



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



In the matter of:)	
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)	
[NAME REDACTED])	ISCR Case No. 15-02987
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Douglas Velvel, Esq., Department Counsel
For Applicant: *Pro se*

07/22/2016

Decision

MALONE, Matthew E., Administrative Judge:

Applicant's financial problems were isolated and arose entirely through unforeseen circumstances. However, he has taken responsible steps to correct his finances, and he is unlikely to encounter such problems in the future. The security concerns about Applicant's financial problems are mitigated. His request for a security clearance is granted.

Statement of the Case

On September 8, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain eligibility for a security clearance required for his employment at a defense contractor. Based on the results of the ensuing background investigation, Department of Defense (DOD) adjudicators could not

determine that it is clearly consistent with the national interest for Applicant to continue to hold a security clearance.¹

On November 19, 2015, DOD issued a Statement of Reasons (SOR) alleging facts which raise security concerns addressed under the adjudicative guideline² for financial considerations (Guideline F). Applicant timely responded to the SOR (Answer) and requested a hearing. The case was assigned to me on March 24, 2015, and I convened a hearing on April 25, 2016. The parties appeared as scheduled. Department Counsel presented Government Exhibits (Gx.) 1 - 4.³ Applicant testified and presented Applicant's Exhibits (Ax.) A - C. A transcript of the hearing (Tr.) was received on May 3, 2016.

Findings of Fact

Under Guideline F, the Government alleged that, as of the date of the SOR, Applicant owed \$91,028 for two mortgage-related debts that were charged off as business losses (SOR 1.a and 1.b). In response, Applicant admitted both allegations. He also provided extensive explanatory information in support of his responses. (Tr. 11 - 12) In addition to the facts established by Applicant's admissions, I make the following findings of fact.

Applicant is 53 years old and works as an aircraft mechanic for a defense contractor who hired him in August 2014. Applicant served in the U.S. Navy from November 1983 until he retired as a petty officer first class in November 2003. While on active duty, Applicant was trained as an aviation electronics technician. He held a security clearance throughout his career. Among his many decorations, he received a Navy and Marine Corps Achievement Medal, six Good Conduct Awards, and six Overseas Service Ribbons. (Gx. 1; Ax. A; Tr. 40)

Applicant and his wife have been married since June 1988. He has two stepchildren, now in their thirties. Applicant's wife has worked in financial institutions for several years. She is currently employed by a well-established credit union in a position that pays her about \$35,000 annually. She had been unemployed after being laid off from a different credit union in 2012 as a result of the economic downturn. (Answer; 41 - 42)

After Applicant retired, he went to work in real estate sales. He and his wife earned a good living (on average about \$156,000 annually) from 2004 to 2008. They lived in a house (House A) they bought in 2004, but wanted to retire close to the ocean.

¹ Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive), as amended.

² The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

³ A list of the Government's exhibits is included as Hearing Exhibit (Hx.) 1.

In 2006, they bought a house (House B) at the beach that was close enough so Applicant could continue working at his real estate job if necessary. It cost about \$240,000. The purchase was financed through two mortgages, one for 80 percent of the cost, the other for 20 percent. Both mortgages were provided by the same lender. The latter mortgage was repaid as interest only to start and was the type of loan commonly used at the time to cover the borrower's down payment. After the purchase, Applicant and his wife intended to sell House A as soon as possible and move into House B. However, almost immediately, the housing market crashed and they could not sell either house. Market values had declined and they were "upside down" on all of their mortgages. For the same reasons, they could not get enough in rent for either house to cover their mortgages. (Answer; Gx. 4; Tr. 37, 52)

Additionally, Applicant's income suffered due to the loss of sales revenue in the housing market. Although Applicant's wife was still working, their joint income fell from \$182,231 in 2006 to \$147,501 in 2007. Their income in 2008 fell another \$8,000. Between 2009 and 2014, their income averaged \$79,998. In 2011 and 2012, Applicant's tax returns showed his reportable income was increased by early withdrawals from his IRA and 401k accounts to help cover the costs of the House B mortgages. From 2006 to 2010, they had rented the house at a loss to his stepson and his family, while his stepson completed college then deployed overseas as a member of the U.S. Army.⁴ (Answer; Gx. 4; Ax. B; Tr. 53 - 54, 55 - 58)

By late 2010, although his wife was still working, he no longer had rental income for House B and had to start using retirement and other savings to keep up with all of his mortgage payments. In December 2010, he started trying to negotiate with the mortgage lender for House B to obtain a mortgage modification due to financial hardship. He also suggested that a short sale should be arranged to resolve what had become an untenable situation for all involved. The bank did not respond because Applicant was still making all of his payments as required. (Answer; Gx. 4; Ax. 38 - 39)

