



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



In the matter of:)	
)	
)	ISCR Case No. 12-07817
)	
Applicant for Security Clearance)	

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *Pro se*

11/15/2015

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On December 10, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. DOD acted under Executive Order 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) effective within the DOD on September 1, 2006.

Applicant answered (Answer) the SOR on January 9, 2015, and requested a hearing before an administrative judge. The case was assigned to me on May 27, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 12, 2015, and the hearing was convened as scheduled on July 14, 2015. The Government offered exhibits (GE) 1 through 4, which were admitted into evidence

without objection. Department Counsel's exhibit index was marked as Hearing Exhibit (HE) I. Applicant testified and offered exhibits (AE) A through E, which were admitted into the record without objection. DOHA received the hearing transcript (Tr.) on July 23, 2015.

Findings of Fact

Applicant admitted all the SOR allegations. The admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 47-year-old employee of a defense contractor. He has worked for defense contractors since December 1999. He also works part-time for a retail company. He is single with no children. He resides with his girlfriend. He has no military service. He holds a top secret security clearance.¹

The SOR alleges four delinquent debts including a past-due mortgage account in the amount of \$14,694, with an outstanding loan balance of \$91,173 (SOR ¶ 1.a); a collection account on a second mortgage in the amount of \$64,784 (SOR ¶ 1.b); and two collection accounts to a property management company in the amounts of \$4,549 and \$4,708 (SOR ¶¶ 1.c and 1.d). The debts were listed in credit reports from March 2012 and July 2014.²

In about 2006, Applicant purchased four investment properties, two condominiums located in state A, one loft in state B, and a home located in state C. He bought the properties on the advice of a childhood friend who was in the real estate business. The plan was to rent the properties and hold them until they increased in value and then sell them at a profit. The rental income would be used to pay the mortgages. His friend helped him obtain the various loans to finance the purchase of these properties. He also obtained second mortgages on the two properties in state A. He rented the properties, but the rent was insufficient to cover the mortgage payments. He used his savings and other income to make all his payments for as long as he could. By 2009, he was unable to make the payments and the properties went into foreclosure. The delinquent debts alleged in SOR ¶¶ 1.a and 1.b were both second mortgages, one in state A and one in state B. He has not received any IRS Forms 1099-C (cancellation of debt) for any of the debts. He has not been sued for any deficiencies or nonpayment. These debts are not resolved.³

The SOR debts at ¶¶ 1.c and 1.d are both for amounts Applicant owed to a property management company he used for the investment properties. He has not contacted the creditor and these debts are unresolved.⁴

¹ Tr. at 26, 26, 28, 55, 64; GE 1.

² GE 3-4.

³ Tr. at 29-37, 39, 41, 43, 65-66; GE 2.

⁴ Tr. at 34, 75; GE 3.

Applicant's current financial state is that he owes his own home, but is currently two months behind on the mortgage payment. He is up-to-date on his taxes. According to a recent personal financial worksheet, he is left with approximately \$745 of monthly discretionary income. He does not have any savings and has about \$400 in his checking account. He has several small balances on some investment accounts after he used them to pay the investment property mortgages. He provided documentation showing that he settled two delinquent credit card debts in 2010. He has not obtained financial counseling.⁵

Applicant is a highly regarded employee. He presented 10 character letters from supervisors and coworkers who describe him as a trustworthy, dedicated, honest, loyal, and hardworking employee. He suffered a heart attack about one year ago, but returned to work with minimal loss of time.⁶

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 that 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 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.

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 decision.

⁵ Tr. at 47, 52, 72, 76; GE 2; AE B-C.

⁶ Tr. at 63; AE A.

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 about 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* Executive Order 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 as follows:

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 under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant has four delinquent past-due or collection accounts that remain unpaid. The evidence is sufficient to raise the above disqualifying conditions.

Several financial considerations 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 debts are recent, multiple, and cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

All of the delinquent debts are related to Applicant's failed investment venture. He invested in four properties in three different states hoping to profit by selling them after his equity increased. Things did not go according to plan and after depleting his savings and investment accounts all the properties were foreclosed. Applicant's decision to invest in these properties was not a circumstance beyond his control. AG ¶ 20(b) is not applicable.

Applicant did not participate in any financial counseling. Although he presented evidence that he settled two non-SOR debts, there are no clear indications that his SOR debts are being resolved, nor was there evidence of good-faith efforts to pay or resolve the debts.⁷ AG ¶¶ 20(c) and 20(d) do not apply.

Applicant did not contest any debts so AG ¶ 20(e) does not apply. At this point, Applicant's finances remain a concern.

⁷ The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the predecessor mitigating condition to AG ¶ 20(d)], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [AG ¶ 20(d)].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).

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 relevant 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.

I considered the circumstances by which Applicant became indebted. I also considered that he is a valuable employee to his employers. However, Applicant has made little effort to resolve his financial situation. He has not established a meaningful track record of debt management.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not 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:

AGAINST APPLICANT

Subparagraphs: 1.a – 1.d: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge