



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



In the matter of:)	
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)	ISCR Case No. 11-14680
Applicant for Security Clearance)	

Appearances

For Government: Christopher Morin, Esq., Department Counsel
For Applicant: Sheldon I. Cohen, Esq.

08/20/2013

Decision

LYNCH, Noreen, A., Administrative Judge:

On April 26, 2013, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) alleging security concerns arising under Guideline F (Financial Considerations) and Guideline B (Foreign Influence).¹ The 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 (Directive); and the Adjudicative Guidelines (AG) implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on June 21, 2013. A notice of hearing was issued on June 26, 2013, scheduling the hearing for July 30, 2013. Government Exhibits (GX) 1-5 were admitted into evidence, without objection. Applicant testified, presented the testimony of three witnesses, and submitted Applicant Exhibits

¹The Government withdrew the allegations under Guideline B (Foreign Influence) at the start of the hearing. (Tr. 7)

(AX) A-U, which were admitted without objection. The transcript (Tr.) was received on August 7, 2013. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Findings of Fact

In his answer to the SOR, Applicant denied the factual allegations under Guideline F (Financial Considerations), with explanations.

Applicant is a 40-year-old security guard employed by a defense contractor. Applicant has held a security clearance since 2003. (Tr. 59) He has been with his current employer since October 2012, but he has been employed as defense contractor for more than seven years.

Applicant is a naturalized U.S. citizen who has lived in the United States since August 25, 1999. He was 26 years old and supported himself with minimum wage jobs, but his goal was to advance his education. At times he had two jobs and worked more than 60 hours per week. His first marriage ended in divorce in 2003. He had no children as a result of the marriage. He completed his undergraduate degree in accounting and received a master's degree in 2009. (GX 1)

Sometime in 2005, Applicant met a woman and they became engaged. In 2006, Applicant wanted to purchase a home for them. They were both committed to the purchase of the house and both would contribute to the mortgage. Applicant obtained the help of a realtor, and in December 2006, Applicant was approved for the purchase of a \$425,000 home. (GX 2) The bank gave him two mortgages: the first mortgage was \$340,000 and the second was \$85,000. At the time, Applicant earned about \$70,000. The mortgages were in Applicant's name only. Applicant testified credibly that the lender specifically told him that after the first year, Applicant could refinance and combine the loans to obtain the lower interest rate. (Tr. 91) Applicant's fiancée contributed to the home expenses, approximately \$1,200 each month. Applicant's brother moved into the home, and he contributed \$1,000 each month. Applicant paid the \$3,600 monthly mortgage payment until approximately late 2007.

A series of unfortunate events occurred beginning in late 2007 that caused Applicant financial difficulties. Before the purchase of his home, he had no financial problems and his credit reports confirm that he paid his accounts as agreed. (GX 2)

In 2007, his fiancée lost her teaching job and decided to return to school. Applicant helped her with her educational expenses, such as paying for textbooks. She stopped paying for any household expenses since she was now in school and had no income from a job. Applicant's first child was also born in 2007. A second child was born in 2008. (Tr. 76) Eventually, his fiancée left Applicant and took the children. He pays child support for the two children. The monthly amount of \$836 is automatically deducted from his pay check. He has never been late with a payment. In addition, he sends them extra money each month.

Applicant was working two jobs to pay the mortgage himself. He was also providing for his child. Applicant could not maintain the mortgage without the assistance of his girlfriend and his brother. At that point, on the advice of a realtor, he put the house on the market for sale. He moved out of the house and rented an apartment. When Applicant called the bank again for a lower interest rate, he was told that since he had not been late with his payments, he could not get a lower interest rate. (Tr. 93) They advised him to stop making payments on the mortgage, but they denied him a modification or rate reduction. (Tr. 92) He also called other banks about getting another mortgage loan. He was not successful.

Applicant decided to sell the house. The realtor found some buyers who were interested in the house, and received a few contracts. (AX D) They even had someone for a short sale but did not get the approval of the bank. However, the realtor sent Applicant an email on July 13, 2008, stating that the bank had sold the house at an estate sale in April. (AX C) Applicant credibly testified that he had no idea that this had occurred. He called the bank and learned of the 2008 foreclosure. Applicant made many efforts to contact the bank by phone, but there was no answer. The bank no longer exists. (Tr. 94)

The SOR alleges a Chapter 7 bankruptcy that was discharged in April 2013, and six delinquent debts for collection accounts, medical accounts, and a vehicle loan. The debts include the two mortgages that were discharged in the bankruptcy.

Applicant did not know that the second mortgage was listed on his credit report. He consulted an attorney and was advised to file bankruptcy. He believed that when the house went to foreclosure in 2008 the second mortgage was no longer an issue. He learned that when he applied for positions in his professional field of accounting, he would not get the job because of the credit reports that showed the amount owing on the second mortgage. (Tr. 98) Upon the advice of his attorney, Applicant filed for bankruptcy in January 2013.² His delinquent debts were discharged in April 2013. (GX 5)

Applicant obtained a second job in July 2012 to help pay his delinquent debts. He had used a credit card in 2006 to help paint the home he bought and to furnish the home. The amount of delinquent debt on the card was \$15,000. (SOR 1.b) The debt has been discharged.

The cable bill that is listed as a collection account in SOR 1.c for \$122 is paid. The item SOR 1.d relates to a car repossession. The amount of the delinquent debt is \$22,569. Applicant decided to buy a car in 2012 to rebuild his credit score. He made payments on the car for one year. Due to his poor credit score, the interest rate was 24%. When he decide to file for bankruptcy, he contacted the lender stating his intention to keep the vehicle. The lender stated that they did not receive his last payment despite the fact that Applicant had an automatic payment deduction. At the

²At the hearing, the Government amended SOR 1.a to reflect the discharge in April 2013.

same time, his father died in Ethiopia. Applicant left the country to bury his father, and when he returned to the United States the car was repossessed. (Tr. 109)

The medical debt that is listed for \$350 has been paid. (SOR 1.g) Applicant's attorney provided documentation along with the schedule of bankruptcy that all debts were discharged "whether listed or not."

Applicant's net monthly income is approximately \$4,378. His net monthly remainder is about \$2,374. He uses a budget and saves approximately \$1,000 a month. Applicant has incurred no new debts. He reduced his expenses and purchased a used car for cash. He still hold two jobs so that he can provide child support and pay all his bills.

Applicant was candid in his explanation that he has worked two jobs during the past years so that he could maintain his expenses. He did not live beyond his means or spend money lavishly. He was approved for two mortgages to purchase a home in 2007. He was told, and he believed, that in one year the rates would be lowered and consolidated into one loan. He had no reason not to trust the bank at that point in time. He had no idea that his brother or his fiancée would not continue to pay toward the mortgages. He acted reasonably and paid until he could no longer afford the \$3,600 monthly mortgage. He called the bank but was told that since he had not missed any payments that they would not refinance. He attempted to sell the house. When he had contracts for a short sale, he could not get approval from the bank. He was credible in that he did not know that the home had gone to foreclosure in 2008.

Applicant submitted letters of recommendation from associates in his company. Each letter describes Applicant as a person of honor and character. Applicant is committed to his work and demonstrates great compassion and temperance in all matters. Applicant is described as diligent and professional. He has been attentive in his duty to protect classified information. He is a mentor to young engineers in the company. Applicant is a stable family man with commitment to community and to country. (AX)

Applicant's supervisor, who has known him for about seven years, testified that Applicant is a great employee. He is a helpful, respectful, and knowledgeable person who is well liked by his peers and other employees in his building. He has never received a reprimand. (Tr. 23) She considers him one of her best officers among the almost 60 officers that she supervises. (Tr. 29) She described the strict training that he completed for the job. Although she was not initially aware of the specific security concern, when she learned about Applicant's bankruptcy, her opinion of him did not change. She noted that many people had been "caught" in a similar bind concerning homes in this economic climate.

Applicant's brother testified that Applicant has helped him greatly in the past few years. He described his brother as a generous man. He explained that he lived with his brother in the above-mentioned house, but had to leave because his girlfriend became pregnant and they had to find a larger place for themselves. He confirmed that he paid

Applicant \$1,000 a month, as rent, for almost one year toward the mortgage. (Tr. 41) Applicant's brother noted that Applicant is very helpful in the Ethiopian community development program. (Tr.46)

A close friend and federal employee testified that he has known Applicant since 2002. They met while Applicant was attending a community college program. They have remained friends. Together they formed the Ethiopian Community Development Program in 2004. (AX 2) They founded the nonprofit organization to aid Ethiopian immigrants in the completion of necessary forms, counsel them about job searches, contribute food to needy persons, and assist in finding housing. (AX T) Applicant was not paid for his work. He contributed funds to the organization over the years. Applicant's friend described him as a kind, responsible, and decent individual. (Tr. 62) He was aware that Applicant's home was foreclosed in 2008.

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." ³ The burden of proof is something less than a preponderance of evidence. ⁴ The ultimate burden of persuasion is on the applicant. ⁵

³ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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.”⁶ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁸ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying:

(a) inability or unwillingness to satisfy debts;

⁶ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁷ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁸ *Id.*

(b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;

(c) a history of not meeting financial obligations;

(d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;

(e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;

(f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern;

(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;

(h) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income; and

(i) compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

Applicant filed a petition for a Chapter 7 bankruptcy and his nonpriority unsecured debts were discharged in April 2013. He admits that he had delinquent debts, his vehicle was repossessed, and that his home went to foreclosure in 2008. Consequently, the evidence is sufficient to raise disqualifying conditions in ¶ 19(a) and 19(c).

AG ¶ 20 provides conditions that could mitigate security concerns. The following are potentially relevant:

(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;

(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; and

(f) the affluence resulted from a legal source of income.

Applicant had no financial difficulties before the events in 2007. He was approved to purchase a home in 2006 and his brother and girlfriend contributed to the mortgage. When they stopped contributing to the mortgage payment after one year, Applicant could not maintain the payment. He called the bank and tried to have the loans refinanced. He unsuccessfully tried to sell the home. The bank is no longer in existence. Applicant worked two jobs to pay his bills and to provide for his children. He has never been late with his child support payments. On the advice of an attorney, he filed for bankruptcy, and his nonpriority debts were discharged in April 2013. He no longer has delinquent debt. He has reduced his expenses and lives modestly. He is saving money. He benefitted from the financial counseling component of the bankruptcy. When he was able, he paid his delinquent debts. His current financial status is stable. He has a savings account. He has not acquired any new delinquent debt. AG ¶¶ 20 (a), (b), (c) and (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 an applicant's conduct and all the 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case as well as the whole-person factors. Applicant is a 40-year-old employee of defense contractor who has held a security clearance since 2003. He is a naturalized U.S. citizen who has lived in the United States since 1999. He has worked hard and has advanced his education by obtaining undergraduate and graduate degrees in accounting. He has been employed by defense contractors for a number of years. He obtained his undergraduate degree at night while working during the day. Applicant has received many favorable recommendations. He is active in the community.

Applicant provides child support for his children. He has never been late on a child support payment. He was approved for a home purchase in 2006. He wanted to have a home for his fiancée. When his fiancée and his brother could not help him pay the mortgage, he could not maintain the mortgage payment. He obtained a second job. He was not successful in selling his home due to the economic situation. He believed the bank when they advised him that after one year, he could refinance the two mortgages.

Applicant was candid at the hearing and credible in his testimony. He had no financial difficulties until the above-described events beyond his control happened in 2007. He acted reasonably under the circumstances but he was advised to file for bankruptcy. His delinquent debts were discharged in April 2013. He still works two jobs. He is resolved to save money. He disclosed his financial situation on his security clearance application. He has held a security clearance without incident.

Applicant met his burden of proof in this case. Clearance is granted.

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
Subparagraphs 1.a-1.g:	For Applicant
Paragraph 2, Guideline B:	WITHDRAWN
Subparagraphs 2.a-2.b:	Withdrawn

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to continue Applicant's security clearance. Clearance is granted.

NOREEN A. LYNCH.
Administrative Judge