



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 12-09921

Appearances

For Government: Chris Morin, Esquire, Department Counsel
For Applicant: *Pro se*

09/23/2015

Decision

HOWE, Philip S., Administrative Judge:

On April 10, 2012, Applicant submitted his electronic version of the Security Clearance Application (e-QIP). On March 14, 2015, the Department of Defense issued to 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 Regulation 5200.2-R, *Personnel Security Program*, dated January 1987, as amended (Regulation); 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 on September 1, 2006.

Applicant answered the SOR in writing on April 20, 2015. Applicant requested his case be decided on the written record in lieu of a hearing.

On June 2, 2015, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), consisting of Items 1 to 6, was provided to the Applicant on June 15, 2015. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on July 15, 2015. Applicant filed a Response to the FORM within the 30 day time allowed that would have expired on August 14, 2015. I received the case assignment on September 1, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant admitted both allegations in the SOR. (Items 2-6)

Applicant is 41, divorced, and has one child. He works for a defense contractor. He has a college degree. (Items 2, 3)

Applicant and his former wife owned a home when they were married. They divorced in May 2011 and sought to sell the house. They owed \$182,684 between two mortgages on the house to his credit union. Those mortgages are the subject of the SOR allegations with his credit union being owed \$113,025 on the first mortgage and \$69,659 on the second mortgage. After the divorce Applicant could not afford to pay the mortgages on his own. He does not state in his Answer what the monthly payment was. He had a short sale of the house in January 2012. (Items 1, 2)

After the sale, in March 2012, Applicant offered \$5,000 from himself and his former wife, each, in settlement of the remaining \$182,684 debt. The total was to be \$10,000. They would each pay \$75 monthly. He claimed he could not pay more than that amount. At that rate the payments from each would be \$900 annually. It would take over five years to pay the \$10,000. Applicant did not provide any historical financial information about his salary in 2012 or his assets, how much of a down payment he made on the house, or other relevant financial information to support his assertion that he could not afford to pay the credit union the money he owed them. He does not provide information on the sale price of the house. (Items 1, 2, 5, 6)

Applicant submitted a Response to the FORM. It consists of a letter from him to DOHA and a copy of a July 21, 2015 letter from his credit union about the second offer he made to settle the outstanding balance on the mortgages. Applicant contends that if the Federal government "backed" the credit union like it did banks, then he could have settled the loans for a minimal amount of money. The Response shows the credit union rejected his offer of \$1,500 on the \$182,684 balance. They wanted at least 25% of the debt repaid, which Applicant states would be \$45,000, and he cannot pay it. (Response)

The credit bureau reports on Applicant from May 2012 and October 2014 show he owes other debts and pays them. In 2014 he purchased a \$36,000 automobile and owed about \$42,000 in student loans. He also has two credit cards listed, on which he

owes about \$11,000. Applicant continued to spend money while he claimed he was unable to repay his mortgage. (Items 5, 6)

Applicant did not submit any documentation that he has participated in credit counseling or budget education. He provided no evidence concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

Department Counsel submitted six Items in support of the SOR allegations. Item 4 is inadmissible. It will not be considered or cited as evidence in this case. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management between May 10 and May 29, 2012. Applicant did not adopt it as his own statement, or otherwise certify it to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation summary is inadmissible in the absence of an authenticating witness. In light of Applicant's admissions, it is also cumulative.

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 are useful 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, the administrative judge applies the guidelines in conjunction with the factors listed in AG ¶ 2 describing 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.

According to 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 the applicant or proven by Department Counsel,

and has the ultimate burden of persuasion as to obtaining a favorable clearance 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. 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. From these nine conditions, two conditions are applicable to the facts found in this case:

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

From 2012 to the present, Applicant accumulated two delinquent debts, totaling \$182,684, the balances on his first and second mortgages on his former residence. Both mortgages remain unpaid or unresolved after the bank conducted a short sale in 2012 of the house.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Only one mitigating condition might have partial applicability.

(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 (b) would apply if the divorce were shown by Applicant to have a substantial effect on his ability to repay his debts. He did not provide information on his income in 2012 or at the present. He did not submit documents showing the sale price of the house. His credit reports show he did purchase a \$36,000 automobile in 2014. If he could afford to make the payments on that vehicle, it would seem likely he could make similarly sized payments on the \$45,000 the credit union sought to settle his debts. Applicant merely asserts he cannot repay his mortgages. That is not persuasive proof of financial inability and that he acted responsibly under the circumstances during the past three years. He failed to meet his burden of proof on that issue.

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 facts and circumstances surrounding this case. Applicant was an adult when he purchased his marital residence. He has not taken any action since 2012 to resolve his mortgage debts. This inaction leaves him vulnerable to pressure, coercion, exploitation, or duress based on the magnitude of his financial obligation. His lack of action continues to this day, and is obviously voluntary. His inaction will continue based on his past performance. Applicant displayed a lack of good judgment incurring the debts. Next, he exhibited a continued lack of appropriate judgment by failing to make payments on any of his delinquent debts during the past three years.

Overall, the record evidence leaves me with questions or substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guideline for Financial Considerations. I conclude the whole-person concept against Applicant.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	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.

PHILIP S. HOWE
Administrative Judge