



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



In the matter of:)
)
) ISCR Case No. 11-10834
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

06/19/2013

Decision

DUFFY, James F., Administrative Judge:

Applicant mitigated the security concerns arising under Guideline F (Financial Considerations). Eligibility for access to classified information is granted.

Statement of the Case

On February 1, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. This 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) implemented on September 1, 2006.

On March 4, 2013, Applicant answered the SOR and requested a hearing. The case was assigned to me on April 25, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 9, 2013, and the hearing was convened as scheduled on May 16, 2013. At the hearing, Department Counsel offered Government's Exhibits (GE) 1 through 4 that were admitted into evidence without

objection. Applicant testified and offered Applicant's Exhibit (AE) A that was admitted into evidence without objection. The record was left open until May 30, 2013, to provide Applicant an opportunity to submit additional matters. He timely submitted documents that were marked as AE B through D and admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on June 4, 2013.

Findings of Fact

Applicant is a 31-year-old computer drafter who works for a defense contractor. He has been working for his current employer since December 2012. He graduated from high school in 2000 and earned an associate's degree in computer-aided drafting and design in 2003. He is divorced and has one child who is four years old. Since about 2005, he has held a security clearance without incident.¹

The SOR alleged that Applicant had six delinquent debts totaling \$272,029. These debts include a consumer debt of \$35 (SOR ¶ 1.a), three student loans totaling \$19,127 (SOR ¶¶ 1.b–1.d), and two mortgage loans totaling \$252,887 (SOR ¶¶ 1.e and 1.f). In his Answer to the SOR, Applicant denied the small consumer debt claiming it was paid and admitted the other allegations. His admissions are incorporated as findings of fact.²

Applicant attributed his financial problems to his divorce. He and his ex-wife married in June 2006 and divorced in August 2010. While married, they lived in a city that was hit hard by the recent recession. In November 2006, they purchased a home for about \$256,000 in that city. They paid about \$2,000 on the home at its closing and financed the remaining amount through two mortgage loans from the same lender. At the time of the purchase, he and his ex-wife were employed and contributed to the mortgage loan payments. Their monthly mortgage payments were about \$2,000. Applicant believes that his ex-wife applied for a mortgage loan modification that was denied. They paid their monthly mortgage loan payments from November 2006 to March 2009. When they separated, his ex-wife stopped contributing to the payments and he could not afford to make them by himself. He was awarded the home in their divorce. The home was foreclosed in May 2011. At some point after the foreclosure, he and his ex-wife received a \$3,000 check from the mortgage lender. In December 2012, he moved to another state.³

In his post-hearing submission, Applicant provided two Form 1099-A (Acquisition or Abandonment of Secured Property) documents dated May 24, 2011, for the mortgage loans. The Form 1099-A for the primary mortgage reflected that the balance of the outstanding principal was \$199,059 and the fair market value of the property was \$216,533. His most recent credit report indicated the primary mortgage loan had a zero

¹ Tr. at 5-6, 16-17; GE 1.

² Applicant's Answer to the SOR; GE 2-4, 6.

³ Tr. at 16-18, 25-26, 32-44; GE 1-4.

balance. The Form 1099-A for the second mortgage loan reflected that the balance of the outstanding principal was \$50,160 and the fair market value of the property was \$77,000. His most recent credit report indicated the second mortgage loan had been charged off and had a past-due balance of "\$52,887 as of May 2011."⁴

The state where Applicant's home was located is a deficiency state. As part of the foreclosure, an appraisal of the property is obtained on the date of acquisition or foreclosure sale. The state allows the lender to sue the debtor after foreclosure for the amount that was owed minus the greater of the amount for which the house was either sold or appraised. The deficiency lawsuit must be filed within six months after the foreclosure sale. Here, Applicant's credit reports dated September 8, 2012, and May 10, 2013, do not reflect that any judgments have been entered against him.⁵

