



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



In the matter of:)
)
) ISCR Case No. 12-07663
)
Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

09/16/2013

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is granted.

Statement of the Case

On February 15, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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 (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR on March 15, 2013, and requested a hearing before an administrative judge. The case was assigned to me on July 23, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 9, 2013. I convened the hearing as scheduled on August 29, 2013. The Government offered

exhibits (GE) 1 through 5, and they were admitted into evidence without objection. Applicant testified, and he offered exhibits (AE) A through E. DOHA received the hearing transcript (Tr.) on September 6, 2013.

Findings of Fact

Applicant admitted all SOR allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 38 years old. He is a high school graduate and earned an associate's degree in business in 2001. He married in 2003 and has a 12-year-old stepson and a 9-year-old daughter.¹

Applicant was unemployed from August 2008 to October 2008 and from October 2009 to September 2010. He worked part-time from October 2008 to October 2009. When he was unemployed he had difficulty paying the mortgage on his home. In 2009, he contacted a real estate agent to help him obtain a loan modification from the creditor because he did not know how to pursue it himself. In approximately 2011, he hired a law firm to handle the loan modification. He was advised that the mortgage payment had to be three months late to start the modification process. He paid the law firm \$570 a month until March 2013. All of communication with the law firm was by telephone. The law firm dealt directly with the creditor. Applicant provided all the paperwork to the law firm. Applicant was trying to prevent his house from being foreclosed. Minimal progress was taking place on the loan modification. When Applicant began working full-time, he asked the law firm to inquire about reinstating the mortgage and add the arrearages to the end of the loan. The creditor refused to accept the proposal so the loan modification proposal was continued. Nothing transpired regarding the modification request for a period of time. Applicant was unable to get the law firm to respond to his inquiries.²

Applicant's friend researched to find out the status of the house. He learned that the house was up for sale at an auction as a foreclosure. Applicant had never been notified by the law firm or the creditor of foreclosure action. Applicant still could not get the law firm to respond to inquiries. Nothing had happened as far as the loan modification request. Shortly after learning of the notice of sale, the house was sold at auction in April 2013. Applicant never received any paperwork. He had provided everything requested by the law firm to stop a foreclosure. The company that purchased the house permitted Applicant to rent it. He has rented it since May 2013.³ Applicant has tried to contact the law firm numerous times since the foreclosure and has had no

¹ Tr. 54, 58.

² Tr. 20-25, 28-31, 37-38.

³ AE D.

response. The debt in SOR ¶ 1.e is the mortgage debt on the house. Applicant does not owe any deficiency on the house, and the debt is resolved.⁴

The debt in SOR ¶ 1.a (\$4,931) is for a credit card Applicant had when he was 18 years old. He was unaware that he owed money on it until he applied for a mortgage. Payment for the debt was collected through garnishment until Applicant paid it off in a lump sum.⁵

Applicant disputes the debt in SOR ¶ 1.b (\$1,196). This debt was to an apartment complex. Applicant stated that he made his final payment of \$800 by money order to the office manager in 2008. He is attempting to trace the money order. He understands he may have to settle the debt, but he is continuing to pursue the dispute because he believes the debt was satisfied.⁶

The debt in SOR ¶ 1.c (\$1,318) was for damage to an apartment Applicant lived in around 2006. He disputed what he owed because there was damage attributed to a hurricane and repair was not his responsibility. The apartment owners sent the debt to collection. Applicant did not realize it was in collection status. He continued to dispute the debt, but eventually paid it.⁷

The debt in SOR ¶ 1.d (\$1,243) was for a drafting class Applicant was enrolled in. His employer at the time was supposed to pay it. He was subsequently laid off by his employer. The class was registered in his name. The employer was to pay the cancelation fee, but never did. Applicant was unaware they did not pay the fee. Applicant provided documentation that he paid the cancelation fee in November 2011.⁸

Applicant has not had financial difficulties since resuming full-time employment. His wife works, earning about \$50,000 to \$60,000 annually. Applicant's annual salary is approximately \$140,000. He paid off his car loan early. They pay their expenses on time. They have learned to keep track of their expenses. They have saved \$15,000 to \$20,000. He has paid off some student loans, and he pays the remaining ones through an automatic withdrawal. Applicant began addressing the delinquent debts prior to receiving the SOR.⁹

The owner of the company where Applicant works testified on his behalf. Applicant has worked for her since 2010. She considers him to be honest and has no

⁴ Tr. 25-29, 31-37.

⁵ Tr. 39-41; AE B.

⁶ Tr. 41-45.

⁷ Tr. 45-49; Answer to SOR; AE C.

⁸ Tr. 49-51; Answer to SOR.

⁹ Tr. 52-54.

reason to question his integrity. Her customers provide positive feedback about his performance. Character letters provided on behalf of Applicant describe him as responsible, ethical, dependable, a team player, hard-working, trustworthy, and a valued asset. He exercises good judgment, is mature, and is of the highest character. He is a family man, devoted to his wife, children, parents, and other family members.¹⁰

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 list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied 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 access to classified information will be resolved in favor of 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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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

¹⁰ Tr. 62-69; AE A.

extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that 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 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 guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

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

Applicant had delinquent debts that he was unable or unwilling to pay. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's financial problems occurred under circumstances that are unlikely to recur. He experienced two periods of unemployment, one for three months and the other for eleven months. He attempted to get a loan modification for his mortgage and hired a law firm to assist him. Instead of helping, it appears they neglected their duty, and his house was foreclosed and sold. Applicant's unemployment was beyond his control. He was unaware until he received his background interview that he had other delinquent debts. He began resolving them before he received the SOR. Applicant's financial problems and resolution of them do not cast doubt on his reliability, trustworthiness, or good judgment. He acted responsibly when he began having financial problems. AG ¶ 20(a) and AG ¶ 20(b) apply.

Applicant has paid the debts in SOR ¶¶ 1.a, 1.c, and 1.d. He is financially stable and living within his means. He pays his student loans. He paid off his car loan early, and he has accumulated significant savings. AG ¶ 20(c) and AG ¶ 20(d) apply.

Applicant disputes the debt in SOR ¶ 1.d because he believes he has already paid it by money order. He is attempting to trace the money order he used to pay the debt. He understands that he may eventually have to pay it again. I found Applicant credible. AG ¶ 20(e) applies to this debt.

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(a):

(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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 38 years old. He had a period of unemployment for three months and another for eleven months, before he regained regular employment in 2010. He had difficulty paying his mortgage and sought a loan modification. He hired a law firm that failed to keep his house from foreclosure and would not return his calls. There is no deficiency on the loan. Applicant resolved all debts on the SOR, except one that he disputes. He is living within his means and is financially stable. Applicant's finances are not a security concern. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the financial considerations guideline.

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.e:	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 Applicant a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge