



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



In the matter of:)
)
) ISCR Case No. 14-06147
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

07/07/2015

Decision

CURRY, Marc E., Administrative Judge:

Applicant’s financial problems were caused solely by a business downturn between 2012 and 2013, when he chose to deplete his personal savings to meet his payroll expenses rather than lay employees off. Now, his business is thriving, he has rebuilt both his reserve and personal income, he has paid one of his outstanding debts, and he is renegotiating the other outstanding debt. Applicant has mitigated the security concern. Clearance is granted.

Statement of the Case

On December 16, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant 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; Department of Defense 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.

On January 14, 2015, Applicant answered the SOR, admitting the allegations and requesting a hearing; whereupon the case was assigned to me on April 2, 2015. DOHA issued a notice of hearing on April 23, 2015, scheduling the hearing for May 20, 2015. The hearing was held as scheduled. At the hearing, I received two Government exhibits (GEs 1 and 2), and two Applicant exhibits (AEs A and B), together with the testimony of Applicant and a character witnesses. DOHA received the transcript (Tr.) on May 29, 2015.

Findings of Fact

Applicant is a 50-year-old single man. He served in the U.S. Army Reserve from 1986 to 2014, retiring as a lieutenant colonel. During his military career, he completed two tours of active duty as part of Operation Iraqi Freedom in 2003 and 2008, respectively. (Tr. 15) Applicant has undergraduate degrees in electrical engineering and chemistry, and a Ph.D. in physics. (Tr. 13)

Applicant is a venture capitalist. Since 1996, he has started multiple businesses. Through the 1990s, his business ventures were Internet-related. In the early 2000s, he gradually transitioned to more Government contracts-related work. He started his current business in 2005. His company focuses on small business innovative research grants, renewable energy projects, and weapons systems development. (Tr. 15)

Initially, the business thrived. By 2009, Applicant employed eight people. In 2011, the DOD budget for a proposed project, on which Applicant's company was prepared to bid, decreased, leading to the project's cancellation. Subsequently, the company's revenue began dropping. (Tr. 17-18) Applicant "held the company alive at the rate of about \$40,000 [per month], until [he] bled through about half a million dollars keeping [his] employees employed." (Tr. 18) After he exhausted the company's assets, he then went without a salary for about two years, from early 2012 through September 2013. (Tr. 18)

Applicant gradually began falling behind on his personal debts. In March 2012, he was unable to make his mortgage loan payments. (Tr. 38) In July 2013, his condominium association obtained a judgment against him for \$22,240. (AE A)

In October 2013, Applicant's business began improving. Now, it is bigger than it was in 2008 before its downturn, as Applicant employs 19 individuals, the majority of whom earn salaries in excess of \$100,000. (Tr. 20-21) Applicant has gradually rebuilt his company's assets. He now has \$150,000 in cash reserves to pay his employee's salaries in the event of a future downturn. This would cover about a month and a half of

salaries. (Tr. 31) He has approximately \$250,000 in personal cash savings, and \$400,000 of money invested in his 401(k) account.¹ (Tr. 32)

The success of the company has allowed Applicant to again receive a salary. Currently, he earns \$150,000 per year. (Tr. 19)

In May 2015, Applicant satisfied the condominium judgment, paying it out of his personal cash savings. (AE A; Tr. 34) He became current on his mortgage loan payments in mid-2013, but then stopped making payments after he decided to apply for a loan modification geared towards military veterans. (Tr. 37) Currently, Applicant has an adjustable rate mortgage with an interest rate that could conceivably increase to nine percent. (Tr. 47) Per the loan modification program, he is eligible for a fixed rate of between two and three percent. (Tr. 39) The loan modification process has been protracted. (Tr. 40-44) Although his company is thriving now, Applicant is seeking the mortgage loan modification to greater insulate his company from either another down business cycle or a significant rise in the interest rate on his current home mortgage loan, which could increase his operating expenses and decrease his profit margin.(Tr. 39-40)

Policies

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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 applicant or proven by department counsel. . . .” The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

¹Applicant did not withdraw money from his 401(k) account during the business downturn. (Tr. 32)

Analysis

Guideline F, Financial Considerations

Under this guideline, “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.” (AG ¶ 18) Between 2012 and 2013, Applicant fell behind on his mortgage loan payments and condominium association payments. In March 2013, the condominium association obtained a judgment against him for \$22,240. AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

The following mitigating conditions under AG ¶ 20 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.

Applicant’s financial problems corresponded with a business downturn. Rather than lay off any employees, he spent all of his reserve assets and chose not to take a salary for nearly two years. Applicant’s company is again thriving. He now earns \$150,000 annually, and has rebuilt both his reserve business and personal savings. Although he is not currently making mortgage payments, it is part of a loan modification process that has taken longer than anticipated. I conclude that all of the mitigating conditions apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They are as follows:

(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.

Applicant's financial problems were caused by a business downturn. His decision to endure personal financial hardship in an effort to continue to pay his employees, rather than lay them off, reflects admirable character. Businesses focused on cutting-edge innovations are inherently risky. But, the dynamism of our economy is dependent upon entrepreneurs such as Applicant who are willing to incur such risks. Applicant's business recently experienced a downturn, and may experience another in the future. However, it is currently thriving, and Applicant is taking prudent steps to increase his profit margin and his savings in reserve to ensure that his business survives any future downturn. I conclude Applicant has mitigated the security concern.

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

Subparagraphs 1.a-1.b: For Applicant

Conclusion

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

MARC E. CURRY
Administrative Judge