



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



In the matter of:)	
)	
[NAME REDACTED])	ISCR Case No. 15-04851
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew Henderson, Esq., Department Counsel
For Applicant: *Pro se*

02/01/2017

Decision

BORGSTROM, Eric H., Administrative Judge:

Applicant did not mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On February 3, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant 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 (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on February 22 2016, and he elected to have the case decided on the written record in lieu of a hearing. On March 30, 2016, the Government submitted its file of relevant material (FORM) and provided a complete copy to Applicant. He received the FORM on April 11, 2016. He was afforded an opportunity to respond to the FORM within 30 days of its receipt and to file objections

and submit material to refute, extenuate, or mitigate the security concerns. He did not respond. The case was assigned to me on December 15, 2016.

Procedural Issues

In the FORM, Department Counsel references FORM Items 1-5. FORM Item 3 is the unauthenticated summary of a February 20, 2015 interview with a government background investigator. In the FORM, Department Counsel advised Applicant that he could object to FORM Item 3 and it would not be admitted, or that he could make corrections, additions, deletions, and update the document to make it accurate. Applicant was informed that his failure to respond to the FORM or to raise any objections could be constituted as a waiver, and the evidence would be considered by me. Applicant failed to respond to the FORM, and he raised no objections. Given Department Counsel's advisement and Applicant's education and work experience, I found the waiver to be knowing and intelligent.¹ Therefore, I admitted FORM Item 3 into evidence as Government Exhibit (GE) 3. FORM Items 2, 4, and 5 are admitted into evidence as GE 2, 4, and 5, respectively, without objection.²

Findings of Fact

The SOR alleges one delinquent mortgage loan as past due in the approximate amount of \$64,368. Applicant admitted this alleged debt. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact:

Applicant is 35 years old. He received his bachelor's degree in May 2004, and he has been employed by a DOD contractor since May 2004. He has been married since June 2009, and he has a 5-year-old child.³

Applicant purchased a home in May 2006. In September 2012, Applicant and his wife purchased a second home, while still owing monthly loan payments on the first property. Applicant's May 2016 credit report indicates that Applicant immediately ceased payments on the loan for his first home upon the purchase of his second home, and that he has made no payments since about October 2012. The mortgage loan is in foreclosure status, with a past-due balance of at least \$67,000.⁴ Applicant intentionally walked away from his financial responsibilities on the first house.⁵

¹ See ISCR Case No. 15-05252 at 3 (App. Bd. Apr. 13, 2016) (Applicant's waiver of the authentication element must be knowing and intelligent.).

² FORM Item 1 consists of the SOR and Applicant's response to the SOR. These documents are pleadings and are entered into the record.

³ GE 2.

⁴ GE 5.

⁵ Response to SOR; GE 2 at 31 ("Decision to enter a strategic default scenario was a financial decision, not a hardship decision. Makes more financial sense to take a credit hit and lose the home than it does to throw good money at a losing investment for the next 30 years of the loan.").

In his response to the SOR, Applicant indicated that he consulted an attorney, attempted to sell the first house, sought a deed-in-lieu of foreclosure, and applied for a loan modification; however, he has provided no timeline, details, or documentation of these efforts. The record evidence does not indicate whether these remediation efforts occurred before or after Applicant's decision to purchase the second home and abandon the first home.⁶

Applicant's security officer stated that Applicant timely reported the pending foreclosure and that he is highly regarded by his employer.⁷

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 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, administrative judges apply the guidelines 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."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the 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." The applicant 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

⁶ The JPAS entry by Applicant's security officer reveals Applicant's decision to walk away from the first house in September 2012; however, the description of his efforts to sell the house do not establish a timeline.

⁷ GE 4.

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. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant's mortgage loan is past due in the approximate amount of \$67,000. This account has been delinquent since October 2012. Accordingly, the evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

Since the Government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a) and 19(c), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.⁸ An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.⁹ Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

⁸ Directive ¶ E3.1.15.

⁹ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

(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.

The debt remains delinquent, and Applicant's willful default on this loan continues to cast doubt on his current reliability, trustworthiness, and good judgment.¹⁰ Therefore, AG ¶ 20(a) does not apply.

The application of AG ¶ 20(b) requires both (1) Applicant's financial indebtedness resulted from circumstances beyond his control and (2) Applicant acted responsibly under the circumstances.¹¹ The timeline for Applicant's purported efforts to sell his home is not in evidence. Nevertheless, because the nationwide housing crisis may have hindered Applicant's ability to sell his first home, it may constitute a circumstance beyond one's control in the context of AG ¶ 20(b).

AG ¶ 20(b) also requires that an applicant act responsibly under the circumstances. Applicant made the willful and informed decision to cease payments on the loan for his first home in about September 2012, when he purchased his second home. There is no evidence that Applicant was unable to afford the loan payments on his first home before he decided to cease loan payments and pay only the loan payments on his new (second) home. Rather, Applicant repeatedly emphasized that the decision to cease loan payments on the first home was because it was a losing investment.

¹⁰ See ISCR Case No. 11-07747 at 3 (App. Bd. Feb. 27, 2013) ("[T]he Judge made a sustainable conclusion that Applicant essentially walked away from a significant financial obligation out of personal interest when he had the means to satisfy the debt, and this evidenced unreliability and lack of trustworthiness.").

¹¹ See ISCR Case No. 07-09304 at 4 (App. Bd. Oct. 6, 2008).

Applicant's actions constitute a "strategic default" on his mortgage loan. As used here, "a strategic default means a decision by a borrower who has the financial means to make the monthly mortgage payments, but chooses not to do so and, instead, intentionally defaults (i.e., stops making payments) on the mortgage loan."¹² An applicant's decision to intentionally default upon a contractual obligation raises questions as to his willingness or ability to abide by other obligations, such as those governing the protection of classified information.¹³ Neither the lawfulness of a course of action nor the reliance upon the advice of legal counsel resolves questions about an applicant's reliability with regard to classified information.¹⁴ Here, Applicant has failed to provide documentary evidence about his purported attempts to sell his house or otherwise resolve the delinquent loan. Absent details about Applicant's efforts and the timeline for his efforts, there is insufficient evidence to conclude that he acted responsibly to address his delinquent debt. I conclude that AG ¶ 20(b) does not apply.

There is neither record evidence of credit counseling nor record evidence of other constructive or corrective steps, such as a monthly budget, to conclude that there are clear indications that Applicant's financial problems are under control. AG ¶ 20(c) does not apply.

The concept of good faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation."¹⁵ Although a legal course of action, a "strategic default" is not enough to show a good-faith effort to resolve debts.¹⁶ As discussed above, there is insufficient evidence of good-faith payments or other steps taken to resolve the alleged delinquent debts. AG ¶ 20(d) does not apply.

Applicant does not dispute that he remains liable for the delinquent loan. AG ¶ 20(e) does not apply.

Applicant's strategic default on his mortgage loan obligation casts doubts on his reliability, trustworthiness, and good judgment, and he has provided insufficient evidence of efforts to resolve this delinquent debt and of financial responsibility. I find that financial considerations concerns remain.

¹² ISCR Case No. 10-10627 at 7 (A.J. Jan. 20, 2012) (defining "strategic default").

¹³ See ISCR Case No. 14-06440 at 4 (App. Bd. Jan. 8, 2016). See *also* ISCR Case No. 01-05340 at 3 (App. Bd. Dec. 20, 2002) ("Voluntary compliance with such rules and systems is essential for protecting classified information").

¹⁴ See ISCR Case No. 14-06440 at 4 (App. Bd. Jan. 8, 2016).

¹⁵ See ISCR Case No. 08-12184 at 10 (App. Bd. Jan. 7, 2010) (Good-faith effort to resolve debts must be evidenced by a meaningful track record of repayment).

¹⁶ See ISCR Case No. 14-06440 at 4 (App. Bd. Jan. 8, 2016). See *also* ISCR 12-01664 at 3 (App. Bd. Jan. 17, 2014).

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F and the factors in AG ¶ 2(c) in this whole-person analysis.

Applicant intentionally walked away from his contractual obligation on the alleged debt. He made a financial decision not to "throw good money at a losing investment."¹⁷ Applicant provided insufficient evidence of efforts to resolve this delinquent account. Despite a favorable reference as to his character and work performance from his security officer, Applicant's strategic default on the mortgage loan continues to cast doubt on his trustworthiness, reliability, and good judgment. As a result, the totality of the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the financial considerations security concerns.

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

¹⁷ GE 2.

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

Eric H. Borgstrom
Administrative Judge