



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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-----) ISCR Case No. 12-11455
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)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

March 8, 2016

Decision

MOGUL, Martin H., Administrative Judge:

On July 1, 2015, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. 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 for SORs issued after September 1, 2006.

On July 20, 2015, Applicant replied to the SOR (RSOR) in writing, and he requested a hearing before an Administrative Judge (AJ). The case was assigned to this AJ on October 21, 2015. DOHA issued a notice of hearing on November 5, 2015, and the hearing was held as scheduled on December 7, 2015. The Government offered Exhibits 1 through 6, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through F, which were also admitted without objection. One additional witness testified on behalf of Applicant. The record was kept open until December 21, 2015, to allow Applicant to submit additional evidence. Applicant submitted post-hearing documents that were timely received and entered into

evidence without objection as Exhibits G through K. DOHA received the transcript of the hearing (Tr) on December 15, 2015. Based upon a review of the pleadings, exhibits, and the testimony of Applicant and his witness, eligibility for access to classified information is granted.

Findings of Fact

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, and the testimony of Applicant, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 57 years old. He is married, and he has two adult daughters. Applicant received a Bachelor of Science degree in Information Systems in 2001. He has been employed as a Cyber Security Engineer by his current employer, a defense contractor, for 10 years. He is seeking a DoD security clearance in connection with his employment in the defense sector.

Guideline F, Financial Considerations

The SOR lists three allegations (1.a. through 1.c.) regarding financial difficulties, specifically delinquent debts, under Adjudicative Guideline F. The SOR debts will be discussed below in the same order as they were listed on the SOR:

1.a. This overdue debt is cited in the SOR in the amount of \$73,874. At the hearing, Applicant testified that this debt and 1.c., below, were both incurred for a first and second mortgage for a house that he purchased in 2005 or 2006, for a total amount of \$335,000. This debt, 1.a., is for the second mortgage. Applicant explained that his wife was earning income by selling items on eBay, and when the economy faltered, her monthly income of approximately \$4,000 to \$5,000 simply vanished. As he realized that he was going to be unable to pay his two mortgage payments because of this lost income, he and his wife both contacted the mortgage holder (the bank) to attempt to have their mortgage reduced, but the bank refused to reduce the monthly payments. Applicant also engaged the services of a realtor to attempt to sell the house in a short sale, but the bank refused to allow the short sale. Ultimately, because of their inability to make the monthly payments, the bank foreclosed on their home. Applicant was aware that the house was eventually sold, but he did not know the amount for which that the house sold. (Tr at 22-29.)

Applicant testified that he received a Form 1099-A, which is a "Cancellation of Debt" form, showing that the debt for both mortgages of \$295,875 was cancelled on November 17, 2010. Applicant stated that he had paid the proper tax for the 1099-A form that he received. (Tr at 29-31, Exhibit C.)

Applicant indicated that after he continued to see that the credit reports showed these debts for his first and second mortgages were still delinquent, he filed a dispute with the credit reporting agencies. Since he did that his credit reports no longer show that he owes these debts. (Tr at 31-32.)

1.b. This overdue debt is cited in the SOR for a charged-off account in the amount of \$5,892. Applicant testified that this debt was for a credit card that became delinquent during the period when he began having problems with his finances. He averred that he made a payment arrangement with the creditor to pay \$360 a month toward this debt, and this debt has now been satisfied. (Tr at 33-34.) Exhibits A and B establish that this debt has been resolved.

1.c. This overdue debt is cited in the SOR for a mortgage account that has been foreclosed in the amount of \$296,000. As reviewed above, in 1.a., this debt arose from his first mortgage. He received a 1099-A for the cancellation of this debt, and this debt has now been resolved. (Exhibit C.)

Applicant testified that he now earns approximately \$5,000 a month. He also testified that he currently lives in a home that he owns, and his monthly mortgage payments are about \$1,000. He has never been late with his mortgage payments for this house. He also indicated that he is not delinquent on any of his other current bills. (Tr at 39-42.) Applicant also submitted a Form 1099-K showing that his wife earned a gross income in 2014 of approximately \$32,000 to supplement the family income. (Exhibit G.)

Mitigation

Applicant submitted a positive letter of recommendation from the Sector Information Security Officer of his employer. (Exhibit F.) He was described as “a loyal, trustworthy American of good moral character.”

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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s over-arching 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 avoided drawing 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, 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 conditions that could raise security concerns and could potentially apply in this case. Under AG ¶ 19(a), “an inability or unwillingness to satisfy debts,” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations,” may raise security concerns. I find that both of these disqualifying conditions apply to Applicant in this case. The evidence has established that Applicant accumulated significant delinquent debt, primarily through his home foreclosure, several years ago.

AG ¶ 20 provides conditions that could mitigate security concerns from financial difficulties. Under AG ¶ 20(b), it may be mitigating where, “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.” Since Applicant’s debts were the result of the downturn of the economy, which resulted in his wife’s monthly income of between \$4,000 and \$5,000 being reduced to virtually nothing, I find this mitigating condition is potentially applicable in this case.

I also find that Applicant acted responsibly under the circumstances. When Applicant became aware of his financial difficulties both he and his wife contacted the bank several times to attempt to renegotiate their mortgages. They also engaged the services of a realtor to attempt to sell the house in a short sale. While their efforts were not successful, and the house was ultimately foreclosed, they did make a good-faith effort to resolve these debts. Also, the bank did issue to them a Form 1099-A showing that these debts had been cancelled. They also resolved their other delinquent debt, the overdue credit card account, listed as SOR allegation 1.b.

AG ¶ 20(d) also is applicable, since Applicant has “initiated a good-faith effort to repay his overdue creditors or otherwise resolve debts.” Finally, Applicant’s current financial situation is more stable and secure. Therefore, I find Guideline F for Applicant.

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 access to a classified position 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. Based on all of the reasons cited above as to why the mitigating conditions are applicable and controlling, I find that the record evidence leaves me with no significant questions or doubts as to Applicant’s eligibility and suitability for a security clearance under the whole-person concept. For all

these reasons, I conclude Applicant has mitigated the security concerns under the whole-person concept.

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: FOR APPLICANT

Subparagraphs 1.a.- 1.c.: 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.

Martin H. Mogul
Administrative Judge