



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



In the matter of:

REDACTED

Applicant for Security Clearance

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ISCR Case No. 15-04227

Appearances

For Government: Benjamin R. Dorsey, Esq., Department Counsel
For Applicant: *Pro se*

03/16/2017

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant presented sufficient evidence to mitigate security concerns raised by his financial circumstances. He became delinquent on a mortgage for a property that his wife purchased to run a business providing services to military members assigned to a local military base. Several matters beyond Applicant's control, including the closure of the base, conspired to leave him unable to pay the mortgage. He took responsible action to address the debt and thereby mitigated concerns raised about his judgment, reliability, and trustworthiness. Clearance is granted.

Statement of the Case

On February 8, 2016, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging that his circumstances raised security concerns under the financial considerations guideline.¹ Applicant answered the SOR and requested a hearing to establish his eligibility for continued access to classified information.

¹ This action was taken under Executive Order (E.O.) 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) implemented by the Department of Defense on September 1, 2006.

On December 15, 2016, a date mutually agreed to by the parties, a hearing was held. Applicant testified at the hearing and the exhibits offered by the parties were admitted into the administrative record without objection. (Government Exhibits 1 – 3 and Applicant's Exhibits A – C.) The transcript (Tr.) was received on December 23, 2016, and the record closed on January 12, 2017.²

Findings of Fact

Applicant is a high school graduate with a technical degree. He and his wife have been married for nearly 30 years and they have two adult children. Over the years, Applicant and his wife have cared for foster children and hosted exchange students.

Applicant served in the U.S. military for over 25 years, retiring in around 2007 in the E-9 paygrade. He deployed on a number of occasions, including at least two deployments to designated combat zones. He was hired by his current employer as a federal contractor after retiring from the military. He has held a clearance since approximately 1980.³

Applicant's financial problems began in about 2008. He started experiencing trouble with the mortgage for a property his wife had purchased in 2003 or 2004 in State A using a power-of-attorney while he was deployed. His wife had purchased the property to run her business, providing services to military members stationed at a local military installation. The business was successful until about 2008. Around that time, the military installation was placed on the base closure list and Applicant's employer forced him to move to State B.

After moving to State B, Applicant rented the property in State A but the tenant moved out about a year later. Applicant was unable to locate another tenant for the property and was unable to pay the mortgage. He tried to sell the property to satisfy the amount remaining on the mortgage, but the property's value had decreased due to the downturn in economy and the distressed conditions in the local market. Notably, several other properties that were owned by military personnel and other employees assigned to the now closed military installation were all on the market about the same time. The glut of available housing caused a significant drag on the potential resell value of all the properties in the area, including Applicant's property. Applicant received a short sale offer of about \$79,000, but the lender nixed the potential deal.

Applicant also tried to modify the mortgage. The lender servicing the loan kept changing hands and losing his modification paperwork. He submitted at least two applications to resolve the mortgage through a deed in lieu of foreclosure. In 2015, Applicant and his wife received the latest and last short sale offer of \$40,000. The new creditor for the distressed property refused this latest offer. Applicant disclosed the

² Prehearing correspondence, the notice of hearing, case management order, and Department Counsel's comment regarding Applicant's post-hearing submission are attached to record as (App. Exh.) I – IV.

³ Tr. 8, 20-23; Exhibit 1.

delinquent mortgage loan on the security clearance application that he submitted as part of a periodic reinvestigation.

In November 2016, the new creditor sent Applicant a notice that the mortgage debt was charged off and the creditor would not charge any additional fees or interest on the account. The notice reflects that the original loan principal was approximately \$120,000 and the charged-off balance was about \$65,000.⁴

Applicant's current annual salary is approximately \$95,000, which is supplemented by about \$40,000 in retirement income. He resolved the three minor debts listed at SOR 1.b – 1.d, totaling about \$400, by paying the debts or bringing the accounts current. He has consistently paid the mortgage on his former marital residence in State A, which he purchased in about 2001. He has also timely paid the rent for the home he has leased since 2008, after relocating to State B for his job. He was financially supporting his daughter and her family, but they recently moved out and no longer depend on him for financial assistance. He is active in his church. A number of social and professional references, some of whom have known Applicant for decades, submitted letters attesting to his reliability, trustworthiness, and excellent work.⁵

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are eligible for access to classified information "only upon a finding that it is clearly consistent with the national interest" to authorize such access. E.O. 10865 § 2.

When evaluating an applicant's eligibility for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

Department Counsel must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. Applicants are responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven . . . and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15.