In early 2011, Applicant became unemployed and returned to school to earn an associate's degree in aircraft mechanics. He was supported by his wife's income, his Navy retired pay, and by Department of Veterans Affairs education benefits. In 2012, while he was still in school, his wife was also laid off and their only income was his retired pay and unemployment benefits. Fortunately, as the housing market and overall economy worsened, Applicant and his wife had already cut expenses to save money while they were both employed. Those savings, along with retirement accounts, were mostly liquidated as they kept up with their mortgage obligations. (Answer; Gx. 4; Tr. 42 - 46)

In 2010, Applicant also consulted a real estate agent who recommended that the only way they could get the bank to consider a short sale was to stop payments. Applicant kept paying his House A mortgage but stopped paying his House B mortgage

⁴ Applicant's stepson has deployed to both Iraq and Afghanistan.

in late 2010. He then was able to negotiate a short sale of House B that was finalized in September 2011. Applicant was advised that the short sale would satisfy all of his obligations related to the mortgages for House B. However, credit reports obtained by the Government in September 2014 and October 2015, reflect remaining debts for both mortgages. (Answer; Gx. 2 - 4; 46 - 48)

There has been no action by the lender to collect the SOR 1.a and 1.b debts, and Applicant was advised by his real estate agent not to address those debts. A credit report produced by Applicant from December 2015 shows he has no accounts in a collection status. Applicant lives in a state that either bars mortgage lenders from suing to collect post-foreclosure and short sale deficiencies, or there is a statute of limitations on such actions. (Answer; Ax. C; Tr. 46 - 48, 59)

Applicant and his wife currently earn about \$80,000 annually, and their finances are sound. Applicant has a good credit score and is able to meet all of his current obligations. He has never had any other past-due or delinquent debts, he has never missed a payment on House A, where he and his wife still live, and he has begun rebuilding the savings he used to meet his obligations before completing the House B short sale. Applicant did not want to file bankruptcy and he "did not want to walk away from the home like a lot of people did." (Tr. 35 - 36, 38)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,⁵ and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the guidelines. Commonly referred to as the "whole-person" concept, those factors are:

- (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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information.

⁵ See Directive. 6.3.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁶ 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 the 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.⁷ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, 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.⁸

Analysis

Financial Considerations

Available information shows that two mortgage-related debts, totaling more than \$90,000, are or were attributable to Applicant after he and his mortgage lender successfully negotiated a short sale of the mortgaged property in 2011. The presence of these unresolved debts reasonably raised a security concern about Applicant's finances that is addressed, in relevant part, at AG ¶ 18, as follows:

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.

More specifically, this record supports application of the disqualifying conditions at AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*). Neither debt was resolved in the four years between the short sale and the issuance of the SOR. By contrast, available information also supports application of the following pertinent AG ¶ 20 mitigating conditions:

⁶ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁷ See *Egan*, 484 U.S. at 528, 531.

⁸ See *Egan*; AG ¶ 2(b).

(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.

AG ¶ 20(a) applies because the debts alleged constitute the only financial problems Applicant has ever encountered. He and his wife have managed their finances prudently, and they exhibited good judgment as they tried to save more and cut expenses when they saw what was happening in the real estate market ten years ago. Applicant is no longer in the real estate business, and it is unlikely that the circumstances that gave rise to the debts at issue in this case will recur.

AG ¶ 20(b) applies because Applicant's financial problems were due to the national recession and collapse of the real estate market. These were circumstances wholly beyond his control. More to the point, he exhibited good judgment by cutting expenses, renting House B at a loss to mitigate some of the financial impact, and initiating negotiations to the best of his ability long before he applied for a security clearance. The resulting short sale was the best result that could be expected at the time. He liquidated his savings to continue to meet all of his mortgage obligations. It was only when he and his wife were both unemployed that he followed professional advice and stopped paying the House B mortgage to force a short sale, the only viable solution at the time. All of the foregoing shows Applicant acted responsibly under the circumstances.

AG ¶ 20(c) applies because the problem – Applicant's House B mortgage debts – has been resolved. Given the circumstances at the time, a short sale was the best resolution for both Applicant and the lender. As to any remainder or deficiency represented by the debts at SOR 1.a and 1.b, it is not clear from available information those debts are properly attributable to Applicant. There has been no effort to collect either debt, and Applicant has been advised that the debts are likely not collectible.

Finally, AG ¶ 20(c) applies because all of Applicant's efforts to resolve his House B mortgages began six years ago. Regardless of the degree of success, he demonstrated at all times a good-faith intent to satisfy his obligations. The possible

presence of ongoing debt is not the end of the analysis here. Adjudications involving this guideline must focus as much on an applicant's judgment and reliability as on his balance sheet. All of the foregoing shows that Applicant is not likely to incur delinquent debts in the future. He and his wife manage their finances responsibly and are not likely to experience such difficulties in the future. Applicant has mitigated the security concerns about his financial problems.

I also have evaluated this record in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is a Navy veteran with a stable personal and professional life. He acted responsibly to resolve his financial problems and again is financially sound. A fair and commonsense assessment of all available information shows that the doubts about his suitability for access to classified information raised by his financial problems have been satisfied.

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:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a - 1.b: For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is granted.

MATTHEW E. MALONE
Administrative Judge