



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



In the matter of:)	
)	
)	ISCR Case No. 14-04482
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Jr., Esquire, Department Counsel
For Applicant: *Pro se*

08/27/2015

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on December 19, 2013. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on October 7, 2014, 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR on October 7, 2014. He submitted a notarized, written response to the SOR allegations dated October 21, 2014, and he requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a file of relevant material (FORM) and mailed Applicant a complete copy on April 29, 2015. Applicant received the FORM. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He submitted a response dated May 29, 2015. The Defense Office of Hearings and Appeals (DOHA) assigned this case to me on August 3, 2015. The Government submitted eight exhibits, which have been marked as Items 1-8 and admitted into the record. Applicant's response to the SOR has been marked as Item 2, and the SOR has been marked as Item 1. His written response to the FORM is admitted into the record as Applicant Exhibit A (AE A).

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a and 1.b of the SOR. His admissions are incorporated herein as findings of fact. He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 35 years old, works as an engineer for a DOD contractor. He began his current employment in March 2009. He worked for another company as an engineer from 2000 until March 2009. He held a security clearance in the past. The record lacks any evidence of discipline at work or mishandling of classified or proprietary information. Applicant does not have an arrest record, and he had not been involved with alcohol or drugs.¹

Applicant was born in Nigeria. He became a United States citizen through his parents in July 1991. He received his bachelor's degree in 2003 and his master's degree in 2013. Applicant and his wife married in March 2009. They have three children, ages 5, 4, and 2. His wife does not work.²

In August 2004, Applicant purchased a duplex or two-unit home. He financed his purchase through lender A with a first mortgage of \$319,200 and a second mortgage of \$79,800 for total debt of \$399,000.³ The April 2015 credit report shows these mortgages paid and closed in September 2006.⁴ The same credit report reflects that in September 2006, Applicant obtained from lender B a new primary conventional real estate

¹Item 4.

²Item 4; Item 8.

³Item 7, lines 18 and 19.

⁴Item 7, lines 18 and 19.

mortgage in the amount of \$428,000 and a second conventional real estate mortgage for \$53,500 to finance his property purchase⁵ and that within the same month, lender B transferred and sold both mortgages to lender C. Lender C acquired a primary conventional real estate mortgage in the amount of \$492,200⁶ and a second real estate mortgage with or without collateral in the amount of \$53,500. Applicant regularly paid the two mortgage payments to lender C until July 2009, when lender C sold the second mortgage only to lender D, the creditor identified in SOR allegation 1.a (\$45,462 debt).⁷ Lender D acquired a conventional real estate mortgage.⁸

Applicant's tenants in the second unit paid \$30 less on their \$1,030 a month rent in November 2008 and made no rent payment in December 2008. They paid their rent in January 2009, which was the last rent payment made by his tenants. Applicant evicted his tenants and sought recovery of the monies owed for rent and repairs through the courts. Without the rent, Applicant struggled to make his mortgage payments and eventually stopped paying the primary mortgage around December 2009 and the second mortgage around March 2010. The primary mortgage lender initiated foreclosure on the property. The January 2014 credit report shows Applicant's primary mortgage with lender C as a foreclosure, but then indicates that lender C accepted a settlement of the account under an election of remedy process. The three credit reports of record indicate that the primary mortgage had been settled for less than full value and has a zero balance. Applicant does not owe lender A, lender B, or lender C any money on the second mortgage. Lender D is the junior lien holder on the property used as security for the first and second mortgages.⁹

Before Applicant's default on both his mortgage loans, lender C sold the second mortgage debt to lender D, who became a junior lien holder. Applicant states that when lender C indicated an intention to foreclose on his property, he sold the property through a short sale. He did not provide any documentation to support his statement, although he gave contact information for his agent.¹⁰ Applicant argues that under a new state

⁵The new mortgages with lender B increased Applicant's debt by \$29,000. The record information does not explain the reason for the increase in debt, which could be the result of Applicant taking additional money from the house equity or closing costs on the new mortgage or some other reason.

⁶The credit reports show the primary mortgage as \$492,200, which does not correlate with the amount of the mortgage sold by lender B. The difference is viewed as a typographical error because lender B could not change the principal on the primary mortgage on its own and since lender B sold the mortgage immediately there could be no deficiency from a failure to make the monthly payment on the mortgage.

⁷Item 5; Item 7, lines 4, 8, and 10.

⁸Item 5 through Item 8.

⁹Item 2; Item 5 through Item 8; AE A.

¹⁰It is improper for an administrative judge to call the agent or otherwise gather documentary evidence for an Applicant. Applicant must obtain this information.

law¹¹ passed in July 2011 and effective as of July 15, 2011, he is not liable for this debt. Because the state law does not indicate that it is retroactive to an earlier date, the resolution of the primary mortgage debt in May 2011 through a short sale may not have relieved Applicant of liability for the second mortgage debt held by lender D.¹² Thus, under the state's anti-deficiency statute,¹³ any nonjudicial foreclosure of the property by lender C may or may not have extinguished the rights of lender D. If, as Applicant states, his property sold through a short sale, both lender C and lender D would need to agree to the short sale. If so, the question arises as to what language is contained in the sales contract about the ability of lender D to further pursue the remaining debt owed. The short-sale contract is not of record, making it difficult to assess if Applicant still owes money to lender D. At this time, Applicant improperly relies on the law which went into effect on July 15, 2011 and after the sale of his property.

SOR allegation 1.b (\$2,099) concerns a past-due automobile loan. Applicant cosigned a loan with a former girlfriend to help her purchase an automobile in February 2008. She defaulted on the loan payments unbeknownst to him. The creditor charged off the past-due loan amount of \$6,699 in July 2012. During his March 2014 Personal Subject Interview (PSI) with an investigator from the Office of Personnel Management (OPM), Applicant advised that he learned about the debt when the creditor contacted him for payment. Applicant agreed to repay this debt at \$300 a month. The January 2014 credit report reflects a balance on this debt of \$2,699; the July 2014 credit report shows a balance on this debt of \$2,099; and the April 2015 credit report indicates a balance on this debt of \$899. The reduced balance owed indicates that Applicant has been paying this debt as he stated.¹⁴

Applicant did not provide a monthly income statement or a monthly budget showing he has sufficient income to pay his monthly expenses. The credit reports reflect that except for the two SOR debts, Applicant pays his monthly bills and always has. The record lacks evidence of any financial or debt counseling.¹⁵

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief

¹¹SB 458; Section 580(e) State of Civil Procedure.

¹²The anti-deficiency law in the state where Applicant resides makes it clear that had Applicant's property been sold at nonjudicial foreclosure by lender A, who held both the primary and second purchase money mortgage debts, he would not be liable for either debt. Depending upon the reason for the increase in his debt with lender B, Applicant may or may not have been covered by the state anti-deficiency statute if lender B had sold his house through a nonjudicial foreclosure.

¹³Section 580(a)-(e), the State Code of Civil Procedure.

¹⁴Item 1; Item 2; Item 5 through Item 8.

¹⁵Item 2; Item 5 through Item 8.

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.

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. . . ." An applicant has the ultimate burden of persuasion for 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 an applicant may deliberately or inadvertently fail to protect or safeguard 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 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

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.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

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

Applicant developed significant financial problems when his tenants stopped paying the rent on their unit in his two-unit building. He was unable to pay his mortgages and defaulted on them. He cosigned a car loan with a former girlfriend, who stopped paying the loan leaving a balance due. These two disqualifying conditions apply.

The financial considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through ¶ 20(f), and the following are potentially applicable:

- (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.

Both debts occurred as the result of actions taken by others, not Applicant. The actions of others are factors beyond his control. When the creditor for the car loan contacted Applicant about the balance due, Applicant reached an agreement to pay the debt. In 2012, the debt creditor charged off the \$6,699 remaining balance on the debt. As of April 2015, the balance on the debt was \$899. Applicant has complied with his agreement to pay this debt, and it is being resolved. AG ¶¶ 20(b) - 20(d) apply to SOR allegation 1.b, which is found in favor of Applicant.

Applicant did not provide documentation showing his income and expenses, and he did not provide a budget. He presented insufficient evidence to support his position that he does not owe any money to the junior lien holder on his second mortgage. The record lacks documentation relating to the short sale of his home in 2011 and contract

information about his mortgages. He has not provided an opinion letter from a qualified attorney about his liability under state law for this debt given the complicated financing processes related to his home mortgages. At this point, Applicant has not shown that he no longer owes this debt under state law. SOR allegation 1.a is not resolved.

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 an 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant routinely pays his monthly bills and does not incur large amounts of unpaid debts, factors viewed as favorable to him. His current financial problems stem from actions beyond his control, in part. He chose to cosign a car loan with a former girlfriend, who ultimately stopped making the car payments. He has taken responsibility for payment of the remaining debt, which is another favorable factor. Applicant provides for his family and manages his income. While economic factors contributed to the loss of his home, he still has a significant unpaid debt from the loss of his home. His reliance on state law, at this time, appears to be misplaced as the law he cited came into effect after the sale of his property and is not retroactive. His unpaid debt may still be covered by state laws, but Applicant has not provided sufficient information for such a determination.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of

security clearance. See *Dorfmont*, 913 F.2d at 1401. Unmitigated financial consideration concerns lead me to conclude that the grant of a security clearance to Applicant is not justified at this time. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary to justify the award of a security clearance in the future. With more effort towards documented resolution of his mortgage indebtedness, he may well be able to demonstrate persuasive evidence of his security worthiness. Based on the facts before me and the adjudicative guidelines that I am required to apply, I conclude that it is not clearly consistent with the national interest to grant Applicant's security clearance eligibility at this time.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his finances under Guideline F.

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
Subparagraph 1.b:	For 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 eligibility for a security clearance. Eligibility for a security clearance is denied.

MARY E. HENRY
Administrative Judge