



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



In the matter of:)
)
) ISCR Case No. 14-06440
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

10/21/2015

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On April 20, 2015, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) 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 (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR on May 11, 2015, and requested a hearing before an administrative judge. The case was assigned to me on August 12, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 18, 2015. I convened the hearing as scheduled on September 17, 2015. The

Government offered exhibits (GE) 1 through 6, which were admitted into evidence without objection. In addition, the Government submitted a copy of the transmittal letter sent to Applicant that included the Government's documents and an exhibit list that were marked as Hearing Exhibits I and II. Applicant testified and offered Applicant Exhibits (AE) A through E, which were admitted into evidence without objection. The record was held open to allow Applicant to submit additional documents, which he did. The documents were marked as AE F and G. The Government did not object to the documents, and they are admitted into evidence.¹ DOHA received the hearing transcript (Tr.) on September 25, 2015.

Procedural Issue

The Government moved to amend SOR ¶ 1.g to accurately reflect the facts as follows: "You are indebted to [mortgage lender] on a real estate mortgage account with a total loan balance of approximately \$175,020, and with a past-due balance of approximately \$53,633. As of the date of the Statement of Reasons, the account remains past due." There was no objection and the motion was granted.²

Findings of Fact

Applicant admitted the SOR allegations in ¶¶ 1.a and 1.b. He denied the remaining allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 60 years old. He has bachelor's and master's degrees. He was married from 1974 to 1982. He remarried in 1989 and has two children ages 24 and 28. He served honorably in the military from 1977 to 1997. His oldest child graduated from college in 2013 and his younger one is attending college. He provided his older child financial support during college. He currently is providing approximately \$1,200 a month for living expenses to his younger child. Prior to July 2013, his wife was not employed. She now earns about \$30,000 annually.³

Applicant purchased a home in 1998. He obtained a second mortgage in 1999 to add a pool to the property. In 2006, he and his wife agreed to purchase another house for her sister. The sibling made a \$40,000 down payment and was to make the monthly mortgage payments. Applicant and his wife believed at the time they had the resources to pay the three mortgage loans. In 2007, Applicant took equity from the home to pay some credit card debts and finance a new boat. Applicant indicated that he refinanced

¹ HE III and IV are the Government's email memoranda.

² Tr. 121-124.

³ Tr. 30-35.

the two mortgages on their primary residence, which was appraised at \$408,000, for less than \$300,000. Applicant indicated he was able to make the payments at the time.⁴

In 2009, Applicant began experiencing financial difficulties due to family issues. His wife's parents passed away, leaving her and her sister their family home, which was in a trust. The mortgage was not satisfied, and Applicant and his wife attempted to pay the mortgage until they could sell the house. They had difficulty dealing with the bank, and paying the additional mortgage loan was a financial strain. They had trouble selling the home because it was appraised at less than the mortgage loan. They continued to pay the mortgage through the middle of 2010. During that year, Applicant's younger son started college and also got into legal trouble. Applicant paid the legal fees for his son. This son also had a medical issue and approximately \$10,000 of medical expenses was not covered by insurance. His oldest son was also attending college at this time. In addition, Applicant was traveling to another city to help his brother move their mother to an assisted living facility. Due to these events, Applicant's credit card debt increased. He withdrew assets from his 401(k) pension plan to help pay their bills.⁵

Applicant made a decision to increase his pay by accepting a job in another state. He intended to sell his primary residence in State A and move to State B. His new salary with a bonus in 2011 was to be approximately \$225,000. He moved in October 2010, and his wife remained in State A to sell their primary residence. He received a financial relocation package from his new employer, which included assistance in selling his house in State A. Around the same time, his vehicle was beyond repair. He indicated that he could not afford to purchase a new vehicle. He chose to liquidate his 401(k) pension plan and purchased a used 2002 Porsche for approximately \$30,000. He indicated he received a warranty on the vehicle and believed it was a good value.⁶

Applicant's attempts to sell the house in State A were unsuccessful because the value of the house was less than the mortgage. In addition, there were other comparable houses in the same neighborhood that were selling for far less than Applicant's list price. His realtor suggested a short sale on the house, which he declined, believing it would jeopardize his security clearance. He was at his new job for three months, and he still had not been assigned the work he had been told he would be performing. He decided to return to State A since they could not sell the house and his new job was not what he expected. Around the same time, he experienced some medical issues. He returned to his former employment in State A in January 2011. His salary from 2011 to 2013 was approximately \$130,000 annually. He received \$1,650 per month in military retirement pay. He was required to pay the rent on the premises he vacated early in State B, until the landlord could find new tenants. The rent was \$2,750 per month. He was required to repay his employer from State B the approximately

⁴ Tr. 43-44; Answer to SOR.

⁵ Answer to SOR.

⁶ Tr. 110-111; Answer to SOR.

\$10,000 for moving expenses he received in cash. He believes he lost about \$30,000 on the move.⁷

In 2011, Applicant was audited by the Internal Revenue Service (IRS), and it was determined that he owed an additional \$12,000 for taxes. He entered into an installment agreement and began making \$500 monthly payments.⁸

Applicant's sister-in-law lost her job in 2011 and was unable to make the mortgage payments on the house on which Applicant and his wife held the mortgage loan. Applicant had four credit cards and the creditors raised their interest rates on the balances owed.⁹

In 2011, Applicant and his wife sought legal advice. On the advice of their attorney, they stopped paying the mortgage loan on his wife's parents' house. Their attempt to return the house to the bank was unsuccessful. Applicant indicated that they constantly had difficulty trying to deal with the bank.

Regarding Applicant's mortgage loans and credit card debts, the attorney initially suggested bankruptcy. His attorney then advised him to stop making the payments on the three mortgage loans, and it was agreed that Applicant would seek a debt settlement for each of the debts. Applicant attempted to obtain a loan modification for the primary mortgage debt (SOR ¶1.a - \$222,786) and was unsuccessful. The creditor filed suit against Applicant and a final judgment in foreclosure was entered for \$278,388 in January 2015. Applicant stated that the house is now awaiting a short sale. He stated that, once the property sells, this will resolve the first mortgage loan; and there is a deficiency clause that will resolve the second mortgage loan (SOR ¶ 1.b-\$56,250). He anticipated it would be resolved by the end of the year. At this point, the judgment has not been satisfied, and these two mortgage loan debts are not resolved.

Applicant understood he was making a business decision to strategically default on his mortgage loans. He has not made a mortgage payment since 2011 and has continued to live in the house to the present. His combined mortgage payments were \$2,300. He indicated that he disputed what he owed on the mortgage loans, believing he was not credited for certain payments he had made. He stated that he could not afford to make the monthly payments.¹⁰

Applicant also did a strategic default for the mortgage loan on the house he financed for his sister-in-law (SOR ¶ 1.g-\$175,020, the past due for \$53,633 as of May 2014). He has not made a payment on the loan since 2011. She continued to occupy

⁷ Tr. 36-43; Answer to SOR.

⁸ Tr. 43, 113-115.

⁹ Tr. 45-46.

¹⁰ Tr. 44-77; GE 3, 5, 6; AE A, F.

the house until 2014, and then his older son moved into it. His son does not pay the mortgage loan or rent. Instead his son contributes \$500 monthly towards Applicant's attorney's fees. Applicant provided information to show he has paid approximately \$27,000 for attorney fees since 2011. Applicant disputes the amount he owes on this loan. He is hoping to resolve this mortgage loan debt through a short sale of the house.¹¹

The debts in SOR ¶ 1.c (\$11,105), ¶ 1.e (\$5,543), and ¶ 1.f (\$4,434) are for delinquent credit cards. Applicant received an IRS Form 1099C-Cancellation of Debt for each debt. He stated he filed the forms with his 2013 federal income tax returns and paid the taxes. Applicant indicated the creditors increased the interest rates on the cards and then would not agree to settle the debt, but chose to cancel them instead. His last payments on the delinquent accounts were in August through October 2011. He stated he was advised if he continued to make payments on the account, the creditors would not negotiate a settlement. He decided to default on his payments and attempt to settle the accounts.¹²

The creditor for the credit card in SOR ¶ 1.d (\$7,663) refused to cancel the debt and instead filed a lawsuit. It later voluntarily dismissed the lawsuit and agreed to a settlement for \$4,008, paid by installment payments over nine months. Applicant complied with the terms and completed the payments in March 2015, thereby resolving the debt.¹³

In 2013, Applicant's salary was reduced to \$85,000 because he was cut from a contract. He saw this as a fortuitous event, because he became ill around the same time and needed time to recuperate.¹⁴

Applicant explained that he chose to proceed with a strategic default strategy regarding his mortgage debts in lieu of filing bankruptcy. He could not afford to pay his creditors so he made this choice. He believed it forced the mortgage loan companies to negotiate settlements via short sales for the properties. He stated he had some experience dealing with banks after the difficulty he experienced with his wife's parents home. He knew he could not sell the houses to satisfy the mortgage loans, so chose to stop paying the mortgages on the advice of his attorney.¹⁵

Applicant estimated he has about \$500 expendable monthly income at this time, because he recently completed his IRS installment payments and the credit card

¹¹ Tr. 94-103; AE D, E.

¹² Tr. 78-84; AE B.

¹³ Tr. 86-94.

¹⁴ Tr. 36.

¹⁵ Tr. 103-109.

settlement payments. He received some credit counseling from his attorney. He has a credit card with a \$4,000 balance that he makes timely payments, and his wife has one credit card with a \$1,500 balance. Applicant self-reported to his facility security officer that his house was being foreclosed.¹⁶

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 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 not drawn 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 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 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.

¹⁶ Tr. 115-117.

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 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. I have considered all of the disqualifying conditions under AG ¶ 19, and the following are potentially applicable:

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

Applicant has an unpaid \$222,786 judgment and two charged-off mortgage loans with past-due balances owed of \$56,250 and \$53,633. He had delinquent credit cards totaling approximately \$28,745. He stopped making payments on all of these accounts in 2011. The above disqualifying conditions apply.

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

- (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.

Applicant has numerous debts that are not resolved. Due to his financial difficulties, he chose to default on his debts to force creditors to negotiate settlements with him. He settled and paid the credit card debt in SOR ¶ 1.d. The other credit card creditors chose to cancel their debts and issue him IRS 1099C forms. Applicant made a business decision to strategically default on his mortgage loans. He also decided to stop paying his credit cards accounts to force the creditors to negotiate settlements. He did this on the advice of his attorney. I find his behavior did not occur under unique circumstances that are unlikely to recur. His actions cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to many things, such as: the downturn of the real estate market; medical expenses for his son; paying his son's legal fees; supporting his sons while in college; traveling to help his brother move his mother; paying the mortgage on his wife's parents home; agreeing to purchase a house for his sister-in-law; changing jobs and incurring expenses when he moved to State B and then returning to State A; and being audited on his federal income taxes and owing additional taxes. Some of these things were beyond his control, but not all of them. He made decisions to take on additional debt and became overextended financially. He chose to refinance his home and take equity from it and use the money before the downturn in the real estate market. He chose to purchase a house for his sister-in-law, understanding that if she could not pay the mortgage, then he was responsible. He already had two mortgages on his home at the time and his wife was not employed. He decided to move to make more money and then moved back and had to repay his employer. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant chose to stop paying his mortgage loans and credit cards in 2011. He made business decisions to strategically default on his loans and debts. He continues to live in his primary residence, and his sister-in-law and son have occupied the other house rent-free. He forced his mortgage company to take him to court. He lost and the mortgage company was awarded a judgment. Although he is currently waiting for the short sale on his home to take place, he has not satisfied the judgment for the first mortgage or resolved the second mortgage. He settled one credit card debt, and he received IRS 1099C forms for the others. Although, these debts are no longer enforceable, I find he has not acted responsibly regarding his finances. Given

the way he has handled his finances, I find that AG ¶ 20(b) has limited applicability in this case.

Applicant hired an attorney to help him resolve his debts. Applicant received some financial counseling through his attorney. His three mortgage loans, one of which has gone to judgment, are not yet resolved. Based on the current status of his delinquent debts, I do not find that there are clear indications that Applicant's financial problems are under control. I find AG ¶ 20(c) partially applies in that he is no longer legally liable for the credit card debts in SOR ¶¶ 1.c, 1.e, and 1.f, and he has settled the credit card debt in SOR ¶ 1.d. He has not made sufficient progress toward resolving his mortgage debts to fully mitigate the financial concerns under AG ¶ 20(c).

Applicant's "strategic defaults" of his debt obligations, which forces his creditors to resort to court action or accept lesser amounts in settlement, do not constitute good-faith efforts to repay his creditors. Although some of the creditors canceled their debt and issued him tax forms, it also does not constitute a good-faith effort to repay his creditors. SOR ¶ 20(d) is not fully established.

Applicant disputes the amounts owed on his mortgage loans. It appears he is attempting to resolve the amount through legal means. The debt in SOR ¶ 1.a is a judgment for more than \$200,000 that has been adjudicated and is still owed. Applicant testified that he anticipated that judgment and the second mortgage debt would be resolved after the short sale of the house, but that has not yet occurred. In addition, he also disputes the amount owed on the debt in SOR ¶ 1.g. He anticipated dealing with that debt after his primary residence's debt was resolved. It is premature to apply AG ¶ 20(e).

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 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 60 years old. He served honorably in the military for twenty years. He had some financial problems that were beyond his control. He also made poor decisions that had a negative impact on his finances. He has chosen to strategically default on several loans. He settled one credit card debt, but the others were charged off, and he received IRS cancellation of debt forms, which he stated he filed with his tax returns. Applicant's choices in how he is resolving his financial problems may be legal and an appropriate business strategy, but it raises questions about his judgment, reliability and trustworthiness. He still has a significant amount of delinquent debt that has not been resolved. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the 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
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraphs 1.c-1.f:	For Applicant
Subparagraph 1.g:	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 a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge