



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-04173

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel

For Applicant: *Pro se*

05/30/2017

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On March 9, 2016, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 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 effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on April 8, 2016, and elected to have his case decided on the written record. Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant, and it was received on June 20, 2016. Applicant was afforded an opportunity to file objections and submit

material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant did not respond to the FORM. Therefore, the Government's evidence identified as Items 1 through 5 were admitted into evidence without objection. The case was assigned to me on May 3, 2017.

Findings of Fact

Applicant admitted the sole allegation in the SOR. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 50 years old. He earned a bachelor's degree in 1988 and a master's in business administration degree in 1996, both from prestigious universities. He served in the military from 1984 to 1994. He is married. He has children ages 21, 17, and 14, from the marriage. He has worked for his present employer, a federal contractor, since 1999.¹

In Applicant's May 2014 security clearance application and during his background interview with a government investigator, he disclosed a charged-off second mortgage delinquent debt in the amount of \$91,694 that remains unpaid. This debt remains on credit reports from May 2014 and March 2015.²

During his background interview, Applicant explained the circumstances of the second mortgage debt. In 2007, he obtained a mortgage in the amount of approximately \$494,000 and a second mortgage for \$91,694.³ In May 2010, Applicant stopped making payments on both mortgages because he purchased another house through a short sale and moved into this new house. His new residence had a mortgage that was \$250,000 less than the mortgages owed on his first home. He voluntarily let his first home's mortgage foreclose. His explanation was that the mortgage on his first home was worth more than the value of the house at that time. Applicant did not recall the monthly payments.⁴

In January 2011, the creditor for the first mortgage foreclosed on the home, and it was sold at auction for an unknown amount. Applicant's credit report shows there is a zero balance on that account. The second mortgage, as alleged in SOR ¶ 1.a, is in collection. Applicant attributes his financial difficulties to the downward trend of the real estate market during that time.⁵

¹ Item 2.

² Items 2, 3.

³ There is no evidence that the second mortgage lender was involved in predatory practices.

⁴ Item 3.

⁵ Item 3.

In Applicant's answer to the SOR, he stated he has not defaulted on a debt before or after his voluntary foreclosure. He has been current on payments for his present mortgage since 2010. He has no other debts. He is funding his child's college education. He has no vehicle loans. He is working to repair his credit, live debt-free, and pay his bills. He explained he made a financial mistake. He did not provide information about any attempt he made to pay, settle, or resolve the delinquent debt alleged in the SOR.⁶

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 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 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, 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 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 that an applicant may deliberately or inadvertently fail to safeguard

⁶ Item 1.

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 EO 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 AG ¶ 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.⁷

AG ¶ 19 provides a condition that could raise security concerns. The following is potentially applicable:

(a) inability or unwillingness to satisfy debts.

Applicant has a \$91,694 delinquent debt that he is unwilling to pay. There is sufficient evidence to support the application of the above disqualifying condition.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

⁷ See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

(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.

In 2010, Applicant made a strategic financial decision to default on his first and second mortgages and purchase another home at a short sale. The first mortgage was foreclosed and there is a zero balance owed. The second mortgage remains in collection as a charged-off account. Although this event is unlikely to recur in the future, the debt remains unpaid. It is clear from the evidence that Applicant does not intend to pay the debt. His decision may have made financial sense at the time, but it does not absolve him of his duty to pay his delinquent debt. He presented no evidence of any attempt to settle the debt or resolve it with the creditor. AG ¶ 20(a) does not apply because the facts cast doubt about Applicant's reliability and good judgment.

Applicant attributed his financial problems to the real estate market. There is no evidence that Applicant was unable to make his mortgage payments. Rather his first house had lost its value; he purchased a second house by short sale; and he voluntarily let his first house foreclose. Based on Applicant's answer to the SOR, there is sufficient evidence to conclude he has the financial means to address the delinquent debt, but chooses not to do so. I am unable to find these conditions were beyond his control, and he acted responsibly under the circumstances. AG ¶ 20(b) does not apply.

There is no evidence Applicant participated in financial counseling. Applicant has not presented any evidence that he made a good-faith attempt to settle, pay, or resolve the delinquent debt alleged in the SOR. The problem is not under control. AG ¶¶ 20(c) and 20(d) do not 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 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.

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 51-year-old educated man. He served in the military and has been steadily employed with the same federal contractor since 1999. In 2010, Applicant made a strategic financial decision to voluntarily stop paying two mortgages because his house had lost its value, and he decided to purchase a second home that was more affordable. Although, his decision may have made sense from a financial standpoint, it did not relieve him of his responsibility to pay the loan he secured for a second mortgage and did not pay or resolve. Applicant provided evidence that he is financially stable, but did not provide evidence of any attempt to contact the creditor to resolve the collection account. He has not acted responsibly in addressing this debt. Instead, he has ignored his financial responsibility to this creditor, fully understanding the debt was charged-off, and at some point will drop off his credit report. He has failed to meet his burden of persuasion. The record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F, financial considerations.

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
Subparagraph 1.a:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge