



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



In the matter of:)
)
) ISCR Case No. 18-01323
)
Applicant for Security Clearance)

Appearances

For Government: Eric Price, Esq., Department Counsel
Kelly Folks, Esq. Department Counsel
For Applicant: *Pro se*

04/15/2019

Decision

LYNCH, Noreen A., Administrative Judge:

This case alleges security concerns raised under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

On May 23, 2018, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guidelines F. The SOR further informed Applicant that, based on information available to the Government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR on August 3, 2018, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on January 16, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 11, 2019, scheduling the hearing for March 1, 2019. The hearing was convened as scheduled. Applicant's counsel withdrew from the case and Applicant represented himself. The Government offered Exhibits (GE) 1 through 6, which were admitted. Applicant testified on his own behalf. He submitted Applicant Exhibits (AE) A through K.

The record was left open until April 1, 2019, and Applicant timely submitted a packet of six documents, which was marked as AE L, and was accepted into the record without objection. DOHA received the transcript of the hearing (Tr.) on March 11, 2019.

Findings of Fact

Applicant, age 50, is married with two children. He obtained his undergraduate degree in electrical engineering in 1995. Applicant completed his security clearance application (SCA) on August 11, 2017. (GE 1) He has worked for his current employer for a little more than two years. He has a real estate license and has taken other certification courses. (Tr.27)

The SOR alleges in 1.a through 1.e, five delinquent debts totaling about \$38,000, which include a first and second mortgage, a real estate course, and a credit account. (GE 2, 6) Applicant admitted the SOR allegations and provided explanations for each one. (Answer) He noted that he had paid the debt in SOR allegation 1.d, and provided documentation.

FINANCIAL

Applicant acknowledged his financial hardship, and explained that the financial problems started when his home in state A was rented for about seven years with no problems at first. Applicant and his wife moved from that home in 2009 and relocated to state B for jobs. Applicant was unemployed for seven or eight months in 2009. The renter caused massive damage to the home in state A and Applicant eventually evicted the tenant. (GE 1) The renter was also about \$2,000-\$3,000 behind in rent payments. Applicant obtained a judgment against the tenant but has not received any money. (Tr.13) He recounted the expense this caused him in terms of fixing the damage and various fines that he received from the state. In addition, he incurred legal fees. He approximates that he spent over \$20,000, not counting the citations from the state and legal fees. (AE A-K) He borrowed from his 401(k) to pay for the repairs. (Tr. 14)

Applicant hired an attorney to dispute the state citations in state A. This is ongoing. The home is now repaired, but the rent is not sufficient to cover the first or second mortgage on the home in state A. Applicant attempted a loan modification but that was not successful. He is now in the process of attempting a short sale. Applicant credibly testified that until the fiasco with the renter, he never missed a mortgage payment. (Tr. 17) His last mortgage payments were one year ago because he could not afford to pay a mortgage on his current home in state B as well as state A. (Tr. X) A second set of tenants were also evicted in March 2019.

Applicant recounted how he and his wife purchased a home in state B in 2013. He put a down payment on the house. His wife handles the finances for the family. (Tr. 39) He could not recall her precise salary, but believed it may be \$110,000. Applicant was working for a small company earning about \$80,000. (Tr. 29)

Applicant purchased three or four investment properties when he came to state B. He and his business partner purchased the homes between 2016 and 2018. (Tr. 95-101) The purpose was to fix the homes and eventually resell them. (GE 1) Applicant borrowed from his 401(k). He also used a credit card to get some advance cash. (Tr. 62) Equity from one house was used to purchase another. Each home purchased turned into a nightmare. (Tr. 53-58) The cost of repairs were higher than they imagined and some of the contractors did not complete the required work. Two houses are now rented. (Tr.60) Applicant stated that he plans to end this business relationship because he believes that his partner has cheated him out of some money that was received from equity in one house.

As to SOR 1.a, an account past-due in the approximate amount of \$16,383, Applicant has not paid this first mortgage on the home in state A for about one year. (Tr. 80) He submitted documentation concerning the circumstances. It is still not resolved. He did attempt to refinance the house at one point. (Tr.80) He admits that he has not done anything to resolve the issue since 2018.

As to SOR 1.b, an account past-due in the amount of \$2,302 for a second mortgage on the house in state A. Applicant stated the reason for this second mortgage charge-off is due for the same reasons as stated for SOR 1.a. In 2017, Applicant received a settlement offer from the bank to settle for \$17,000. The bank wanted a lump sum payment and Applicant did not have the money. The bank also offered Applicant a 12 month payment plan for a monthly amount of \$1,600, but Applicant stated that he did not have the money in his budget. In 2016, Applicant requested monthly payments of \$225 until the \$17,000 is paid in full. (AE A) He hopes to do a short sale.

As to SOR 1.c, a charged-off account in the amount of \$13,019, Applicant is trying to settle this account. It was a credit card used for an educational course. At first, he disputed the amount due to the course nature not being what was promised. Applicant believed it was fraudulent. He submitted an article entitled RIPOFF REPORT, (AE B) proclaiming the company has received many complaints. The charge was removed from the credit card, but after an investigation the charge of \$5,000 was added with interest and penalties, which exceeded his maximum amount of credit. The bank closed the account eventually. Applicant's payment increased from \$180 a month to almost \$500 a month, which he claimed he could not afford. He stated that negotiations did not continue. Applicant recalled that he also used the credit card for a \$6,000 advance to assist in an investment property. (Tr. 95) At this time, there is no payment arrangement or plan.

As to SOR 1.d, a charged-off account in the amount of \$334, Applicant recently resolved the account and provided documentation. (AE L)

As to SOR 1.e, a collection account in the amount of \$5,686, this debt was the result of a real estate course that Applicant took. He stated that the company was well known, but it was a scam. He is disputing this amount. He attended a three day course. He paid \$4,700, but still owes about \$5,686. This account is interrelated with 1.c. (Tr. 112) Applicant submitted letters that he wrote to state officials complaining about the company that runs the course. (AE L)

Applicant recently attended a financial counseling class. He and his wife both work in professional positions. Applicant's salary per year is about \$104,000. He has a budget. Applicant has a savings and checking account. He contributes to his pension account. Applicant approximated that he has about \$80,000 in his 401(k). (AE L) He stated that he and his wife take an annual cruise. He sometimes sends money to his mother in her native home. Applicant acknowledged that he pays a minimum amount on two other credit cards. (GE 1) He pays his taxes and is current on his home mortgage. Applicant travels to a central American country to see his family frequently, as recent as 2016. (Tr. 48)

Applicant submitted several character letters. Each letter attests to his reliability as an engineer and his loyalty. Applicant is dedicated to his work and is trustworthy for a position of responsibility. One reference knows about his financial issues, and believes Applicant is working hard to resolve them. He works hard for his company and his family. (AE C) A former colleague states that his work ethic is beyond reproach. (AE L)

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 (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the 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 or sensitive information. Finally, as emphasized in Section 7 of EO 10865, "Any determination under this order adverse to an applicant shall be a determination 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 concern under this guideline is set out in AG ¶ 18:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by his credit reports, establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"), and AG ¶ 19(c) ("a history of not meeting financial obligations").

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

AG ¶ 20(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;

AG ¶ 20(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c): the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial difficulties are the result of several things. In 2009, he became unemployed and rented his home in State A. Unfortunately, the tenant, after a number of years, ruined the home and has not paid a judgment against her. Applicant could not pay the mortgage for that house and the current house in state B. He also received legal citations. He incurred legal fees. He received a settlement offer but could not accept because he did not have the money. This has been ongoing. He bought a house and then invested in three or four properties using money from his 401(k) and a credit card. He took a course that he believed is a scam and disputed it. He charged part of the fee on a credit card. He invested in three properties when he already had financial issues with the house in state A. This casts doubt on his judgment. AG ¶ 20(a) is not established.

AG ¶ 20(b) is not fully established. Applicant's unemployment, and other issues were beyond his control, but he has not acted responsibly. He recently paid one small debt. He has disputed one debt but he has not resolved any debts. He promises that once he has the money from the sale of house in state A, he will pay his debts. A promise to pay in the future is not sufficient. He has also used his money for travel. He has no track record of paying these debts. He has not produced sufficient information to show that he has been proactive in his actions.

AG ¶ 20(c) and 20(d) are not fully established. Applicant took a financial course after the hearing. He now has a budget. From the evidence in the record, there are no clear indications that his financial situation is under control. He has not been able to start a settlement plan for the mortgages because he does not have the money.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, including his credibility and openness at the hearing. Applicant had circumstances that occurred beyond his control and he has made some strides in attempting to resolve the mortgage issues. However, at this time, Applicant has not mitigated the security concerns raised by his financial indebtedness. The property investments in state B, after the financial issues that existed from the house in state A do not persuade me that Applicant's judgment is suitable. Accordingly, Applicant has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to continue Applicant's eligibility for access to classified information. Clearance is denied.

Noreen A. Lynch
Administrative Judge