



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



In the matter of:)	
)	
)	ISCR Case No. 12-09815
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

07/16/2015

Decision

LYNCH, Noreen A., Administrative Judge:

On December 2, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising 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 (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on April 2, 2015. A notice of hearing was issued on April 24, 2015, scheduling the case for June 18, 2015. Government Exhibits (GX) 1-3 were admitted into evidence without objection. Applicant testified and presented documents for the record (AX A-L). I held the record open and Applicant timely submitted additional documents, which were marked as AX M-O, and admitted into the record without objection. The transcript was received on June 26,

2015. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Findings of Fact

In his answer to the SOR, Applicant denied the SOR allegations under Guideline F, with explanations.

Applicant is 33 years old. He is a flight test technician. Applicant obtained a vocational degree. He is married and has two children. Applicant has been with his current employer since 2014. Applicant has held a security clearance for about 13 years. (GX 1)

The SOR alleges two delinquent debts, of which one is a home mortgage loan account in the amount of almost \$127,000. (GX 2) The other delinquent debt is paid. Applicant submitted documentation that he paid the debt alleged in SOR 1.b in the amount of \$1,249, which was a bill for dental services. (AX E)

Applicant purchased his first home in 2007. (Tr. 25) At the time, Applicant earned about \$48,000 a year. He realized that the monthly mortgage amount of \$1,300 was difficult to maintain given his other expenses. He stated that it was a struggle to pay the bills. (AX A)

In January 2009, Applicant accepted a job offer to work for a company in Kuwait, earning \$133,000. (AX B) Applicant worked in Kuwait for two years so that he could maintain his mortgage and expenses. In late 2010, the contract in Kuwait came to an end. Applicant was given an offer for a job in the states. Applicant accepted the position, despite the fact that his salary was reduced by about 38%.

When Applicant returned to the United States he had to relocate to another area that was too far to commute from his residence. In January 2011, Applicant purchased another home close to his work.

Applicant planned to make improvements to his first residence and then sell the home or rent it. (Tr. 31) He managed to rent the property for a short time but the renter defaulted. (Tr. 32) In 2011, Applicant realized that he could no longer maintain two mortgage payments. He attempted to restructure the mortgage loan. He contacted a credit counseling company and applied for governmental help with several federal programs. (AX C) He completed a credit counseling course and constructed a budget. Applicant was not successful in his attempts and he stopped paying on the mortgage loan in October 2011. He put the house on the market, but it did not sell. He was instructed to stop making payments on the house by the credit counseling company.

Applicant's application was sent to the loss mitigation department in 2012. Applicant was notified that the house would be foreclosed. He tried a short sale and lowered the asking price on the home. At this time, Applicant notified his facility security officer (FSO) of the financial situation. The lender foreclosed on the home in 2012 or

2013 and has forgiven the deficiency balance. Applicant provided documentation from the lender indicating that the loan was considered satisfied. (AX M)

Applicant presented six letters of recommendation from friends, colleagues, and employers. Each attests to his loyalty, excellent service as a contractor in a variety of posts in the Middle East, and integrity. His supervisor, who has known him for more than ten years, notes Applicant's reliability and work ethic. His FSO confirmed that Applicant advised him about his financial situation. He has never had any incidents with handling or safeguarding classified information. (AX F)

Applicant's performance review for 2014 reflects that he consistently exceeds standards. (AX G) Applicant was named Employee of the Month in December 2014. (AX H)

Applicant's current position is stable. He works many hours overtime. (Tr. 40) He earns \$62,000 a year. Applicant's net monthly income is about \$4,356, which includes his wife's salary of \$600. After expenses, he has a net monthly remainder of about \$1,947. Applicant has no outstanding debts. He does not have a car payment, no credit cards, and his medical bills are paid. (Tr. 21) He has a checking and savings account. (AX J) He is adamant that he is not a frivolous spender.

Applicant explained that he was deployed various times to raise his income to pay all his bills. Before the great reduction in pay, he had no serious financial issues. He has been proactive with his delinquent debt. He is on solid financial ground.

The credit reports in the record show that Applicant has maintained a positive credit history before the current issue. Aside from the two delinquent accounts alleged in the SOR, Applicant's credit reports indicate that he does not have a history of late or missed payments. Applicant's most recent financial statement shows that he lives within his means and has disposable income. (AX J) When he filed his tax return for 2013, he reported cancellation of the mortgage loan as income. He received a letter from the mortgage company that the account is considered close. (Ax M)

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. 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. . . .”¹ The burden of proof is something less than a preponderance of evidence.² The ultimate burden of persuasion is on the applicant.³

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible 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.”⁴ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ *Id.*

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure or an 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." It also states that "an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant had delinquent mortgage and an unpaid medical account. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

Applicant incurred delinquent debt when he returned home from a contracting job abroad and obtained employment earning significantly less money. He moved and bought another house and maintained two mortgages for a period of time. He tried but was not successful in selling the home. The home went to foreclosure in 2012. Consequently, Financial Considerations Mitigating Condition (FC MC) 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.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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) partially applies. As noted above, Applicant's financial difficulties are the result of his lower pay and inability to rent, sell, or modify his home mortgage account. He reported the cancellation of the mortgage loan on his tax return for 2013. He has a letter from the mortgage company that the account is considered paid in full. He has resolved the debt. He paid the other debt alleged on the SOR. He has shown that he acted responsibly under the circumstances.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has limited application. Applicant states that he paid both home mortgages until he was advised not to in 2011. He resolved the other allegation. He received counseling in 2012. FC MC 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.

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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 33 years old. He was candid at the hearing. He has worked and held a security clearance in the states and abroad. He has many letters of recommendation and excellent performance evaluation. He had difficulty maintaining two mortgages when he returned to the states with a substantial pay cut. He did all he could to resolve the issues. He was proactive in his efforts to become debt free.

Applicant submitted documentation that he reported on his tax return. He obtained information that exonerates him from the debt. He had one other debt which has been paid. He is current with his expenses. He has a stable income. He presented sufficient evidence to mitigate his case. He met his burden of proof.

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

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. Clearance is granted.

NOREEN A. LYNCH.
Administrative Judge