



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



In the matter of:)
)
) ISCR Case No. 11-07535
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: Christopher Graham, Esq.

02/23/2013

Decision

O’BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, testimony, and exhibits, I conclude that Applicant has mitigated the security concerns raised under the guideline for Financial Considerations. His request for a security clearance is granted.

Statement of the Case

On August 22, 2012, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) that cited security concerns under Guideline F (Financial Considerations). This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992) as amended; and the Adjudicative Guidelines (AG) implemented by the DOD on September 1, 2006.

In his October 10, 2012 Answer to the SOR, Applicant denied both of the SOR allegations, and requested a hearing before an administrative judge. I received the case on December 17, 2012, and the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on January 17, 2013. At the hearing on February 12, 2013, I

admitted into evidence six Government Exhibits (GE 1-6). I also admitted seven Applicant Exhibits (AE A-G). I held the record open to allow Applicant to submit additional documentation. He timely submitted one document, which I admitted without objection as AE H. Department Counsel's response to the submission is included in the file as Hearing Exhibit I. DOHA received the transcript (Tr.) on February 22, 2013.

Findings of Fact

Applicant's admissions to the SOR are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the record evidence, I make the following findings of fact.

Applicant, 39 years old, is married with two children, six and eight years old. He earned a bachelor's degree in science and information management, and a master's degree in telecommunications engineering. He has worked for 12 years in information technology. He has worked for federal contractors since 2001. Since 2012, he has been a senior systems engineer for his current employer. (GE 1; Tr. 14-17)

In April 2005, Applicant and a partner purchased a townhouse for \$378,000. It was an investment to pay for their children's future college education. They obtained a mortgage loan from Lender B for approximately \$340,000 (allegation 1.b). They secured a tenant, who was employed full-time and paid the rent without significant problems for three years. In February 2006, Applicant obtained a home equity loan from Lender A for about \$100,000, secured by the townhouse (allegation 1.a). Both Applicant and his partner received funds from the loan. Starting in February 2008, the tenant failed to pay the rent for four months. At the same time, Applicant's partner stopped contributing to the mortgage payments because she could no longer afford to pay her share. Applicant used his savings to keep up with the mortgage payments. In June 2008, the tenant left the townhouse. It was in poor condition, with damaged appliances and carpeting. Between July and September 2008, Applicant spent approximately \$3,500 to return it to a rentable condition. He listed the townhouse for rent from September 2008 to January 2009, but received only one query because of the depressed market. The mortgage loans became delinquent in 2008. (GE 2, 3, 5; AE C, D, E; Tr. 17-20, 27-34, 61)

Applicant attempted to work with Lender B. He asked to refinance the loan, receive a loan modification, or participate in any available assistance program, but without success. In January 2009, he listed the house for sale at \$340,000. The real estate market had crashed, and between 2009 and 2010, the only offers he received were between \$235,000 and \$268,000, substantially below the mortgage balance. Lender B would not accept the offers. From October 2009 to January 2010, Applicant was unemployed. In addition, Applicant's mother was diagnosed with ovarian cancer in January 2010. She did not have health insurance. Applicant contributed about \$6,500 toward her surgery and medical expenses. Both events contributed to exhausting his savings. During this time period, Applicant asked Lender B to allow a short sale. In September 2010, the lender agreed. Subsequently, Applicant received offers for

\$242,000, \$245,000, and \$250,000, but the lender would not accept the offers. In some cases, buyers withdrew their offers because the lender's process was so lengthy. Applicant's October 2010 credit report shows Lender B started the foreclosure process in fall 2010, and the property was foreclosed in July 2011. (GE 2, 3, 4; AE A, D, G; Tr. 20-24, 35, 45-46)

Lender B sold the property in July 2011 for \$257,000. In January 2012, Lender B sent Applicant a Form 1099-A, Abandonment or Acquisition of Secured Property, which listed the loan balance as \$340,000, the fair market value of the property as \$230,000, and indicated Applicant was personally liable for the debt. Applicant provided evidence that he carried private mortgage insurance (PMI) (also called primary mortgage insurance) as part of his monthly mortgage payment; however, the evidence does not indicate what percentage of the loan balance the insurance covered. Applicant contacted Lender B to determine if he owed a balance on the property. He was told he had no further obligation. However, the company would not provide him with a written statement to that effect. In Applicant's September 2012 credit report, the entry for the Lender B mortgage shows zero under the "Past Due" column, zero under the "Balance" column, and under the Payment column, it notes "Foreclosure; Paid." (GE 2, 3; AE A, E, F, G, H; Tr. 22-23, 35-37)

Applicant's April 2012 credit report shows one delinquent debt, the home equity loan from Lender A. In about September 2012, Applicant contacted the lender and negotiated a settlement of \$12,579 to be paid in three installments of \$4,193 in October, November, and December 2012. Applicant asked his partner to help pay the settlement, but she refused. Applicant paid most of the debt from his savings, and used his credit card for about \$2,000 of the settlement. Lender A's letter dated December 17, 2012, indicates the obligation is satisfied. Applicant has informed the credit agencies that this debt is resolved. (GE 3, 5; AE B; Tr. 23-24, 46, 50-51, 57-59)

