



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



In the matter of: REDACTED Applicant for Security Clearance)))))	ISCR Case No. 12-05953
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Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

12/04/2014

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated the security concerns arising from his past financial problems. His ability to pay his mortgage was significantly impacted by matters outside of his control. He settled and paid his mortgage debts two years ago and has not accrued any other delinquent debt. He is in firm control of his finances and established his eligibility for access to classified information. Clearance is granted.

Statement of the Case

On April 29, 2014, the Department of Defense (DOD), in accordance with DOD Directive 5220.6, as amended (Directive), issued Applicant a Statement of Reasons (SOR), alleging security concerns under Guideline F (Financial Considerations). On May 22, 2014, Applicant answered the SOR and requested a hearing to establish his eligibility for access to classified information.

On September 16, 2014, Department Counsel notified the Hearing Office that the Government was ready to proceed to a hearing in this case. On September 25, 2014, a notice of hearing (NOH) was issued setting the hearing for October 17, 2014. The hearing was held as scheduled. Government Exhibits (Gx.) 1 – 4 and Applicant’s

Exhibits (Ax.) A – G were admitted into evidence without objection.¹ Applicant testified and called his facility security officer (FSO) as a witness. The hearing transcript (Tr.) was received on October 27, 2014.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact:²

Applicant, 48, immigrated to the United States from Africa in the early 1990s. He has been a U.S. citizen for over ten years. He is married and has two minor children. In 2001, he purchased property A, which remains his family's primary residence. Applicant volunteers his time and holds a high level leadership position in a charitable organization that serves the less fortunate. (Tr. at 65, 73-74; Ax. F)

Applicant earned his bachelor's degree in 1999 and then enlisted in the U.S. military. He served in the U.S. military from 1999 to 2006, receiving a commendation for his efforts in support of Operation Enduring Freedom (OEF). In 2006, having achieved the rank of sergeant (E-5 pay grade), Applicant separated from active duty and received an honorable discharge. (Tr. at 66-69; Ax. F)

After his discharge from the military, Applicant was employed for about a year before being laid off for economic reasons. He found temporary work with a defense contractor and, within a few short weeks, was hired as a permanent employee. He has been working for his current employer for the past seven years and was recently elevated to a more senior level position requiring a security clearance. (Tr. at 38, 69-71)

In December 2011, in connection with his new position, Applicant submitted a security clearance application (SCA). He voluntarily disclosed that he was delinquent on the mortgages for a property he had purchased in 2006 (property B). He stated that he was working with his lender to accomplish a short sale to resolve his delinquent mortgage debts.

In April 2012, Applicant resolved the mortgage debts on property B through an agreed-upon short sale. Applicant submitted documentation with his Answer corroborating his assertion that he had resolved the first and second mortgages related

¹ Ax. A – D were originally attached to the Answer, but were remarked at hearing. Applicant and Department Counsel did not object to my consideration for administrative notice U.S. Government documents that are publically available through the U.S. Department of Justice (DOJ) website. The DOJ documents relate to significant settlement agreements entered into by the U.S. Government with Applicant's lenders to settle charges of wide spread wrongdoing in their mortgage lending practices. The documents were marked Hearing Exhibit (Hx.) II, and made a part of the record. Department Counsel did raise a relevancy objection to the documents, which was overruled. Applicant and Department Counsel's positions regarding the documents for administrative notice are contained in Hx. III.

² In reaching my findings of fact, I have made only those inferences reasonably supported by the evidence and, where necessary, resolved any potential conflict raised by the evidence.

to property B. Of note, Applicant submitted a settlement agreement noting the exact amount the creditor holding the second mortgage on property B would accept to resolve the second mortgage and a HUD-1 closing statement showing that the creditor was paid the agreed-upon settlement amount. (Ax. A – D; Tr. at 30-34, 53-55) The sole SOR allegation relates to the second mortgage on property B.

At hearing, Applicant explained that he initially purchased property B in 2006 after separating from active duty, with an eye towards make it his family's new home. Applicant put \$50,000 as a down payment and financed the rest of the purchase price for property B. After signing the original closing documents on property B, Applicant's lender sent him additional loan documents. He unwittingly signed the new loan documents without thoroughly reading them. The new loan documents obligated him to repayment terms far in excess of the original loan terms.³

Applicant, who was unable to afford the new, higher mortgage terms, decided not to move his family into property B. Instead, he leased the property and supplemented the rental income he was receiving with his own savings to pay the mortgages on property B. Applicant fell behind on his mortgage payments on property B when his tenants failed to pay their rent on time. He was unable to sell property B to resolve the mortgage debts because the local housing market had collapsed. Applicant estimates that the value of property B decreased by approximately \$250,000.

Applicant explored different avenues to resolve the mortgage debts. Over the course of three years, he spent countless hours on the phone with the agents for his lenders and submitted (and then resubmitted) the necessary paperwork in pursuit of a mutually agreeable resolution. His mortgage lenders eventually agreed to a short sale. At the short sale closing, Applicant received \$2,500. He immediately applied this money to resolve the second mortgage loan. Both mortgages on property B were satisfied when the property was sold in April 2012. (Tr. at 38-55, 62, 78-84)

Beyond the mortgage debts, Applicant also accumulated about \$30,000 in credit card debt. Realizing that he had to resolve these debts, Applicant stopped using his credit cards and methodically paid down his credit card balances. He now only has one credit card and maintains a balance of less than \$1,000.⁴ (Tr. at 55-58)

Applicant earns approximately \$75,000 annually. He has about \$100,000 in a retirement account. He has a balance of approximately \$14,000 in what he describes as his "operations" (checking) account, and an additional \$13,000 in savings accounts that he can tap into for unexpected emergencies. He has lived in his home, property A, since 2001. He pays his monthly mortgage payments on his home via automatic deduction from his checking account and has been consistently on time. He has not accumulated

³ The U.S. Department of Justice has alleged that Applicant's lenders engaged in similar wrongful conduct during the same time frame. See *generally*, Hx. II.

⁴ Applicant's past credit card debt was not alleged in the SOR, but was considered in assessing his mitigation evidence and whole-person factors. See ISCR Case No. 12-04293 (App. Bd. Nov. 24, 2014).

any other delinquent debt since resolving the mortgage debts on property B over two years ago. He is the manager for his employer's payroll department and previously handled in a responsible fashion large sums of money for the U.S. Government. (Tr. at 64-66, 71-75)

Applicant's FSO, who has held a security clearance for over 20 years and retired from the U.S. Navy after 20 years of service, voluntarily appeared at the hearing. The FSO has known Applicant for the past five to six years. They work together in a fairly small office and have frequent contact. The FSO testified that Applicant is current on his security briefings and training, and recommends Applicant for a security clearance because. In the FSO's estimation, one could not find a more honest and trustworthy individual than Applicant. (Tr. at 87-91)

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are only eligible for access to classified information "only upon a finding that it is clearly consistent with the national interest" to authorize such access. E.O. 10865 § 2.

When evaluating an applicant's eligibility, an administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a common sense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

The Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, an 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." Directive ¶ E3.1.15. An applicant has the ultimate burden of persuasion to establish their eligibility.

In resolving the ultimate question regarding an applicant's eligibility, an administrative judge must resolve "[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security." AG ¶ 2(b). Moreover, "security clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531.⁵ However, a judge must decide each case based on its own merits because there is no *per se* rule requiring disqualification.⁶

⁵ See also, ISCR Case No. 07-16511 at 3 (App. Bd. Dec. 4, 2009) ("Once a concern arises regarding an Applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance.").

⁶ ISCR Case No. 11-12202 at 5 (App. Bd. June 23, 2014).

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. 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 an 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.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” E.O. 10865 § 7.⁷ Thus, a decision to deny a security clearance amounts to a finding that an applicant, at the time the decision was rendered, did not meet the strict guidelines established for determining eligibility for access to classified information.

