



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



In the matter of:)	
)	
-----)	ISCR Case No. 12-01343
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

03/14/2014

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR), dated September 11, 2013, 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 (AG) effective within the DOD on September 1, 2006.

In an October 10, 2013, response to the SOR, Applicant admitted the three allegations raised under Guideline F and requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. The case was assigned to me on November 21, 2013. DOHA issued a notice of hearing on December 13, 2013, setting the hearing for January 14, 2014.

The hearing was convened as scheduled. The Government offered six documents, which were accepted as Exhibits (GX) 1-6 without objection. Applicant offered testimony and nine documents, which were accepted without objection as Exhibits (AX) A-I. He was given until January 28, 2014, to submit any additional materials. The transcript of the proceeding was received on January 17, 2014. Also on January 17, 2014, Applicant was given an additional 30 days to submit any additional matters he wished to have considered. On February 14, 2014, Applicant forwarded to the Government a cover letter and a favorable recommendation letter for consideration. Those documents were forwarded to me on February 25, 2014, and accepted into the record as Exs. J-K without objection. The record was then closed. Based on my review of the testimony and materials, I find that Applicant failed to mitigate financial considerations security concerns.

Findings of Fact

Applicant is a 47-year-old physical security specialist who has worked for the same organization for the past five years. He earns approximately \$96,000 a year. Applicant is considered to be an outstanding leader and professional at his place of business. He has completed some college. Applicant is divorced and has one child.

Applicant married in late 1996. Applicant filed for Chapter 7 bankruptcy at the request of his wife-to-be, who had a trust fund she did not want compromised because of his financial issues. His debts, which had been acquired through a business downturn, were discharged in April 1997. The couple moved to another state after their marriage, then moved again in 1999. In late 2002, the couple had a child and Applicant's wife left the workforce to care for their newborn child. Their marriage began to fail shortly thereafter. Following a brief estrangement and a failed reconciliation, Applicant's wife "called it quits, basically, and gave [him] a couple of weeks to get [his] affairs in order" and move out. (Tr. 26) At that point, Applicant moved to his current state of residence, where he stayed with his parents for over a year.

Applicant and his wife worked on their difficulties long-distance and progress was made. Meanwhile, in November 2004, Applicant bought a home in his name in his new state while his wife was arranging to sell their house where she was living, which was owned in her name. (Tr. 27) Their goal was for them to regroup in his new home, which was valued at approximately \$300,000 and financed through two loans (\$251,000 and \$58,000). (Tr. 29-30) At that time, Applicant was earning \$60,000 a year. The purchase was within the financial parameters he had in mind for once he and his wife were reconciled and working. A month later, Applicant's wife and child visited, then ultimately joined him in the new home. There, his wife planned to return to the workforce. After six months, the couple realized things were not working out, and both wife and child left.

In 2006 or 2007, Applicant found it difficult to meet his monthly mortgage obligations and he struggled to pay his monthly mortgage payments, which were about \$2,500 a month. Soon, he was making late payments. On his income, he was supporting himself in his state, and sending money to his estranged wife. He tried to

economize, but costs related to his divorce were costly. His bank and lenders would not help him refinance his loans. Applicant's divorce was granted in the summer of 2007. Then, he was laid off from his job July 2007 until October 2007.

Applicant again met with his mortgagor in late 2007 or early 2008. He was advised that he could negotiate a refinance on his loans if he became three months behind on his mortgage. In 2008, Applicant realized his house was "way under what [he] was . . . paying for it." (Tr. 44) He decided to avail himself of his mortgagor's advice to forego payments on his mortgage. He did so because he was only "treading water" financially, "making ends meet. But . . . [not] getting ahead." (Tr. 44) Applicant stopped making his mortgage payments in October 2008. He continued withholding those payments while he worked with his mortgagor, although a refinance was not forthcoming. He made no further payments before moving out of the house in May 2010 because he was told by the mortgagor that it would "stop dealing" with him if he resumed payments. (Tr. 46) He moved out shortly after the bank locked him out of the house for two weeks, during which time someone stole his computer and tools. (Tr. J)

