



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



In the matter of:)	
)	
)	ISCR Case No. 11-14707
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

11/18/2013

Decision

WHITE, David M., Administrative Judge:

Applicant defaulted on the mortgage loan on his former residence after relocating for valid family reasons. He was unable to sell the residence due to soil contamination the previous owner failed to disclose. The loan is guaranteed by the VA, foreclosure proceedings are ongoing, and he can pay any resulting debt. The evidence is sufficient to mitigate resulting security concerns. Based upon a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SF-86) for a periodic review on September 6, 2011. On March 4, 2013, the Department of Defense issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations). 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 for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing on April 6, 2013 (AR), and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on May 15, 2013. The case was assigned to me on May 23, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Video Teleconference Hearing on June 24, 2013, and I convened the hearing, as scheduled, on July 11, 2013. Applicant and the court reporter attended the hearing in person. Department Counsel participated from DOHA Headquarters by video teleconference. The Government offered Exhibits (GE) 1 through 4, which were admitted without objection, and Hearing Exhibit (HE) I, a Government exhibit list. Applicant offered Exhibits (AE) A through G, and testified on his own behalf. I granted Applicant's request to leave the record open until July 25, 2013, to permit submission of additional evidence. Applicant timely submitted AE H through J. Department Counsel had no objection to AE A through J, and they were admitted. DOHA received the transcript of the hearing (Tr.) on July 23, 2013.

Findings of Fact

Applicant is a 32-year-old employee of a defense contractor, where he has worked since April 2009. He has been married since 2004, and has three young children. He is a high school graduate, and has taken some college courses. He was honorably discharged from the Navy in August 2007, after serving for seven years on active duty. He has been eligible for a security clearance in connection with his military and post-service defense contractor positions. (GE 1; Tr. 6-8.)

In his response to the SOR, Applicant admitted the truth of SOR ¶ 1.a, and denied SOR ¶¶ 1.b through 1.d, with explanations. Applicant's admissions, including his statements in response to DOHA interrogatories (GE 4), are incorporated in the following findings.

During the last six and a half years of his naval service, Applicant was stationed in State A where he currently lives and works. He met and married his wife there. After leaving the Navy in 2007, Applicant went to work for a private company in state B, where he grew up. He and his wife bought their first home there in June 2008, with a VA-guaranteed mortgage loan of about \$139,000. His wife was unhappy living in State B, where she had no friends or family, so in November 2008 Applicant interviewed for and was offered his present position in State A. They rented their home in State B on terms that provided sufficient funds to cover their mortgage payments, but the tenant stopped paying rent shortly after moving in. The tenant moved out in February or March 2009 and the house was listed for sale during April 2009.¹ Applicant and his wife made all payments while they lived in the house and while it was rented, but could not afford to continue payments while maintaining another household in State A. They made several partial payments when possible, but the mortgage fell into default around mid-2009. (AR; GE 1; GE 2; GE 4; Tr. 39, 53, 57-61, 66.)

¹Applicant's description of this rental during the hearing differs, in some details, from his statements during his security interview on October 3, 2011. The differences are neither significant for evaluation of security worthiness, nor indicative of any attempt to be deceptive on either occasion.

Shortly after the house was placed on the market, the listing agent informed Applicant and his wife that the previous owner had permitted the county to use part of the ten acres on which it is located to mix asphalt for a road project. As a result of this activity, which was not disclosed when Applicant purchased the property, the land is contaminated by oil and requires over \$75,000 in restoration work. This problem was not identified during the lender-approved pre-purchase property inspection conducted for Applicant and his wife by a licensed real estate inspector. About 50 potential buyers or agents inquired about or visited the property with the listing agent while it was on the market through October 2010, but after being properly informed of its contaminated status none remained interested. (AR; AE F; AE J; Tr. 39-41, 54-56, 61-63.)

Upon discovering that the property was contaminated, Applicant consulted an attorney who contacted the previous owner seeking to reverse the fraudulent sale or obtain compensation. The previous owner was an attorney who had retired to another state, and promised to resist and stall any efforts to hold him liable for failing to disclose the contamination. Applicant's attorney advised Applicant that compensation was unlikely under the circumstances, and a short sale would be his best option. Applicant contacted his mortgage lender and the VA for assistance with attempting to resolve the situation. The mortgage lender initiated foreclosure proceedings in late 2009, and he was advised to make no further payments toward the loan. Due to difficulties in arranging an auction sale of the contaminated property, and reluctance to incur clean-up responsibility by taking possession, the lender has not completed foreclosure proceedings. Applicant was not aware of what, if any, steps the lender had taken with respect to the VA guarantee of the loan and is awaiting further guidance from the VA. The lender has not issued Applicant an IRS Form 1099 indicating either abandonment or cancellation of the mortgage debt. (AR; GE 2; GE 4; Tr. 40-42, 58-59, 62-66.)

The \$428 delinquent cell phone debt, alleged in SOR ¶ 1.b and erroneously listed by Experian on his September 2011 Full Data Credit Report (GE 2), is actually his father's debt. Applicant and his father share the same name (Jr. and III), and his father acknowledged in writing that the debt is his. (AE I.) The original creditor's May 2007 Equifax entry on the Full Data Credit Report states the account was opened in April 2004, became delinquent in February 2005, and was placed for collection in May 2007. It further states, "consumer disputes this account information." The debt is not listed on Applicant's January 2013 Equifax credit report (GE 3.) Applicant provided sufficient proof that this is not his debt. (AR; GE 4; Tr. 47-48.)

Applicant was unaware of the \$296 collection account, as alleged in SOR ¶ 1.c, until asked about it during his security interview on October 3, 2011. The claim originated from the utility company that Applicant and his wife used while living in State B. After the interview, Applicant contacted the company and was informed that the debt was for equipment that was not shown to have been returned in the company's records. Applicant was directed by the company to leave the equipment (a "power box") on the back porch when they moved out, so someone could come and pick it up. He did as directed, but the box was apparently not there when the employee came to get it. Applicant has been in contact with the company on several occasions during the past

year. On the most recent two occasions, the company was unable to locate any record of the debt in their data base. Applicant continues to dispute responsibility for the debt, but offered to pay it if the company verifies it. He is willing and able to do so. (GE 2; GE 4; AR; Tr. 48-49.)

The \$232 medical collection account alleged in SOR ¶ 1.d arose from an insurance billing mistake. Applicant paid the collection agency in February 2013 to resolve the matter, and asked his medical insurer to contact the doctor's office to resubmit the charges as well. (AR; Tr. 49-52.) Applicant has no other delinquent debts. (GE 2; GE 3; AE G; Tr. 34-35, 67-68.)

Applicant has not undergone any formal financial counseling, and his wife handles most of the routine family finances. He met with a specialist to help him resolve previous inaccuracies on his credit reports, primarily caused by having the same name as his father. He submitted a personal financial statement demonstrating a present monthly surplus of about \$2,000, and \$24,000 in accumulated financial assets. (AE A; AE H; Tr. 68-72.)

Six coworkers and friends, who have known Applicant well for the past three to five years, wrote glowing letters of recommendation praising his honesty, integrity, and trustworthiness. (AE B.) His performance evaluations from his service in the Navy uniformly praised his exceptional performance, responsibility, reliability, leadership, and professionalism. (AE C.) He also earned two Squadron Commodore Letters of Commendation and was awarded two Navy and Marine Corps Achievement Medals for exceptional professionalism, initiative, and loyal devotion to duty while on active duty. (AE D.) Between September 2009 and April 2013, ten different coworkers nominated Applicant for company recognition awards for his leadership, teamwork, and operational excellence. (AE E.)

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 (DCs) and mitigating conditions (MCs), which 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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 ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline F, Financial Considerations

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 record evidence potentially raises security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

The only debt of potential security concern involves the foreclosure on a real estate mortgage in State B. The other SOR-alleged debts were minor, and either were not his or were unintentionally late and easily resolved. After moving back to State A to save his marriage and family, Applicant first rented the State B house but had to evict the tenants after they stopped paying rent. He then tried to sell the house, without success due to contamination that was fraudulently concealed from him by the previous owner. The mortgage debt is in foreclosure proceedings, involves a VA guarantee to the lender, and remains pending despite Applicant's efforts to move the process along. This evidence raised minimal but sufficient security concerns, under DCs 19(a) and (c), to shift the burden to Applicant to rebut, extenuate, or mitigate those concerns. The evidence does not support any other DC under this guideline.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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 mortgage debt remains unresolved, but the creditor has VA guarantees against loss and no active collection efforts are being made during the ongoing foreclosure process. Applicant, a first-time home buyer, had the property inspected by a licensed expert, but was not made aware of the chemical contamination until he attempted to sell the property. Unlike the previous owner, he demonstrated integrity by disclosing the problem to potential buyers with the result that the property could not be sold. His attorney was unsuccessful in obtaining legal relief from the previous owner. These circumstances were unique, and are highly unlikely to recur. The

evidence establishes his current reliability, trustworthiness, good judgment, and substantial mitigation under MC 20(a).

Applicant offered sufficient evidence to support mitigation under MC 20(b) as well. He had already accepted his current employment and moved back to State A before learning that long distance rental of the house in State B was unworkable and soil contamination prevented its being sold. He attempted to obtain legal relief from the previous owner without success, then notified both the lender and the VA of his need to pursue a short sale. No buyers were interested after learning of the contamination, so the loan went into foreclosure. Applicant could have done nothing else to remedy the situation, and has the financial wherewithal to meet any potential tax or deficiency obligations at the conclusion of foreclosure proceedings. This demonstrates responsible action under the circumstances.

Applicant did not undergo financial counseling, but his ability to manage this series of setbacks without incurring other delinquent debt is compelling evidence that he does not need to do so. He established clear indications that his financial issues have been or are being resolved, and are under control for the future. MC 20(c) and 20(d) are therefore applicable.

Applicant documented a valid basis to dispute of the legitimacy of the debt alleged in SOR ¶ 1.b, which is actually owed by his father. Accordingly, he mitigated that allegation under MC 20(e).

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.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a sincere and

hard-working individual, whose only issue of potential security concern involves a real estate purchase in which the previous owner fraudulently failed to disclose that the property had chemical contamination requiring more than \$75,000 in remediation. Before he knew that, he had already relocated to State A and accepted his current employment in order to preserve his family. He made no effort to conceal any issues from his creditors, employer, or the Government, and stands ready to fulfill any obligations resulting from the ongoing foreclosure proceedings. He is mature and accountable for his choices and actions, and prioritized his spending of limited resources in a reasonable way. His disciplined actions to prevent any additional delinquent indebtedness demonstrate positive permanent behavioral changes and rehabilitation.

The potential for exploitation or duress is greatly diminished by his openness about the circumstances, the creditor's limited liability due to the VA loan guarantee, and his ability to deal with any remaining financial obligations after foreclosure proceedings are complete. The likelihood of recurrence of financial issues has been minimized by his good new job and lessons learned from his first venture in home ownership. Applicant has a lengthy and excellent record of valuable service to the national security, and the trust and confidence of his coworkers and supervisors. Overall, the record evidence creates no doubt as to Applicant's present eligibility and suitability for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a through 1.d:	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.

DAVID M. WHITE
Administrative Judge