Applicant's November 2010 credit report shows the two mortgage loans listed above. It also lists three small debts that had been in collection, but were paid; and two judgments, that were also satisfied. None of these debts are alleged in the SOR. The 2010 report also shows numerous open accounts that were in current status. Applicant testified that he has no debts that are currently delinquent, and he has only one open mortgage loan, which is for his primary residence. He also noted that his income and expenses have changed since he completed his personal financial statement in June 2012. Because his salary increased and his wife returned to full-time work, his net monthly income increased from \$9,600 to \$13,000. His mortgage payment has decreased from \$3,150 to \$2,900 per month. Applicant helps his mother financially, and those funds are included in his monthly miscellaneous expenses. However, because Applicant did not list his monthly debt payments, I cannot determine his monthly net remainder. His listed assets of \$186,000 include his home, savings, and investments. (GE 2, 4; Tr. 55-57, 60, 62)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the Adjudicative Guidelines (AG).¹ Decisions must also reflect consideration of the “whole-person” factors listed in ¶ 2(a) of the Guidelines.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guideline F (Financial Considerations).

A security clearance decision is intended only to resolve the questions of whether it is clearly consistent with the national interest² for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the Government’s case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.³ A person who has access to classified information enters 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 one who will protect the national interests as his or her 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.⁴

Analysis

Guideline F (Financial Considerations)

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

¹ Directive. 6.3.

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

³ See *Egan*, 484 U.S. at 528, 531.

⁴ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

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.

Applicant and his investment partner purchased a townhouse in 2005. In 2006, they obtained a home equity loan secured by the same property. When his tenant stopped paying rent in 2008, Applicant eventually failed to meet his mortgage payments, and the lender started foreclosure proceedings in 2010. The second loan remained outstanding until 2012. The following disqualifying conditions apply under AG ¶ 19:

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

I have considered the mitigating conditions listed at AG ¶ 20, especially the following:

- (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; and
- (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.

Applicant invested in real estate in order to have assets to use for his children's education. He made the payments on the two townhouse mortgage loans timely for three years, when his tenant was working steadily and paying her rent. However, he had no way to foresee or control several events that affected his ability to continue his payments: his tenant's failure to pay her rent; the significant damage done to the townhome; his mother's serious illness that required substantial funds from Applicant; his unemployment; his partner's inability to continue contributing to the mortgage payments; and the nationwide financial crisis that reduced the home's value. Applicant acted responsibly. He used his savings to continue the payments as long as he was able. He repaired the townhouse so that it was marketable after the tenant left, and then sought tenants for several months. He contacted the lender and requested to refinance, or to have the loan modified. He listed the house for sale, but received only offers that were well below the outstanding mortgage balance, which his lender would not accept. He requested permission to short sell the property. Despite allowing a short

sale, the lender did not accept several buyers' offers, and foreclosed on the property. Applicant acted responsibly in regard to the largest loan. Applicant also negotiated and paid a settlement on the second mortgage. However, he does not receive full mitigation under AG ¶ 20(b) because he did not attempt to resolve the smaller loan until 2012, after he received the SOR.

Applicant did not seek financial counseling while dealing with the two mortgage loans. However, both mortgage loans alleged in the SOR are now resolved. The lender informed Applicant he has no further obligation on the larger loan, and his credit report shows that he no longer owes the debt. Applicant and his wife both work full-time, and they have substantial monthly income and assets. Applicant no longer has investment properties, and his only mortgage loan is the one on his personal residence. His financial situation is under control and it is unlikely the problem will recur. AG ¶ 20(c) applies.

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate the Applicant's security eligibility by considering the totality of an applicant's conduct and the circumstances. An 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Until 2008, Applicant was financially stable. Unfortunately, when the real estate crisis occurred, he was unable to rent or sell his property, and his primary loan was "under water" – its market value was less than his mortgage balance. In addition, several events occurred that affected his finances including his mother's illness, several months of unemployment, damage to his rental property, and his partner failing to share in the mortgage payments. Applicant did not ignore the largest mortgage debt, but made efforts to resolve it. Applicant should have made efforts sooner to resolve the smaller debt. However, in viewing the events in the context of the whole person, I

conclude that Applicant made substantial efforts to meet his mortgage obligation, he resolved his two debts, and given his good credit record and substantial resources, such a situation will not recur.

Overall, the record evidence satisfies the doubts raised about Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from the cited adjudicative guideline.

Formal Findings

Paragraph 1, Guideline F	FOR Applicant
Subparagraphs 1.a – 1.b	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, It is clearly consistent with the interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is granted.

RITA C. O'BRIEN
Administrative Judge