



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-04071

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel

For Applicant: *Pro se*

10/14/2015

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On December 8, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. 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* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant answered (Answer) the SOR on January 23, 2015, and requested a hearing before an administrative judge. The case was assigned to me on May 27, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 11, 2015, and the hearing was convened as scheduled on July 14, 2015. The Government offered exhibits (GE) 1 through 3, which were admitted into evidence

without objection. Department Counsel's exhibit index was marked as Hearing Exhibit (HE) I. Applicant testified, but did not offer any exhibits at the hearing. The record was held open for Applicant to submit additional information. Applicant submitted exhibits (AE) A-F, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on July 23, 2015.

Findings of Fact

Applicant admitted SOR allegation ¶ 1.b, but denied ¶ 1.a. The admission is incorporated as a finding of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 58-year-old employee of a defense contractor. He has worked for his current employer since December 2013. He was unemployed from May to December 2013 and earlier from November 2006 to February 2007. From February 2007 to May 2013 he worked for private sector companies. He is a high school graduate with some college credits. He is married and has two adult children. He served 22 years in his state's National Guard and will receive retirement pay when he turns 62 years of age. He has held a security clearance in the past.¹

The SOR alleges two delinquent debts including a past-due mortgage account in the amount of \$30,054, which resulted in a foreclosure on a loan balance of \$237,599 (SOR ¶ 1.a), and a collection account in the amount of \$3,706 (SOR ¶ 1.b). The debts were listed in credit reports from January 2014 and May 2015.²

Applicant purchased a home in 1999 and refinanced that same home in 2004. Applicant admitted that he had a mortgage with mortgage company "A" and that the property subject to the mortgage was foreclosed. His earliest credit report shows he opened his mortgage account with "A" in December 2006. He became unemployed in November 2006, which caused him to get behind on his mortgage payments. His credit report shows that he was 120 days delinquent on his mortgage payments to "A" in July 2008. A credit report shows that the mortgage was foreclosed by mortgage company "B" in December 2008. At that time, the mortgage had a past-due balance of \$30,054 and a loan balance of \$237,599.³

Applicant tried to work with "A" to get his mortgage current. He was prepared to take money from his wife's retirement account to catch up on the mortgage payments. By the time he was ready to make the payments, additional fees were charged to the extent that he could not make the payment and the property was foreclosed. Sometime after the foreclosure, he was contacted by "B" and was told that he owed the debt to "B." Applicant had never dealt with "B" before nor received any correspondence from it. He

¹ Tr. at 5, 18-20; GE 1.

² GE 2-3.

³ Tr. at 20-21, 23; GE 2-3.

asked “B” to send him proof that “B” held the debt, but only received documentation that “A” was the debt holder. None of Applicant’s credit reports or the Government’s most recent credit report show entries for either “A” or “B.” Applicant has not pursued any additional action to resolve the debt.⁴

Applicant admitted that he had two credit card accounts with the creditor for SOR ¶ 1.b. He believed he settled one debt with the creditor, but could not recall which one. Credit reports show this account was opened in 1992 and went delinquent in 2009. Applicant presented an IRS Form 1099-C, which is a cancellation of debt form, but it was not for this account. The creditor and account numbers were different. This delinquent account appears on one of the three different credit reports Applicant supplied as evidence (AE D). Applicant only recently disputed this entry with the credit reporting service. He presented no evidence of payment or a basis for dispute. This debt is unresolved.⁵

Applicant received some financial counseling through a Dave Ramsey course. Dave Ramsey is a nationally known writer, speaker, and radio and television personality on financial matters. Applicant indicated that his current monthly budget leaves him with about \$200 of discretionary income at the end of the month. He currently is receiving short term disability pay because of a medical condition. This reduces his overall monthly income by about \$1,000. He expects to return to full-time work shortly.⁶

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 that 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

⁴ Tr. at 21-22, 24-26; GE 3; AE D-F.

⁵ Tr. at 31-32; Answer; GE 2-3; AE A-B, D-F.

⁶ Tr. at 33-34, 42, 45.

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, 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 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 about 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* Executive Order 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 as follows:

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. Two are potentially applicable in this case:

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

Applicant had a foreclosure and a delinquent credit card account. The evidence is sufficient to raise the above disqualifying conditions.

Several financial considerations 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's debts are recent, multiple, and cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Applicant's home was foreclosed after he got behind on payments, in part, due to a period of unemployment. This was a circumstance beyond his control. However, I am unable to find that he acted responsibly in dealing with his debt. He presented evidence questioning whether he owed a debt to the mortgage holder successor in interest. He acknowledged his credit card debt, but failed to produce evidence that he acted responsibly toward this debt. AG ¶ 20(b) is partially applicable.

Applicant participated in a financial counseling course. There are not clear indications that his debts are being resolved, nor was there evidence of good-faith efforts to pay or resolve the debts.⁷ AG ¶ 20(c) partially applies, but ¶ 20(d) does not apply.

⁷ The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the predecessor mitigating condition to AG ¶ 20(d)], an applicant must present evidence showing either a good-faith effort to repay overdue

Applicant supplied sufficient documentary evidence disputing the second mortgage debt, but no evidence disputing the credit card debt. AG ¶ 20(e) partially applies. At this point, Applicant's finances remain a concern despite the presence of some mitigation.

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 relevant 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.

I considered Applicant's military service and the circumstances by which he became indebted. However, I also considered that he has made little effort to resolve his financial situation. He has not established a meaningful track record of debt management.

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 has not mitigated the financial considerations security concerns.

creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that 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.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [AG ¶ 20(d)].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).

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: For Applicant

 Subparagraph: 1.b: 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge