



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-00823
)
Applicant for Security Clearance)

Appearances

For Government: Bryan J. Olmos, Esq., Department Counsel
For Applicant: *Pro se*

09/04/2019

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On March 29, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on April 29, 2019, and requested a hearing before an administrative judge. The case was assigned to me on June 24, 2019.

The hearing was convened as scheduled on August 7, 2019. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through C, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted documents that I have marked AE D through F and admitted without objection.

Findings of Fact

Applicant is a 63-year-old employee of a defense contractor. He worked for a company from 1986 until he retired in 2017. He has worked for his current employer since then. He also worked a part-time job from 2014 to 2017. He has a bachelor's degree. He is divorced with an adult child. (Tr. at 44-46; GE 1, 2)

In 2014, Applicant made an ill-advised decision to invest in real estate and flip houses. He bought a house with the assistance of a company that provides instructions on how to flip houses. He bought a house that needed repairs for about \$82,000. He thought he could renovate the house for about \$38,000 and sell the house for about \$145,000. The house needed more repairs than anticipated; the general contractor did shoddy work; the house was unable to pass inspections; Applicant was unable to sell the house for what he had invested in it; and it was lost to foreclosure. There is no evidence of a deficiency owed on the mortgage loan. (Tr. at 16-28, 37; Applicant's response to SOR; GE 2)

Applicant did not fully understand the economics of his investment. He funded the venture with one or more mortgage loans and his personal credit, including credit cards. He significantly overextended himself, and a number of debts went unpaid. (Tr. at 37-44, 47-52; Applicant's response to SOR; GE 1-4)

The SOR alleges the foreclosed investment property and ten delinquent debts totaling about \$47,700. Applicant admitted owing all the debts with the exception of the \$121 debt alleged in SOR ¶ 1.j, which he did not recognize. The debts are listed on a July 2017 credit report, a February 2019 credit report, or both credit reports. (Applicant's response to SOR; GE 3, 4)

Applicant contracted with a debt-settlement company in about 2016 to assist him in resolving his debts. He enrolled 13 debts, totaling \$86,600, in the company's debt-relief program (DRP). He pays \$1,273 into an escrow account each month. He missed about six to nine months of payments to the DRP during a period when he was not receiving overtime hours, but he resumed the payments. The debt-settlement company agreed to negotiate settlements with his creditors and use the accumulated funds in the escrow account, minus fees, to pay the settlements. (Tr. at 29-30, 46-50; Applicant's response to SOR; GE 2; AE-B-F)

Four debts with original balances totaling \$36,041 were settled for \$17,398. These debts were not alleged in the SOR as the settlement payments were completed before the SOR was issued. A fifth debt with a \$500 original balance was settled for \$322. The settlement payments for this debt were completed before the SOR was issued, or shortly thereafter. This debt appears to correspond to the \$328 debt alleged in SOR ¶ 1.i. (GE 3, 4; AE B, C)

The remaining debts alleged in the SOR are enrolled in the DRP, with the exception of the \$576 debt alleged in SOR ¶ 1.g and the \$121 debt alleged in SOR ¶ 1.j. Applicant admitted owing the \$576 debt. He was unsure why it is not in the DRP. He

thought he received recent information from the debt-settlement company about the debt. He relies on the debt-settlement company to deal with his creditors, and he stated that the \$576 debt will be addressed. He still does not recognize the \$121 debt. Five of the debts in the DRP, with original balances totaling \$45,847, were settled for \$22,102. Payments for three of the settled debts are being made. Payments for the last two settled debts have not started yet. Three of the debts in the DRP, with original balances totaling \$4,199, have not been settled yet. (Tr. at 52-69; Applicant's response to SOR; GE 3, 4; AE B-F)

Applicant's current finances are much better. He is receiving retirement pay from the job he held for 31 years. He credibly testified that he will remain in the DRP for the additional approximately two years it will take to settle and pay his remaining debts. He is also considering taking out a loan to expedite the process. He realizes that his real estate investment was a fiasco. He does not intend to repeat his mistake. (Tr. at 30-32, 53, 69-76; AE A-F)

Policies

This case is adjudicated under Executive Order (EO) 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), which became effective on June 8, 2017.

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 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 national security eligibility will be resolved in favor of the 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 the applicant or proven by Department Counsel.” The applicant 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.

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* 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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

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

Applicant has a history of financial problems, including a foreclosed mortgage loan and delinquent debts. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(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

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

Applicant made an ill-advised investment in real estate. The house he bought needed more repairs than anticipated; the general contractor did shoddy work; the house was unable to pass inspections; Applicant was unable to sell the house for what he had invested in it; and it was lost to foreclosure. There is no evidence of a deficiency owed on the mortgage loan. AG ¶ 20(b) is not applicable because the house problems were risks that Applicant assumed when he made the investment.

Applicant started addressing his financial problems more than two years before the SOR was issued. He contracted with a debt-settlement company in about 2016 to assist him in resolving his debts. Five debts with original balances totaling \$36,541 were settled for \$17,720. Four of the settled debts were not alleged in the SOR as the settlement payments were completed before the SOR was issued. The fifth debt appears to correspond to the \$328 debt alleged in SOR ¶ 1.i. The remaining debts alleged in the SOR are enrolled in the DRP, with the exception of the \$576 debt alleged in SOR ¶ 1.g and the \$121 debt alleged in SOR ¶ 1.j. Applicant thought the \$576 debt was in the DRP. He does not recognize the \$121 debt. He credibly testified that he will remain in the DRP until his remaining debts are settled and paid. I am confident he will add the \$576 to the DRP or otherwise appropriately address it, and I find the \$121 debt to be *de minimis*, and insufficient to affect Applicant's suitability for a security clearance.

A security clearance adjudication is not a debt-collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions

to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

I believe Applicant is honest and sincere in his intentions to pay his debts. There are clear indications that the problem is being resolved and is under control. I find that he has a plan to resolve his financial problems, and he took significant action to implement that plan. Financial considerations security concerns are mitigated.

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(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.

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 have incorporated my comments under Guideline F in my whole-person analysis.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations 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
Subparagraphs 1.a-1.k:	For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge