



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 12-09504
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: Alan Edmunds, Esquire

10/30/2015

Decision

HOGAN, Erin C., Administrative Judge:

On January 26, 2015, the Department of Defense (DOD) 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 (AG) effective within the Department of Defense after September 1, 2006.

On March 12, 2015, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on January 16, 2015. I was assigned the case on July 28, 2015. On September 11, 2015, a Notice of Hearing was issued, scheduling the hearing for October 6, 2015. The hearing was held as scheduled. During the hearing, the Government offered nine exhibits which were admitted as Government Exhibits (Gov) 1 – 9. Department Counsel’s List of Government Exhibits was Hearing Exhibit (HE) I. Applicant testified and offered 17 exhibits which were admitted as Applicant Exhibits (AE) A – Q. Applicant’s List of Exhibits is marked as HE II. The record was held open until October 11, 2015, to allow Applicant to submit additional exhibits. He timely offered six exhibits which were marked

and admitted as AE R – AE W. Applicant's Post-Hearing List of Exhibits was marked as HE III. The transcript (Tr.) was received on October 14, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his response to the SOR, Applicant denies the sole SOR allegation.

Applicant is an employee of a Department of Defense contractor seeking to maintain a security clearance. He has held a security clearance for over 20 years. He has worked for his current employer since November 2005. He is a high school graduate and has some college credit. He was previously married from September 2003 to September 2007. He married his current wife in August 2009. He and his wife are expecting their first child. Applicant has no other children. (Tr. at 29-30; Gov 1)

Applicant's security clearance background investigation revealed a mortgage foreclosure in April 2009, in the total amount of \$182,304. (Gov 5 at 14; Gov 6 at 1; Gov 7 at 9) This is the sole allegation in the SOR. Applicant is current on all his other debts.

Applicant purchased a house in September 2007 with his girlfriend. He and his girlfriend lived in the property together. Applicant relied on both his income and his girlfriend's income to pay the mortgage. Applicant's girlfriend asked to be in charge of the finances. She asked Applicant if she could handle their finances because she had a bad experience in a prior relationship regarding finances. Applicant allowed his girlfriend to handle the couple's finances. A few months later, Applicant began to receive notice of late payments and past-due notices. He noticed his credit card balance was increasing while his girlfriend's credit card balance was decreasing. His girlfriend was paying off her bills while increasing Applicant's bills. Applicant terminated the relationship and both parties moved out of the house they purchased in January 2008. Applicant moved in with his parents. (Tr. 22-24, 31-34)

Applicant contacted several realtors about selling the house. They told him that he would be unable to sell his house because the housing inventory was high and no one was buying. Applicant decided to let the home go to foreclosure because he could not afford the mortgage payments. Applicant never tried a short sale because his home went to foreclosure before he could do so. He never applied for a loan modification because he was unaware of a loan modification being an option. There were actually two mortgages that were foreclosed. The principal mortgage had a balance of \$128,554. The second mortgage has a balance of \$53,750. (Tr. 18-19, 24, 34-36, 38)

Applicant was denied for a special access program by the Air Force in 2011 because of the mortgage issue. He transferred to another department where he was not required to have a special access clearance. He continued to work for his company. (Tr. 40; Gov 8 at 8)

Since the breakup with his girlfriend and mortgage foreclosure in 2008, Applicant manages all of his bills. He makes sure to review all of his mail so no bills are neglected. He is in better control of his bills because he is involved. He and his wife have a monthly budget. They have no current delinquencies. Their taxes are current. (Tr. 25-26)

When Applicant submitted his security clearance for renewal, he attempted to contact the holder of the first mortgage. The first mortgage holder told Applicant they had already resolved the first mortgage and it is no longer in their records. In 2009, Applicant was issued a 1099-A in relation to the first mortgage. (Tr. 36-37; AE R) In 2013, Applicant settled the second mortgage for the amount of \$5,375. (Tr. 18-19; AE A)

Applicant presented a credit score which shows he is a borrower in good standing. His credit score improved from "low" to "good". In February 2015, he attended a credit counseling course. He learned about budgeting, controlling cash flow, and planning for future emergencies. (Tr. 22; AE D).

Applicant presented a copy of his monthly budget. He and his wife have a net monthly income of \$6,792. His monthly expenses are currently \$3,140. His monthly debt payments are currently \$1,914. Applicant and his wife have approximately \$1,700 left over each month after expenses. He has approximately \$92,000 in his 401(k). He has more than \$4,000 in savings and between \$4,000 to \$5,000 in checking. (Tr. 17, 21; AE C)

Whole-person Factors

Applicant's supervisor testified during the hearing. He also provided a written statement. He is Applicant's direct manager and has known Applicant since December 2013. He supervises 82 employees with 12 employees who report directly to him including Applicant. Applicant is one of his top employees. Applicant receives some of the highest ratings in his performance reviews. He has received several performance awards. Applicant was hired into a working situation that had critical deficiencies. He was able to provide sound solutions that exceeded their customer's expectations. Applicant's supervisor is aware of Applicant's mortgage foreclosure. He has no concerns or reservations about Applicant's continued access to classified information. (Tr. 48-59: AE L)

Several other co-workers and friends provided reference letters on Applicant's behalf. Applicant is highly regarded by them. (AE J – AE P). Applicant provided copies of his performance evaluations. They indicate Applicant exceeded or significantly exceeded commitments. (AE I). He also provided copies of certificates and awards received during his career. (AE G). In 2014, Applicant received a Special Recognition Award for Individual Excellence in recognition of his commitment and significant contributions to his employer. (AE H)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered when determining 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.

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 as to obtaining 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 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 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 relating to the guideline 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 disqualifying conditions that could raise security concerns. I find AG ¶ 19(a) (an inability or unwillingness to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations) apply to Applicant's case. In April 2009, Applicant underwent a mortgage foreclosure for a home that he purchased with his girlfriend. Applicant owed approximately \$182,304 for the first mortgage and second mortgage. He had been unable to satisfy these debts over the past several years.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with their creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage their finances in such a way as to meet their financial obligations.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions apply:

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) applies because

Applicant's financial problems were the result of a failed relationship as well as the unfortunate timing of the housing market crash in 2008. He had no financial problems before his relationship with his former girlfriend and has been financially responsible after the end of the relationship. Aside from the first mortgage, he resolved the debts incurred by his ex-girlfriend. He remarried. He and his wife's financial situation is stable.

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) applies. Applicant's mortgage foreclosure was the result of a failed cohabitation relationship. Applicant relied on his girlfriend's income to pay the mortgage. He was unable to pay the mortgage based on his income. His girlfriend incurred a lot of expenses in his name by using his credit cards. He also had to deal with this additional financial burden. Applicant contacted realtors who told him that his house would not sell because of the current market conditions. He decided to let his home go to foreclosure and to focus on the bills incurred as a result of the failed relationship. He acted responsibly under the circumstances. His financial situation is now stable.

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) applies because Applicant attended financial counseling in February 2015. Applicant began resolving the financial issues created from his failed relationship well before he attended financial counseling. His current financial situation is under control.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Applicant settled the second mortgage in 2013. Although not alleged in the SOR, Applicant's former girlfriend incurred a lot of credit card debt in his name. He resolved all of these unalleged SOR debts.

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 the 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 considered the favorable recommendations of Applicant's supervisor as well as his friends and co-workers. I considered that Applicant's mortgage foreclosure occurred after a failed relationship. The need to sell his home coincided with the 2008 housing market crash and Applicant was unable to sell the house he purchased with his former girlfriend. Aside from the mortgage foreclosure, Applicant is financially stable. The foreclosure was a departure from Applicant's track record of financial stability. Security concerns under financial considerations are mitigated.

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

ERIN C. HOGAN
Administrative Judge