



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



In the matter of:)
)
) ISCR Case No. 11-13605
)
Applicant for Security Clearance)

Appearances

For Government: Kathryn D. MacKinnon, Esq., Deputy Chief Department Counsel

For Applicant: *Pro se*

07/30/2013

Decision

O'BRIEN, Rita C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and the Government's File of Relevant Material (FORM), I conclude that Applicant has not mitigated the security concerns raised under the financial considerations guideline. Accordingly, his request for a security clearance is denied.

Statement of the Case

On March 28, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) (Item 1), pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended; DOD directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006. The SOR listed security concerns addressed in the Directive under Guideline F (Financial

Considerations) of the AG. In his Answer to the SOR, notarized on April 23, 2013, Applicant admitted the two allegations, and requested a decision without a hearing. (Item 3)

Department Counsel for the Defense Office of Hearings and Appeals (DOHA) prepared a presentation of the Government's case in a FORM dated May 22, 2013,¹ which contained the Government's argument and documents to support its preliminary decision to deny Applicant's request for a security clearance. Applicant received the FORM on June 3, 2013. He was given 30 days from the date he received the FORM to file a response. He did not submit one. The case was assigned to me on July 25, 2013.

Findings of Fact

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

Applicant is a 64-year-old high school graduate. He married in 1978, and has three adult children. Applicant served as an enlisted member of the military from 1967 to 1986. He served as an officer from 1986 until his honorable discharge in 1997. In his August 2011 security clearance application, he reported receiving a top secret security clearance in 1984, and a secret security clearance in 2007. Since 2008, he has been employed by a defense contractor as a programmer analyst. (Item 4)

Applicant's wife handles the family bills. During his 2010 security interview, Applicant was unfamiliar with the details of any of his delinquent accounts. He explained that his financial issues stemmed from a mortgage loan he obtained from what he called a "predatory lender." In his Answer to the SOR, he stated that he missed a mortgage payment in 1999. However, at his security interview, he said the mortgage payments became delinquent in about 2002. In 1999, the lender refused to accept anything but the full delinquent amount, which Applicant could not afford. While Applicant tried to negotiate, the delinquent balance continued to grow. The lender decided to sell the home. (Items 3, 6)

Based on advice from an attorney, Applicant filed a Chapter 13 bankruptcy petition in July 2003. The petition allowed him to stop the house sale. The first and second mortgage loans listed in the bankruptcy totaled \$178,000. The other listed debts totaled approximately \$34,000. Under the bankruptcy plan, he made monthly payments of \$2,600. The petition was successfully discharged in May 2006. (Items 3, 6)

In August 2006, Applicant was accused of making false statements to his employer, a county health department. He resigned in October 2006, on advice from his union representative and an attorney. A formal investigation showed no grounds for the

¹ See Directive, Enclosure 3, Section E3.1.7. The FORM included six documents (Items 1 - 6) proffered in support of the Government's case.

allegations However, Applicant was unemployed from the time of his resignation in October 2006 until June 2007. He became delinquent on his current mortgage (allegation 1.a). As of his 2010 security interview, Applicant had not sought financial counseling. The balance on the loan is \$316,000. As of his February 2013 credit report, the account was past due in the amount of \$95,000. (Items 3, 5, 6)

Applicant's mortgage was sold to several successive lenders. He noted in his Answer that he contacted each of the mortgage holders numerous times about resolving his delinquency. He also stated that he applied five times for loan modifications, and none of his applications have been either approved or disapproved. He did not provide evidence of the applications or his contacts with the lenders. Applicant stated in his Answer that the current mortgage holder ". . . has worked with us to some degree, but we have had no resolution yet. They are also investigating to see if we are one of the cases that [a previous lender] owes money to under their recent mortgage settlement agreement." (Item 3)

With his Answer, Applicant provided evidence of his recent payments to the current lender. The \$2,920 monthly payments were made from May through July 2012 and from September through December 2012. The evidence does not include information on whether these payments apply only to the current balance, or whether any part is being applied to reduce the delinquent balance. Recently, Applicant applied to a federal housing agency to determine if he qualifies for assistance through the "Making Home Affordable" program. If he does not qualify, he plans to try to short-sell the house. (Items 3, 6)

The file contains no information on Applicant's income, or if he is current on his other monthly expenses. However, his February 2013 credit report shows no delinquent accounts other than the mortgage. The file also does not include character references or performance evaluations. (Item 5)

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 AG.² Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the guidelines, commonly referred to as the "whole-person" concept. The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when 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).

² Directive. 6.3.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest³ 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 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.⁴ 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.⁵

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. . . .

The evidence supports application of disqualifying conditions AG ¶19 (a) (*inability or unwillingness to satisfy debts*) and AG ¶19 (c) (*a history of not meeting financial obligations*). Applicant completed a Chapter 13 bankruptcy plan in 2006. The bulk of the debt in that bankruptcy stemmed from delinquent first and second mortgage loans. Within months of successfully discharging that bankruptcy plan, Applicant became delinquent on his current mortgage. The SOR alleges approximately \$95,000 in delinquent debt.

³ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁴ See *Egan*, 484 U.S. at 528, 531.

⁵ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

Under AG ¶ 20, the following conditions can potentially mitigate the 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; and

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

Applicant's failure to meet his financial obligations did not occur in the distant past, because his mortgage loan is currently delinquent. His unresolved financial situation casts doubt on his judgment and reliability, and AG ¶ 20(a) cannot be applied.

As of 2006, after successfully completing a Chapter 13 plan, Applicant was unemployed for eight months, and was unable to keep up with his mortgage payments. He receives partial mitigation because this unforeseen event affected his finances. However, for full mitigation under AG ¶ 20(b), an applicant must act reasonably in response to the event. Although Applicant contends that he contacted his mortgage lenders and sought loan modifications, he did not provide documentation to support his claim. Without such evidence, full mitigation under AG ¶ 20(b) is not available.

As of his 2010 security interview, Applicant had not sought financial counseling, and there is no indication that he has recently sought it. Although he said that he contacted the lenders, and applied for loan modifications, the file contains no documentation to support his claim. He provided evidence of mortgage payments in 2012, but no information on whether these funds represent his current mortgage payments, or full or partial payments toward his past-due balance. The record evidence does not show a substantiated plan to resolve his significant delinquency. Applicant's financial situation is not under control. AG ¶¶ 20(c) and (d) cannot be applied.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. I have evaluated the facts presented and have applied the

appropriate adjudicative factors under the cited Guideline. I have also reviewed the record before me in the context of the whole-person factors listed in 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.

Applicant receives credit for completing a three-year Chapter 13 bankruptcy plan, through which he resolved his past debts and paid his creditors. However, since shortly after discharging that petition in 2006, Applicant's current mortgage loan has become significantly delinquent. He owes back payments of approximately \$95,000, with no clear evidence in the file showing how it rose to that level. Applicant has been aware that delinquent debts are a security concern since at least 2009, when he completed his security clearance application.

Applicant stated that he contacted the lenders, and applied for several modifications, but provided no evidence of these efforts. Although uncorroborated statements can be accepted,⁶ it is difficult to rely on such claims in the context of an administrative determination, where an applicant's credibility cannot be weighed. There is no record evidence regarding how the delinquent balance rose to its current level, how long he has been delinquent, or any record of his payments since 2006, when the problem began. Applicant has no plan in place to resolve his substantial mortgage debt, other than a possible future effort to short-sell the property. Applicants are not required to be debt-free; however, they are expected to develop a plan for resolution, and provide evidence that they are implementing that plan. The Government's doubts about Applicant's suitability to hold a security clearance remain, and must be resolved in favor of the national interest.⁷

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 as follows:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a	Against Applicant
Subparagraph 1.b	For Applicant

⁶ ISCR Case No. 98-0419 at 3 (App. Bd. April 30, 1999).

⁷ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

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 allow Applicant access to classified information. Applicant's request for a security clearance is denied.

RITA C. O'BRIEN
Administrative Judge