In the interim, Applicant began working for his current employer, with a starting annual salary of about \$80,000. Shortly thereafter, his girlfriend, who was employed, moved into the house with him. (Tr. 43-46) She contributed financially to the upkeep of the house. (Tr. J) In June 2010, as Applicant was trying to seek permission to conduct a short sale on the property, the mortgagor foreclosed upon the house. At the time, the primary mortgage had an outstanding balance of \$243,479. (Tr. 47-48, 50; SOR allegation 1.b)

In February 2010, Applicant's girlfriend bought a home, in part with her savings from living for free in Applicant's house. She and Applicant moved into the home shortly after they were locked out of the Applicant's mortgaged house in May 2010. A month or two later, Applicant contacted the primary mortgagor to inquire about the status of the house. He was "told . . . they sold the house and they were done with [him]." (Tr. 51) To date, he is unsure if the home was auctioned. It was his understanding, based on the comment that it was "done with him," that the situation had been "resolved." (Tr. 52-56) He has had no further contact with that lender. No progress on the debt noted in SOR allegation 1.b for a mortgage account that went into foreclosure with an outstanding balance of about \$243,479 has been made. (Tr. 72) In 2013, he contacted his secondary lender, which negotiated a settlement amount of \$2,932 on the nearly \$60,000 debt noted in SOR allegation 1.c. (Tr. 53-55; GX 2) At the time of the hearing date, Applicant had recently made his fourth \$123 payment on the established repayment plan for that debt. (Tr. 55, 72)

Applicant, who presently earns about \$96,000, continues to live with his girlfriend in her house. There, he does not contribute toward her mortgage. (Tr. 50) Instead, he gives her a lump sum of money to help with bills, such as their cellular phone bill, her vehicle payment, and "stuff like that." (Tr. 50) He does not have a car payment, but has about \$750 a month in car-related expenses, such as fuel. He contributes about the same amount toward his girlfriend's car payments. (Tr. 56-57) Applicant has a net

monthly remainder of \$42. He had a part-time job at some point between 2003 and 2005, but has not again sought such additional income. (Tr. 59-60) There is no evidence he has received formal financial counseling. With regard to not having made contact with his primary mortgagor since 2010, he stated: “(W)hen somebody tells me that they’re done dealing with me, to me, that’s a done deal. It may be that it’s wrong of me to think that way, and I can’t correct that.” (Tr. 68) “I thought I did what I could to deal with [the bank], as fair as possible, and you know, time after time, they pulled another trick or kept giving me . . . the run around. . . . Hopefully, I can find out if the house was sold and for how much.” (Tr. 71-72) No additional documentation regarding the home or the mortgages was submitted after the hearing.

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, which are 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 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. Likewise, I have not drawn 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, 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 and has the ultimate burden of persuasion to obtain 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 safeguard 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

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence showing Applicant has a history of financial issues dating back to his 1996 bankruptcy. Today, he has two delinquent home loan-related debts on a property foreclosed upon in 2010. Such facts are sufficient to raise two of the financial considerations disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts, and

AG ¶ 19(c): a history of not meeting financial obligations.

Five conditions could mitigate the finance-related security concerns in this case:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(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 marital estrangement and 2007 divorce, as well as a period of unemployment in 2007, affected in varying degrees Applicant's overall finances. It can be assumed that these events, which were beyond his control, also impacted or frustrated his ability to timely pay his obligations. There is no indication that during this time frame, before his substantial pay raise, Applicant was unreasonable in the management of his limited funds. Indeed, he continued to make regular payments on his mortgage into 2008. Consequently, AG ¶ 20(b) applies to a limited extent.

By 2008, Applicant had received a notable increase in pay. At the time, he was making ends meet, but was not getting ahead financially. There is no evidence that he simply could not afford the monthly mortgage payments, only that he felt they were holding him back financially. In 2008, Applicant chose to stop making payments on his home loans in the hopes of being given the opportunity to refinance the home at more favorable terms. The bank took no immediate action to adjust the terms. Applicant continued to forego payments, worried that resumption of payments would frustrate his strategy for gaining a refinance. Although his girlfriend moved in with him and shared the financial costs associated with the home's upkeep, the couple otherwise lived in the house for free. Applicant did not vacate the property until after the bank locked him out of the house in 2010 and the foreclosure procedure was commenced. Applicant did not inquire about what, if any, balance he owed on his home loans after the foreclosure. He called his primary mortgagor and accepted its comment that it was "done with him" as a form of financial absolution. Three more years would pass before he initiated contact with his secondary lender.

Applicant's credit reports reflect that the two home loan-related debts noted in the SOR remain delinquent and outstanding. Applicant provided no documentary evidence showing that the primary mortgage noted at SOR allegation 1.b has been addressed, satisfied, forgiven, or absolved. Only his testimony and his past few years of inaction support his assertion that the over \$240,000 debt is no longer owed. He failed to demonstrate efforts reflecting a strategy for further addressing this debt. Moreover, there is no evidence that he has the present ability to make any strides toward satisfying this debt.

Applicant's only documented evidence of progress on his two delinquent debts is with regard to his nearly \$60,000 secondary home loan, which was negotiated to settle after payment of about \$3,000. Applicant showed that he recently made four months of modest, \$123, payments to the creditor noted at SOR allegation 1.c. These recent payments, however, do little to explain the delay from the early 2010 foreclosure until 2013 to address that debt. There is no evidence he has received financial counseling. Given the fact he has a net monthly remainder of under \$50, despite an income of

nearly \$100,000, it is unclear whether he can continue to sustain these payments over a protracted period of time. Under these facts and given the limited documentary evidence offered, no other mitigating conditions 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). 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 the 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 47-year-old physical security specialist earning about \$96,000 a year. He has worked for the same entity for five years. Divorced with one child, Applicant has completed some college.

Applicant first had financial difficulties in the late 1990s, when he filed for bankruptcy protection. A series of moves and marital discord dogged him in the 2000s. A 2004 home purchase was predicated on the idea that he and his wife would both be working and making payments toward their new house. The marriage faltered and, by 2006-2007, Applicant found making the mortgage payments difficult. The bank was not willing to work with him regarding the mortgage terms at that time. His divorce and a notable pay raise did not lessen his desire for more favorable loan terms. To that end, he stopped making payments on his home loans as a way to motivate his bank to negotiate a refinance of his mortgage terms. By that point, it was a ploy made not out of financial distress, but because he did not feel his mortgage payments were allowing him to advance financially. He and his girlfriend stayed in the house for free until early 2010. Applicant's inquiry as to the status of the house and his financial obligations resulted in his being told that the bank was "done with him." Applicant chose to take this to mean that he was absolved of financial liability on the primary home loan. Three years later, he inquired about his secondary home loan. On that debt, he negotiated the nearly \$60,000 debt down to about \$3,000, to be paid through monthly payments of \$123.

Applicant apparently chose to completely disavow responsibility on his primary mortgage after a single 2010 conversation with his bank. There is no documentary evidence showing he ever followed up with that lender from the time of his 2010 discussion through the time the case record closed. He failed to provide any documentary evidence showing that the debt had been paid or otherwise resolved. On his second home loan, he has made negligible progress. Contact with that lender was

not initiated until last year, three years after the house went into foreclosure. While it is to his credit he ultimately entered into a repayment plan on a settled amount, only four months of payments on that debt fail to establish a meaningful record of regular and timely payment. This is particularly true given Applicant's currently limited monthly net remainder. Given the neglect of these debts, the limited progress made on the second home loan, and Applicant's present financial situation, financial considerations security concerns remain unmitigated.

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: AGAINST APPLICANT

Subparagraphs 1.a-1.c: Against Applicant

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 grant Applicant a security clearance. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge