



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



In the matter of:)	
)	
)	ISCR Case No. 14-05177
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

03/15/2016

Decision

RIVERA, Juan J., Administrative Judge:

Applicant’s foreclosure was resolved via a short sale of the property in 2008. There is no evidence of any further financial problems or delinquencies. His good credit and payment record establishes a track record of financial responsibility. He mitigated the Guideline F security concerns.

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 21, 2014. After reviewing it and the information gathered during a background investigation, the Department of Defense (DOD) was unable to make an affirmative decision to grant Applicant’s eligibility for a clearance. On June 16, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations).¹ Applicant answered the SOR on September 2, 2015, and elected to have his case decided on the written record, in lieu of a hearing.

¹ DOD acted 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* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines*

A copy of the Government's file of relevant material (FORM), dated October 31, 2015, was provided to him by transmittal letter dated November 5, 2015. Applicant received the FORM on November 16, 2015. He was allowed 30 days to respond to the FORM and submit any objections, corrections, and to provide material in extenuation and mitigation. Applicant's response was received by DOHA on January 28, 2016. It included Applicant's one-page statement and seven documents. The response was marked as Applicant exhibit (AE) 1 and included in the record. The case was assigned to me on March 3, 2016.

Findings of Fact

Applicant denied the only factual allegation in the SOR. After a review of the record evidence, I make the following findings of fact:

Applicant is a 36-year-old employee of a federal contractor. He received his General Education Development (GED) certificate in 1998. He has never been married, but has been residing with a cohabitant since 2005. Applicant was hired by his current employer, a federal contractor, in August 2003.

Section 26 (Financial Record) of the 2014 SCA asked Applicant to disclose whether during the last seven years he had any financial problems, including delinquent or in-collection debts; loan defaults; credit cards or accounts suspended, charged off, or cancelled; and whether he was currently over 120 days delinquent on any debt, or had been over 120 days delinquent on any debts. Applicant answered "yes" and disclosed that in 2008, he became delinquent on his mortgage because he could no longer make his payments. The mortgage went into foreclosure proceedings, but ultimately the property was sold on a short sale.

Applicant also disclosed that the creditors alleged in SOR ¶ 1.a attempted to collect the money owed for the second mortgage on his property. He claimed that he successfully disputed the collection because the property was sold on a short sale.

Applicant explained that in 2004, he sold his townhome and made a \$30,000 profit. He then purchased a property for \$710,000 with a first and second mortgage held by the same creditor. He needed a larger property to house his father, sister, and older brother, all of whom he brought to the United States from the Philippines. Applicant believed that with his income, and the help of his father and brother, he would be able to afford the new home mortgage. However, his brother married and moved out of the house, and his father never got a job. Applicant rented out rooms, but the renters also moved out. He worked overtime to increase his earnings and maxed out his credit cards making mortgage payments. In the end, he was unable to make the \$4,800 monthly mortgage payments.

for Determining Eligibility for Access to Classified Information (AG), implemented by the DOD on September 1, 2006.

Applicant contacted the creditor and asked for a reduction in the mortgage payments, but his request was denied. At the time he stopped making the payments in April 2008, the property was \$300,000 upside down. After the foreclosure proceeding started, the creditor allowed for the short sale of the property.

In his answer to the SOR, Applicant submitted his Home Sale Worksheets and IRS Form 4549 (Income Tax Examination Changes). The IRS FORM 4549 notified Applicant that he had an income tax deficiency for 2008. It indicated that Applicant's 2008 income tax return was amended to show a \$142,987 debt that was cancelled (the second mortgage).

After the short sale of the property, Applicant took steps to resolve his financial problems. He moved with his girlfriend into a rental property. He continued to work overtime and has paid about \$62,000 of his accumulated credit card debt. Applicant stated that between 2009 and 2013 he worked an average of 470 overtime hours. He used the additional earnings to pay his credit card debt. Applicant also stated that he has been promoted twice and his current supervisor salary is about \$75,000 annually.

