



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



In the matter of:)	
)	
)	ISCR Case No. 23-00613
)	
Applicant for Security Clearance)	

Appearances

For Government: Karen Moreno-Sayles, Esq., Department Counsel
For Applicant: Kamal Mustafa, Personal Representative

09/03/2024

Decision

Curry, Marc E., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Clearance is granted.

Statement of the Case

On April 5, 2023, Department of Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national security to grant security clearance eligibility. The DCSA CAS took the action 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 National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017.

On April 25, 2023, Applicant answered the SOR, admitting the allegations and requested a hearing, whereupon the case was assigned to me on January 4, 2024. On March 18, 2024, the Defense Office of Hearings and Appeals issued a notice of hearing,

scheduling the hearing on April 9, 2024. The hearing was held as scheduled. At the hearing, I received 11 Government exhibits (GE 1 – GE 11), 8 exhibits of Applicant (Applicant's exhibit (AE) A through AE H), and Applicant's testimony. The transcript was received on April 19, 2024.

Findings of Fact

Applicant is a 64-year-old married man with three adult children. He earned a bachelor's degree in computer information systems in 1984 and a master's degree in the same field in 2005. (GE 1 at 12) Applicant has been working for his current employer, a defense contractor since 2021.

In 2005, Applicant purchased his current home. He kept his previous home, deciding to use it as a rental property. Applicant financed the purchase of the new home in 2005 with an adjustable-rate mortgage. (Tr. 75) Over the years, the interest rate continuously increased. By approximately 2015, it was \$4,200 per month, an amount Applicant and his wife could not afford. (Tr. 75) At or about the time the mortgage payment on his primary residence increased drastically, the tenant in his rental property stopped paying the rent. (Tr. 39) In the six months it took to evict him, he did not pay any rent. (Tr. 39) Ultimately, Applicant lost control of his finances and was unable to keep up with his mortgage payments on his primary residence, prompting the bank to initiate foreclosure actions in February 2016. (GE 10 at 1; Tr. 65) While the foreclosure action was pending, Applicant's wife was laid off for six months. (Tr. 42)

In July 2017, Applicant filed for Chapter 7 bankruptcy protection. (GE 4; Tr. 48) The case was dismissed in September 2017 after Applicant, representing himself, missed a creditors' meeting. (Tr. 51)

In September 2018, Applicant filed for Chapter 13 bankruptcy protection. (GE 7) In July 2019, Applicant was laid off and was subsequently unemployed for the next five months. (GE 1 at 17) In November 2019, the bankruptcy court dismissed the bankruptcy pleading after Applicant failed to submit required documents on time. (GE 7 at 2) Although Applicant never re-filed for bankruptcy protection, he had either satisfied or caught up on all of the commercial debts that had been listed in the bankruptcy by September 2021. (GE 1 at 17; GE 2 at 2)

In October 2021, Applicant's home was foreclosed upon. (Tr. 75) At that time, he owed a \$600,000 balance. (Tr. 75; GE 10 at 15) Because of unresolved litigation between the bank and a third party regarding the deed, the bank has been unable to take possession of the property, and Applicant has remained in the home. (Tr. 74) Applicant no longer has a legal interest in the property and has not made payments since the foreclosure. (Tr. 56) There is no possibility that he will owe either of the litigants any money after their dispute has been resolved. (Tr. 60) It is unclear from the record whether Applicant still owns the property that he had been renting to tenants.

While Applicant has been living in the foreclosed home, he has been using money he otherwise would have been using to make mortgage payments to invest in his retirement pension and a savings account. (Tr. 57, 65) Using some of this money, he made a downpayment towards the purchase of another home. (Tr. 57-58) He was approved for the new mortgage despite the unresolved nature of the foreclosure litigation on the house where he is living currently. The price of the new home is \$458,000 (Tr. 57) Additionally, Applicant has \$150,000 invested in a retirement account and \$7,000 in a savings account. (Tr. 59-60) All of the debts that were listed in the bankruptcy petitions of 2017 and 2018 have either been paid or are current. (Tr. 58)

Applicant earns \$120,000 per year. (Tr. 43) He maintains a budget and has approximately \$1,000 of monthly discretionary income. (Tr. 43)

Applicant is highly respected in his community. According to a fellow church member, he is a man “of remarkable integrity” with “an admirable work ethic.” (AE G) As a member of the church council, he oversees \$3,000,000 of church assets with “honesty and integrity.” (AE H)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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 deciding.

The protection of the national security is the paramount consideration. AG ¶ 1(d) requires that “[a]ny 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. 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 to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). 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.

Analysis

Guideline F: Financial Considerations

Under this concern, "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." (AG ¶ 18) Applicant's history of financial problems triggers the application of AG ¶ 19(a), "inability to satisfy debts," and AG ¶ 19(c), "a history of not meeting's financial obligations."

Applicant's financial problems were not caused by foolish or irresponsible spending. Rather, they were caused by a series of unfortunate circumstances, including his wife's job loss, and lost income after a rental property tenant defaulted on his lease, that occurred at the same time his mortgage interest rates began increasing. Applicant attempted to address these problems by filing for Chapter 7 bankruptcy protection, and later, Chapter 13 bankruptcy. Although both cases were dismissed on procedural grounds, he eventually satisfied or brought current the other debts included in the petitions. Under these circumstances 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," applies.

Although Applicant's home was foreclosed, he has continued to live there since his requirement to vacate is stayed pending the resolution of litigation between the bank and a third party with a contested property interest in the home. Applicant is not required to pay rent while the litigation is pending. Moreover, he has \$7,000 in savings, \$150,000 invested in a retirement account, and he recently financed the purchased of a new home. Under these circumstances, I conclude that the behavior "occurred under such circumstances that

it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;" (AG ¶ 20(a)) and that there are "clear indications that the problem is . . . under control." (AG ¶ 20(c)). Applicant has mitigated the security concerns.

Whole-Person Concept

In addition to the mitigating conditions, I considered Applicant's volunteerism and the respect in which he is held by his acquaintances. I conclude Applicant has mitigated the 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.b:	For Applicant

Conclusion

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

Marc E. Curry
Administrative Judge