Analysis

Guideline F, Financial Considerations

The potential security concern regarding an applicant with financial problems is explained at AG ¶ 18:

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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The sole SOR allegation states that Applicant is currently “180 days or more past due in the approximate amount of \$9,761.00” on the second mortgage for property B. Applicant refuted the SOR allegation as drafted through the documents he submitted with his Answer and his credible testimony at hearing.⁸ However, the gravamen of the security concern raised by the SOR allegation, namely, that Applicant’s past financial problems raise a concern about his current fitness to hold a security clearance, is not automatically dispelled by the resolution of the SOR debt. In resolving questions raised about an individual’s current suitability to hold a clearance, an administrative judge should critically and impartially examine the circumstances leading to the accumulation of delinquent debt and efforts, if any, to resolve the underlying financial situation “in

⁷ See *also*, ISCR Case No. 11-13626 at 4 (App. Bd. July 25, 2014) (“an adverse decision under the Directive is not a determination that the applicant is disloyal. Rather, such a decision signifies that the applicant has engaged in conduct or has otherwise experienced circumstances that raise questions about his or her judgment and reliability.”).

⁸ ISCR Case No. 12-00725 (App. Bd. Oct. 3, 2014) (judge erred in not considering document offered by applicant, which corroborated his hearing testimony that the SOR debts were resolved).

order to arrive at a conclusion as to whether the applicant possesses the judgment and self-control required of those who have access to national security information.”⁹ A judge’s common sense evaluation of said circumstances is guided by the adjudicative guidelines (AG).

In the present case, Applicant’s history of financial problems triggers application of the disqualifying condition listed at AG ¶ 19(c).¹⁰ Applicant’s circumstances also raise the following mitigating conditions under the financial considerations guideline:

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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

AG ¶ 20(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

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

Applicant established AG ¶¶ 20(a) through 20(d). His past financial trouble is mainly attributable to matters beyond his control, notably the underhanded tactics employed in the origination of the mortgage loans at issue and the recent economic recession. Notwithstanding these significant external factors, Applicant did not simply walk away from his mortgage debts. He first attempted to pay the mortgages by leasing the property. Once the rental income he was receiving was insufficient to cover the mortgages, Applicant responsibly addressed the mortgage debts by working with his lenders to resolve the debts. In 2012, he satisfied the debts through an agreed-upon short sale. He also responsibly addressed and resolved a significant amount of non-SOR debt. Over the past two years, Applicant has not accumulated any other delinquent debt. This demonstrated track record of meaningful debt repayment and fiscal reform mitigates the security concerns raised by his past financial lapses.¹¹

⁹ ISCR Case No. 10-00925 at 2 (App. Bd. June 26, 2012). See *also*, ISCR Case No. 12-04554 at 3 (App. Bd. July 25, 2014); ISCR Case No. 13-00311 at 3 (App. Bd. Jan. 24, 2014).

¹⁰ A history of not meeting financial obligations.

¹¹ ISCR Case No. 14-00504 (App. Bd. Aug. 4, 2014) (denial of clearance reversed where individual submitted evidence of debt repayment of more than half of the SOR debts); ISCR Case No. 12-04806 (App. Bd. July 3, 2014) (grant affirmed upon proof of clear evidence of financial reform).

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).¹² I hereby incorporate my above comments and highlight some additional whole-person factors.

Applicant served in the U.S. military for seven years and was specifically cited for his service to the nation in support of OEF. He has been completely upfront and honest about his past financial trouble from the start of the security clearance process. His trustworthiness and reliability are vouched for by his FSO. His past financial trouble was primarily a result of matters beyond his control. He responsibly addressed and resolved his delinquent debts. He has responsibly managed his finances over the past two years. He is actively involved in his community. His past financial problems no longer raise a concern about his current reliability, trustworthiness, and good judgment. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility for access to classified information.

Formal Findings

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

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraph 1.a: For Applicant

Conclusion

In light of the record evidence and for the foregoing reasons, it is clearly consistent with the national interest to grant Applicant access to classified information. Applicant's request for a security clearance is granted.

Francisco Mendez
Administrative Judge

¹² The non-exhaustive list of adjudicative factors are: (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.