 2; Tr. 44-45, 56-58, 75-76.)

The next day, April 1, 2007, Applicant's mother-in-law became unexpectedly ill and was hospitalized. She died ten days later. Applicant's wife was on the deed of the mother-in-law's house and she unexpectedly was responsible for a third property, property C. There was a \$120,000 mortgage on property C. (Tr. 44-48, 79.)

Applicant and his wife decided that property C would be easier to sell, and began to prepare it to be put on sale. Property C could not be rented out because the pool on the property was not safe and the rents were low in the area at that time. It went on the market in May 2007. Property A needed work before it would be ready to sell. In June 2007 Applicant and his wife moved from property A to property B. To save money, they decided to complete the work on property A themselves while they tried to sell Property C. They paid all of the mortgages on all three properties from 2007 to 2009. (GE 2; Tr. 45-49.)

In September 2007, an offer was made on property C. Applicant and his wife accepted the offer and it went into escrow. However, the purchaser failed to secure a loan and after stringing Applicant along for months, the sale fell through in late November 2007. They put property C back on the market, but the real estate market had significantly declined. The property finally sold in April 2009. Applicant continued paying real estate taxes and the mortgage payments on property C until its sale. In 2009, Applicant and his wife incurred a \$4,065 profit from the sale of Property C. (GE 2; Tr. 46-48.)

In 2009, Applicant and his wife were current on their mortgages on properties A and B. Property A was empty and still in need of repairs. However, they were having financial difficulties as a result of covering the mortgages on all three properties for over two years and wanted to obtain loan modifications. They hired an attorney to help them get loan modifications on properties A and B. They paid the attorney a retainer of \$7,500 as documented by Applicant. The attorney advised them to stop paying the mortgages because the banks would be unwilling to negotiate with them until they defaulted on their payments. Applicant and his wife followed the attorney's advice. Applicant's wife testified that the attorney then failed to follow through and assist them with the loan modification process. (GE 2; AE F; Tr. 49-52, 83.)

Applicant's wife began trying to negotiate with their creditors in 2010, after it was clear that the attorney had not followed through on obtaining a loan modification. She completed loan modification paperwork and sent it in to each of their mortgage holders on properties A and B. (GE 2; Tr. 50-52.)

Applicant's wife worked with the primary mortgage holder on property A to come to a modification. She would make inquiries with this creditor several times a week. The mortgage holder would indicate that it was processing the modification and Applicant was optimistic it would be approved. However, at the same time, the mortgage holder filed for foreclosure and a foreclosure sale date of March 15, 2010, was scheduled.

Applicant's wife was in continuous contact with the mortgage holder and was repeatedly told the modification would be approved and no sale would occur. However, on the day of the scheduled sale, she was informed that their modification application was rejected and the sale occurred. At the time of foreclosure, Applicant owed this creditor approximately \$264,000 (alleged in 1.e). Applicant presented a 1099 issued by the creditor showing that the principal outstanding balance of the loan was \$258,589 and the fair market value of the property was then \$278,416. Applicant owes no further debts to this creditor. (AE E; AE T; Tr. 45-53, 64-65.)

Applicant's wife received a letter from a collection agent on behalf of the second mortgage holder on property A in August 2011. The collection agent indicated Applicant still owed \$32,066.59 on this debt (allegation 1.d). Applicant's wife replied with a hardship letter on September 15, 2011. On October 5, 2012, Applicant and the creditor reached an agreement for Applicant to pay \$178.15 per month on this debt until it is satisfied. (AE D; Tr. 62-64.)

In March 2012 Applicant obtained a loan modification on his first mortgage on primary residence, property B (alleged in 1.b). The new loan summary lists an unpaid principal balance of \$393,480.98, a deferred principal balance of \$69,180.98. Applicant provided documentation that shows he successfully made payments on this agreement for April through September 2012. (GE 2; AE B; Tr. 56-58.)

Applicant reached a written agreement with the second mortgage holder (alleged in 1.c) on property B, on October 10, 2012. Per the agreement, Applicant will make 24-monthly payments of \$500 and then will resume making payments of \$738 per month under the terms of the note until the debt is satisfied. Applicant presented evidence he remitted payments to this creditor totaling \$7,085 for 2011 and \$2,500 to date in 2012. (AE C; Tr. 62-64.)

Applicant also owes a debt of \$22,146 to a collection agent for a bank on a credit card account (alleged in 1.a). Applicant and the collection agent have reached a settlement agreement documented by a letter from the agent dated September 27, 2012. Under the agreement, Applicant was required to pay \$2,400 by July 27, 2012, and then make eight monthly payments of \$400. Applicant presented evidence he made a \$2,400 payment on July 25, 2012. He also documented \$400 payments for August and September 2012. Applicant and his wife intend on continuing their payments to this creditor until the debt is settled. (AE A; Tr. 59-61.)

Appellant and his wife now live frugally. Appellant enrolled and successfully completed a debt settlement program. His wife has also actively used an on-line program called the "frugality game" that helps her find ways to save money. Their household budget shows that they have approximately \$750 left over after their monthly expenses are met, including their payments on the above listed debts. (AE A; AE J; Tr. 61, 67.)

Applicant is well respected by his friends, work associates, coworkers, and pastor, who submitted letters of support on his behalf. Each attests to Applicant's

trustworthiness and honesty. (AE O.) Applicant's performance appraisals from 2009 through 2011 show that he is a valued employee and displays high ethics, quality, and delivers customer satisfaction. (AE P; AE Q; AE R.)

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

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant was alleged to be indebted on five delinquent accounts in the approximate amount of \$422,935. Four of these debts remain outstanding, with one debt resolved through foreclosure. Applicant's debts have been past due since 2009. The evidence is sufficient to raise the above disqualifying conditions.

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

Applicant's financial problems are directly attributable to his wife's mother's unanticipated death and the decline of the real estate market. He did not anticipate having to maintain three properties for two years. These events were both unforeseen and are unlikely to recur. He acted responsibly paying each mortgage and tax obligation from 2007 to 2009. After he sold property C, he contacted an attorney to assist him in obtaining loan modifications on his other mortgages. He relied upon the advice of that attorney and stopped making his mortgage payments. However, the attorney failed to help him obtain the modifications. Applicant and his wife then began slowly working with each creditor in an attempt to come to an agreement. Applicant is making a good-faith effort to repay his overdue creditors and his decisions do not cast doubt on his current reliability, trustworthiness, or good judgment as attested to by those that know him. His wife has contacted each creditor and established payment agreements on his four remaining debts. Appellant's budget shows he has the funds available to make his monthly agreed upon payments as set out in each of the agreements.

The Appeals Board has noted:

. . . an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by "concomitant conduct," that is, actions which evidence a serious intent to effectuate the plan.¹

Applicant has demonstrated he has a reasonable plan for resolving each of his delinquent accounts. He has documented payments made to creditors in allegations 1.a, 1.b, and 1.c. He only recently reached an agreement with the creditor in 1.d. Given his track record of payments to other creditors and sufficient funds identified in his budget, he can be trusted to act responsibly to effectuate his plan to repay the creditor in 1.d. He is making a good-faith effort to repay his debts. Further, he received counseling through the debt settlement program for his financial problems and there are clear indications that the problem is being resolved through his frugal lifestyle. AG ¶¶ 20(a), 20(b), 20(c) and 20(d) 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

¹ ISCR Case No. 08-06567 at 3 (App. Bd. Dec. October 29, 2009.)

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 those guidelines, but some warrant additional comment.

Applicant is well respected by his supervisor and colleagues. He has served the U.S. honorably for 5 years with the Air Force and has been in his current position since 1981. Those who know him best report that he has sound judgment and high moral standards. His standards are reflected in his recent performance appraisals. His integrity, as attested to by his friends and colleagues, shows that his promises to continue to pay his delinquent accounts are credible.

Overall, the record evidence leaves me without questions and 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 concern.

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

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