Applicant has multiple student loans. The SOR alleged that three of them were past due between 90 and 120 days in 2012. However, his most recent credit report reflected that each student loan has been reported as being current since December 2012. He testified that his student loans were either being paid or were in forbearance. He indicated that he would start making payments on those that were in forbearance at the end of May 2013.⁶

Applicant testified that he paid the small consumer debt of \$35. In his response to interrogatories, he indicated that this debt was paid in full in November 2012 and provided a confirmation number. This debt is no longer reflected in his most recent credit report.⁷

Applicant has not received any financial counseling. He is meeting his current financial obligations. He pays \$500 per month for child support and has never fallen

⁴ Tr. at 48-50; AE A-D. It is not clear why the 1099-A documents for that property, which were both issued on the same day, reflect two different amounts for the fair market value of the property.

⁵ GE 3; AE A. See Nevada Revised Statutes (NRS) § 40.451 *et seq.* This statute is contained in Hearing Exhibit 1. See *also* NRS § 40.455.3 that states:

3. If the judgment creditor or the beneficiary of the deed of trust is a financial institution, the court may not award a deficiency judgment to the judgment creditor or the beneficiary of the deed of trust, even if there is a deficiency of the proceeds of the sale and a balance remaining due the judgment creditor or beneficiary of the deed of trust, if:

(a) The real property is a single-family dwelling and the debtor or grantor was the owner of the real property at the time of the foreclosure sale or trustee's sale;

(b) The debtor or grantor used the amount for which the real property was secured by the mortgage or deed of trust to purchase the real property;

(c) The debtor or grantor continuously occupied the real property as the debtor's or grantor's principal residence after securing the mortgage or deed of trust; and

(d) The debtor or grantor did not refinance the mortgage or deed of trust after securing it.

⁶ Tr. at 25, 28-32, 45-46, 48; GE 3; AE A.

⁷ Tr. at 27-28, 50-51; GE 3; AE A.

behind on his child support payments. In a personal financial statement submitted in November 2012, he indicated that his annual salary was \$47,000 and that he had a net monthly remainder of \$500. At the hearing, he testified that his annual salary has increased to \$52,000. His most recent credit report listed that he had 35 opened or closed financial accounts that were in good standing.⁸

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions that 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 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

⁸ Tr. at 44-50; GE 2.

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* Executive Order 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 accumulated delinquent debts that he was unable or unwilling to satisfy for an extended period. This evidence is sufficient to raise the above disqualifying conditions.

Several 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;

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

(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.

Applicant's financial problems are attributable to his separation and divorce. Those were conditions beyond his control. Since December 2012, he has taken action to bring his student loans into good standing. Appellant's home was foreclosed in May 2011. He received two 1099-A Forms that each reflected the fair market value of the home was greater than the outstanding principal owed. His most recent credit report reflected that the primary mortgage loan had a zero balance and his second mortgage loan had a balance of "\$52,887 as of May 2011." From his most recent credit report, it appears that the mortgage lender did not pursue deficiency judgments within the six-month statutory period and those loans are no longer enforceable. Nevertheless, "[e]ven if a delinquent debt is legally unenforceable 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."⁹ Applicant's default on the mortgage loans happened under circumstances that are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment. Other than the mortgage loans, he was current on his remaining financial obligations. He is living within his means and his financial problems are under control. AG ¶¶ 20(a), 20 (b), and 20(c) apply. AG ¶ 20(d) applies to SOR ¶ 1.a. AG ¶ 20(e) 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 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 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.

⁹ ISCR Case No 01-09691 at 3 (App. Bd. Mar. 27, 2003).

I considered the potentially disqualifying and mitigating conditions in light of all relevant 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 is a mature adult and responsible father. I found him to be a forthright and credible witness. He experienced financial problems following a separation and divorce and has taken reasonable steps to resolve those problems. He is currently living within his means. His financial problems are not likely to recur. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns under the financial considerations guideline.

Formal Findings

Formal findings 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
Subparagraphs 1.a – 1.f:	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.

James F. Duffy
Administrative Judge