



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 19-02858

Appearances

For Government:

Tara Karoian, Esquire, Department Counsel

For Applicant:

Pro se

November 23, 2020

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on August 8, 2017. (Government Exhibit 1.) On December 19, 2019, 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 effective within the Department of Defense after June 8, 2017.

Applicant answered the SOR in writing (Answer) on February 13, 2020, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on March 25, 2020. The case was assigned to me on May 12, 2020. The Defense Office of Hearings and Appeals (DOHA) issued a final Notice of Hearing on September 28, 2020. I convened the hearing as scheduled on October 21, 2020.

The Government offered Government Exhibits 1 through 5, which were admitted without objection. Applicant offered Applicant Exhibits A and B at the hearing, which were admitted without objection, and testified on his own behalf. DOHA received the transcript of this hearing on October 30, 2020. The record then closed.

Findings of Fact

Applicant is 55 years old and married with three children. He has an associate of arts degree. Applicant has been employed by a defense contractor as a systems administrator since July 2017. Applicant is seeking to obtain national security eligibility and a security clearance in connection with his employment. (Government Exhibit 1 at Sections 12, 13A, and 17.)

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds.

The SOR alleged that Applicant had a single charged-off debt in the amount of \$85,026. Applicant denied this allegation in his Answer, stating that his, "current credit reports show[ed] no outstanding collections."

Applicant bought a house in approximately 2004 and obtained a first and second mortgage. The total amount of his indebtedness was approximately \$160,000. Applicant was able to maintain his regular monthly payments on this house until approximately October 2011. During that year the housing market where he lived collapsed, and his house was worth approximately half of what he owed on it. Applicant made repeated attempts with his creditors to readjust the mortgages, all to no avail. So Applicant and his wife were faced with a situation where they were making payments on a house that was not worth what was owed. Applicant was also laid off from a prior job in 2010 and used up his savings to make his mortgage payments until he found a new job several months later. (Government Exhibit 1 at Section 17, Government Exhibit 2; Tr. 15-23, 27, 30.)

At about the same time Applicant's mother-in-law was laid off from her job and in danger of having her own house foreclosed upon. Applicant and his wife could not continue payments on their house and make payments on the mother-in-law's house as

well. The decision was made by Applicant and his wife to move into the mother-in-law's house, and make payments in anticipation that the house would eventually become theirs. They have lived in this house since this time and have made timely payments on the mother-in-law's mortgage. (Tr. 21, 30-32.)

Applicant stopped making payments on his house in late 2011 due to his inability to work out a resolution with the mortgage companies. He returned the keys to the house to the first mortgage holder in approximately August 2012. (Tr. 24-25.)

Applicant stated that he received no communications from the mortgage companies after he returned the keys, even though they had his new address. He did not receive an IRS Form 1099 regarding forgiveness of debt. (Tr. 25-27, 29.)

Seven credit reports were submitted, three by the Government (Government Exhibits 3 through 5) and four by Applicant (two with his Answer; Applicant Exhibits A and B). The oldest, Government Exhibit 3 from 2017, shows the subject debt. The other five reports do not show that debt. All of the credit reports show that Applicant had no other delinquent debt. Applicant stated that his current financial situation is stable. He is able to maintain payments on all of his current debts. (Tr. 32-33.)

Policies

When evaluating an applicant's suitability for national security eligibility, 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 Executive Order 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1 (Guideline F, Financial Considerations)

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Applicant owed approximately \$85,000 for a past-due mortgage that was charged off when the house was foreclosed upon in 2012. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes two conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged financial difficulties:

- (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; and
- (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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances.

Applicant's financial issues concerning his house were caused by a massive downturn in the economy in his home state. Unemployment for several months had depleted his savings and left him in a difficult position. At the same time his mother-in-law had financial issues that affected her own house. Applicant made the difficult, but to him responsible, decision to allow his house to be foreclosed on while helping his mother-in-law by paying her mortgage and living in her house with his wife. The record evidence does not show any other delinquent debt, supporting the finding that this was a one-time occurrence, which occurred nine years ago. His current financial status is stable, and he evinces a credible intent and ability to maintain that stability into the future. Applicant has the knowledge and ability that will allow him to stay on a proper financial footing. He has fully mitigated the allegations in the SOR. Paragraph 1 is found for Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility 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 national security 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 pertinent facts and circumstances surrounding this case. Applicant has mitigated the concerns regarding his financial situation. The situation regarding his mortgage was singular, never repeated, and does not evince poor judgment or unreliability. He has minimized the potential for pressure, coercion, or duress, as well as the likelihood of recurrence. Overall, the record evidence does not create substantial doubt as to Applicant's present suitability for national security eligibility, and a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ 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 of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge