



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



In the matter of:)	
)	
)	ISCR Case No. 11-14361
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

December 4, 2013

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on September 20, 2011. On April 15, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and B for Applicant. 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 (AG), effective within the Department of Defense after September 1, 2006.

Applicant acknowledged receipt of the SOR on May 2, 2013. He answered the SOR in writing on May 17, 2013, and requested a hearing before an Administrative Judge. DOHA received the request on May 23, 2013, and I received the case assignment on September 17, 2013. DOHA issued a notice of hearing on September 18, 2013, and I convened the hearing as scheduled on October 15, 2013. The Government offered Exhibits (GXs) 1 through 7, which were received without objection.

Applicant testified on his own behalf. DOHA received the transcript of the hearing (TR) on October 23, 2013. I granted Applicant's request to keep the record open until November 15, 2013, to submit additional matters. On November 15, 2013, he submitted Exhibits (AppXs) A and B, which were received without objection. The record closed on November 15, 2013. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Procedural and Evidentiary Rulings

Motion to Withdraw

Department Counsel moved to withdraw Subparagraph 2.a. of the SOR, which incorporated Guideline B. (TR at page 6 line 13 to page line 7.) There being no objection by Applicant, the Government's motion was granted. Guideline B is no longer in issue.

Findings of Fact

In his Answer to the SOR, Applicant denied the factual allegations in Subparagraph 1.a. of the SOR.

Guideline F - Financial Considerations

Applicant is a 43 year old Ph. D., married with two children, and works for a Government Contractor. (TR at page 23 line 3 to page 25 line 24.)

1.a. It is alleged that Applicant owes Creditor 2 the past-due amount of about \$34,913 on a second mortgage. (GX 7 at page 2.) He denies this allegation.

In 2008, Applicant purchased a home for what he believes to have been "\$595,000." (TR at page 27 lines 16~27.) This purchase was made "prior to the market collapse" in 2008. (TR at page 27 lines 22~24.) According to Applicant, "It was a - - it's called a piggy back loan. So, it was an 80/15/5 [loan arrangement]. 80 percent on the first loan [to Creditor 1], 15 percent on the second [to Creditor 2], five percent down payment." (TR at page 28 lines 5~8.) The monthly payments on the first mortgage "was \$3,014.54," and on the second mortgage "was \$1,392.16." (TR at page 29 lines 5~15.) However, Applicant could not keep up with his monthly payments; and as a result, the house eventually went into foreclosure in April of 2011. (TR at page 30 line 5 to page 41 line 3.)

Applicant has submitted an IRS "Form 1099-A" from Creditor 1, and three October 13, 2013, credit reports showing a "Past Due" "Balance" to Creditor 2 in the amount of \$34,913. (AppXs A and B at pages 2~4.) He has also submitted a dispute letter to Creditor 2, disputing that he owes anything. (AppX B at page 1.) Applicant believes the Form 1099-A covers both the first and second mortgage. (TR at page 42 lines 2~17.)

Under the Code of Civil Procedure, Sections 577~582, from the state where the foreclosed property is located, it is clear that the primary mortgage is covered by the statute; i.e., that no deficiency judgment can be rendered against Applicant vis-a-vis the first loan. Not so clear, however, is that a second mortgage is also covered as to any deficiency judgment. As Applicant has the burden of demonstrating that he does not owe the alleged debt to Creditor 2, and has instead submitted three October 13, 2013, credit reports showing a "Past Due" "Balance" to Creditor 2, I find this second mortgage debt is still outstanding.

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 useful 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. (AG Paragraph 2.) The administrative judge's over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG Paragraph 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 Paragraph 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 Paragraph E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive Paragraph E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant 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 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 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 relating to the guideline for Financial Considerations is set out in Paragraph 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 several conditions that could raise security concerns. Under Subparagraph 19(a), an “*inability or unwillingness to satisfy debts*” is potentially disqualifying. Similarly under Subparagraph 19(c), “*a history of not meeting financial obligations*” may raise security concerns. Applicant has a significant past-due debt, which he has not yet resolved.

I can find no countervailing Mitigating Condition that is applicable here. Subparagraph 20(b) recognizes that the 2008 crash in the housing market was a condition largely beyond Applicant’s control, but he must act “reasonably under the circumstances.” He has yet to resolve his \$34,000 past-due debt on a second mortgage for a house he abandoned in April of 2011, more that two years ago. Accordingly, Applicant has not met his burden of persuasion.

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. Under AG Paragraph 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.