Applicant claimed that he has always been proud of his financial responsibility. He believes that he has done everything within his ability to fix his financial problems. He submitted extracts from an August 2012 Experian credit report showing that in April 2012, Applicant paid off a \$22,259 auto loan he opened in April 2008. Also, the 2012 credit report shows three credit card accounts that Applicant had paid or was timely paying after having had high balances on those accounts (\$5,000 high balance – paid as of July 2012; \$21,000 high balance - \$4,888 balance as of August 2012; and \$13,000 high balance - \$650 balance as of July 2012). (AE 1)

Applicant also submitted W-2 Forms (Wage and Tax Statement) for 2009, 2010, and 2012 indicating his base pay salary and the overtime hours he worked during those years to address his financial obligations. Applicant's June 2015 credit report only shows the debt alleged in the SOR as delinquent. There are no other delinquent or in collection debts reflected in the credit report. (FORM Item 5)

Policies

Eligibility for access to classified information may be granted "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case

can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

Under Guideline F, the security concern is that 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 ¶ 18)

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.

In 2006, Applicant bought a home beyond his financial means. When he was unable to make the mortgage payments, the property went into foreclosure and it was ultimately sold on a short sale. His failure to pay the mortgage raise the applicability of

the following financial considerations disqualifying conditions: AG ¶ 19(a) “inability or unwillingness to satisfy debts,” and AG ¶ 19(c) “a history of not meeting financial obligations.”

AG ¶ 20 lists five conditions that could mitigate the financial considerations security concerns:

(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.

I find that most of the above financial considerations mitigating conditions apply. Applicant’s financial problems date back to 2006 – 2008, during the period when he bought a property above his financial means. His financial problems were resolved legally with the short sale of the property in October 2008, and by him paying his other financial obligations. There is no evidence to show that Applicant had or currently has other delinquent accounts. I find Applicant has control of his financial situation. I also believe that Applicant has learned his lesson and that it is unlikely for him to repeat the same mistake.

AG ¶ 20(b) does not fully apply. Although there was a downturn of the U.S. real estate market around 2007-2008, Applicant’s inability to pay the mortgage was likely due to his negligence for buying a property above his financial means. Applicant mistakenly believed that his father and brother would have the financial ability to help him pay the mortgage. When that did not happen, he was unable to pay the mortgage.

The Government argued that Applicant made a “strategic election to default his loan” – that he willfully defaulted on his loan and walked away from his legal obligation

to pay the mortgage because of the downturn in the real estate market. Applicant placing his personal interests over his legal obligations would show lack of responsibility. That, in turn, would call into question his willingness to follow the rules for handling classified information if doing so might conflict with his personal interests. ISCR Case No. 11-07747 (App. Bd. Feb. 27, 2013)

As stated above, Applicant's wages and earnings show that he did not have the financial means to purchase the property or to pay the \$4,800 monthly mortgage. He mistakenly relied on his father and brother's assistance to pay the mortgage. When they went on their own way, Applicant had no other choice but to default and pursue a short sale of the property. The evidence is insufficient to show that Applicant was speculating or investing on real estate.

Considering the evidence as a whole, Applicant does not have a current financial problem and his finances are under control. The short sale took place in 2008. It has been eight years since Applicant's most recent financial problem. His credit report shows no current delinquent debts. I find that Applicant has established a track record of financial responsibility.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c). I have incorporated my comments under Guidelines F in my whole-person analysis.

Applicant receives credit for his years working for a federal contractor. His recent promotion to a supervisory position show he is considered to be a valuable employee. His most recent financial problem occurred in 2008, and was resolved via a short sale of the property. There is no evidence of any further financial problems or delinquencies. His good credit and payment record show a track record of financial responsibility. He mitigated the Guideline F 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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant eligibility for a security clearance to Applicant. Clearance is granted.

JUAN J. RIVERA
Administrative Judge