Administrative Judges are responsible for ensuring that an applicant receives fair notice of the issues raised, has a reasonable opportunity to litigate those issues, and is not subjected to unfair surprise. ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014).

⁴ Tr. 24-37, 44-45; Exhibit 1; Exhibit A; Exhibit B.

⁵ Tr. 37-53; Exhibit C.

In resolving the ultimate question regarding an applicant's eligibility, an administrative judge must resolve "[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security." AG ¶ 2(b). Moreover, recognizing the difficulty at times in making suitability determinations and the paramount importance of protecting national security, the Supreme Court has held that "security clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.

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. 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 an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Applicant's delinquent mortgage account for the distressed property in State A raises the financial considerations security concern, which is addressed at AG ¶ 18:⁶

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.

Thus, the security concern is not limited to a consideration of whether a person with financial problems might be tempted to compromise classified information or engage in other illegality to pay their debts. It also addresses the extent to which the circumstances giving rise to a person's financial problems cast doubt on their judgment, self-control, and other qualities essential to protecting classified information.⁷

In assessing Applicant's case, I considered the following disqualifying and mitigating conditions:

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

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

⁶ The minor debts referenced in SOR 1.b – 1.d totaling about \$400 are immaterial. See ISCR Case No. 15-02903 at 3 (App. Bd. Mar. 9, 2017) (remanding case, in part, for judge to explain how \$1,000 in delinquent debt raised a security concern under Guideline F).

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

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; and

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

Applicant's financial issues involving the distressed property in State A are not indicative of a person who lives beyond his means, lacks self-control, or raises other issue of a security concern. His delinquent mortgage account was a result of a confluence of matters largely beyond his control. Specifically, a business failure, forced job relocation, loss of rental income, military base closure, and economic downturn. All of these circumstances combined to leave Applicant unable to pay the mortgage on the distressed property or sell the property to satisfy the debt. Of note, before these events transpired, Applicant made his mortgage payments on a consistent, timely basis.

Applicant did not simply walk away from the debt in the face of these multiple obstacles or wait out any potential state statute of limitations to rid himself of the obligation. Instead, he attempted to resolve the mortgage by first attempting to modify the terms of the loan to reflect the distressed economic conditions on the ground and failing that tried to sell the property to satisfy the debt. His attempts were frustrated by several other outside factors, including uncooperative creditors who repeatedly sold and bought his mortgage. These creditors rejected multiple competitive offers for the property that would have resolved the debt. Foreclosure proceedings were initiated, but due to the economic conditions in the area the distress property is located in the creditor has been unable to sell it. The debt has been charged off and the creditor is no longer taking active measures to collect on it.

The Appeal Board's recent decision in ISCR Case No. 15-02903 (App. Bd. Mar. 9, 2017) is instructive in resolving the security concerns in this case. Notably, the Board remanded an adverse decision where the evidence showed the applicant had, with the assistance of a financial advisor, taken responsible steps to address three past-due debts totaling \$125,000 and, as of the close of the record, resolved the debt through the debts cancellation. The Board, in remanding the case, reiterated its prior holdings in this area:

[A]n applicant does not have to be debt-free in order to qualify for a security clearance. Rather, all that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by ‘concomitant conduct’ that is, actions which evidence a serious intent to effectuate the plan. *Id.* at 3

Here, the record evidence shows that Applicant took responsible steps to address the delinquent mortgage account. He voluntarily disclosed this potentially adverse information on his clearance application. By taking these actions, Applicant affirmatively and positively answered the question that this debt raised about his judgment, reliability, and trustworthiness. Also, although the debt has not been formally canceled, the creditor has essentially placed it in a non-collectible status. Thus, it no longer serves as a means through which Applicant could be subjected to undue pressure or coercion.

Moreover, this singular financial issue was but a blip in Applicant’s nearly 40-year history of properly handling and safeguarding classified information. A history that has included service during the Cold War, the First Gulf War, the recent wars in Iraq and Afghanistan, and multiple deployments to combat zones in support of the security of the nation. This aberrational event or situation does not undercut Applicant’s long history of responsibly managing his obligations, both personal and professional.

Accordingly, I find that the mitigating conditions listed at AG ¶¶ 20(a) – 20(d) apply, in whole or in part, and together with the favorable whole-person factors present in this case are sufficient to mitigate the security concerns at issue. Overall, after considering the entire record evidence, I am left with no questions or doubts about Applicant’s present eligibility for continued access to classified information.

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 (Financial Considerations):	FOR APPLICANT
Subparagraphs 1.a - 1.d:	For Applicant

Conclusion

In light of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for continued access to classified information. Applicant’s request for a security clearance is granted.

Francisco Mendez
Administrative Judge