



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS and APPEALS**



In the matter of:)
)
) ISCR Case No. 13-00121
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

01/22/2014

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. Six years ago, a separation caused by marital problems resulted in foreclosure on Applicant’s home and repossession of his truck. He and his spouse have since reconciled and their finances have greatly improved. The financial considerations security concerns have been resolved. Clearance is granted.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on August 21, 2013, the DoD issued an SOR detailing financial considerations security concerns. DoD adjudicators could not find that it was clearly consistent with the national interest to grant or continue Applicant’s security clearance. On September 6, 2013, Applicant

¹ 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.

answered the SOR and requested a hearing. On December 6, 2013, I was assigned the case. On December 30, 2013, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for the hearing convened on January 13, 2014. I admitted Government's Exhibits (Ex.) 1 through 5 and Applicant's Exhibits A through F, without objection. Applicant testified at the hearing. The record was held open to allow Applicant to submit additional information. Additional material (Ex. G through K) was submitted and admitted into the record without objection. On January 22, 2014, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he admitted owing the two debts alleged in the SOR. He stated that approximately seven years previous he and his wife went through difficult times in their marriage that resulted in a separation and financial difficulties. Applicant's admissions are incorporated herein. After a thorough review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 34-year-old team leader who has worked for a defense contractor since February 2005, and seeks to obtain a security clearance. His annual salary is approximately \$75,000. (Ex. G, Tr. 33) His wife works for the same defense contractor and she makes approximately \$45,000 annually. Their combined income is approximately \$120,000 per year. (Tr. 33) They have three children ages 2, 7, and 15. (Tr. 34)

From September 2004 until February 2005, when Applicant obtained his current job, he was unemployed. He lost his job because he had car problems and was unable to get to work in a different town. (Tr. 38)

Applicant called no witnesses other than himself. Coworkers and friends state Applicant is organized, efficient, highly technical, a man of integrity, and highly committed to his work, family, and responsibilities. (Ex. A, B, C)

In March 2006, Applicant purchased a home for \$95,000 with a 30-year mortgage, and \$802 monthly payments. (Ex. 3) Applicant and his wife then experienced marital problems. He stopped making the monthly mortgage payments and in December 2007, the home went to foreclosure. In March 2007, the lender paid Applicant \$200 or \$300 for the return of the keys, thereby receiving the home intact without damage. (Tr. 28) The house was resold. Applicant believes the fair market value at the time of sale was approximately \$120,000. (Tr. 30) He provided documentation showing the current fair market value of the house is approximately \$88,000, down from \$90,000 in 2011.²

In Applicant's May 2013 Personal Subject Interview, he said he has no plans to make payment on the house and intends to wait and let it be removed from his credit report due to age. (Ex. 3) The lender has made no demand for payment. No deficiency following the resale of the home may exist.

² The home's fair market value at the time of the foreclosure is not part of the record.

In July 2006, Applicant purchased a truck for \$25,321 with monthly payments of \$533 for six years. (Ex. 3) A year and six months after purchasing the vehicle he was no longer able to make the payments. He voluntarily surrendered the truck. (Ex. 3, Tr. 42) He had paid approximately \$10,000 on the vehicle when it was repossessed. (Tr. 56) In June 2008, the account was charged-off. (Tr. 26) He asserts the creditor never contacted him following the repossession of the truck. (Tr. 27) The account does not appear on any of his three most recent credit reports. (Ex. D, E, F)

In December 2006, Applicant purchased a vehicle for \$19,186. (Ex. 3) He was unable to make the payments because of the separation from his wife. He called the dealership and they sent a tow truck to retrieve the vehicle. (Ex. 3) In November 2011, the lender charged off \$7,831 on this account. (Ex. 2) Applicant later retrieved the vehicle from the lender, paid the loan, and still owns the vehicle. (Tr. 24)

In March 2007, six months after separating, Applicant and his wife reconciled. (Ex. 3, Tr. 25) Throughout 2012, they received credit counseling through a financial repair company. (Ex. 3)

Applicant hired a consolidation credit repair company which helped him resolve all his financial problems except for the repossessed truck and foreclosed home. (Tr. 31) He paid them every month and they paid various creditors. He paid them approximately \$2,000. (Tr. 54) With their help, his credit score improved from 576 to 725. (Ex. C, Tr. 23) The credit repair company told him not to make any payments to the lender of the repossessed truck.

In November 2013, Applicant purchased a home for \$210,000 with a \$12,000 down payment. (Tr. 46) When he purchased the home, the mortgage company from the foreclosed home did not appear on his credit report. (Tr. 47)

Applicant's monthly discretionary income (monthly income less monthly expenses and debt payment) is \$1,646. (Ex. H) He has approximately \$36,000 in his retirement account. (Ex. J) He purchased a 2013 truck for \$28,000 with monthly payments of \$620. (Tr. 49, 50) His wife has one credit card. The balance on that card is paid each month. (Tr. 50) He has \$2,000 in his saving account and \$5,000 in his checking account. (Tr. 51)

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, which must be considered 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 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 interests of 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 to obtain 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 safeguard 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 (EO) 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

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or 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 his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

In 2007, Applicant separated from his spouse for six months due to marital problems. At that time, his home went to foreclosure and his truck was repossessed. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Five 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 incurred the two SOR debts more than six years ago when he was experiencing marital problems. The separation from his wife resulted in him being unable to continue his monthly truck and house payments. His debts are neither recent nor numerous. He acted responsibly with both obligations. He maintained contact with his mortgage company and was paid by mortgage company for returning the keys to the

home. He maintained contact with the lender on his truck and arranged a voluntary surrender of the vehicle.

Under AG ¶ 20(a), Applicant's financial problems resulted from a marital separation. He and his wife reconciled after six months. He acted responsibly in working with his creditors. He also hired a firm to help him address other debts not listed in the SOR. The two SOR debts do not cast doubt on Applicant's current reliability, trustworthiness, or good judgment. AG ¶ 20(a) applies.

Under AG ¶ 20(b), Applicant experienced a six-month separation that resulted in the repossession and foreclosure. The separation was largely beyond his control and he has acted responsibly under the circumstances. AG ¶ 20(b) applies.

Under AG ¶ 20 (c), there are clear indications his finances are under control. In the past year his financial status was good enough for him to purchase a home and a new truck. His credit score has improved from 576 to 725. The foreclosure and repossession occurred in 2007 and 2008, six and seven years ago. These debts no longer appear on his current credit reports. AG ¶ 20(c) applies.

Applicant has not made any payment on the two debts, but neither creditor contacted him following the foreclosure or the repossession. He paid \$10,000 on the truck before he voluntarily surrendered it. The debts do not appear on his current credit reports. He arranged to return the keys to the mortgage company. He owed \$95,000 on the house and believes the fair market value of the home was approximately \$120,000. The value of the house has declined since 2008 and is now worth approximately \$88,000. The mortgage company has taken no steps to obtain a judgment against Applicant for any deficiency owing following the resale of the home. Although he has made no payments on these debts, it appears they have otherwise been resolved, if any debt existed. AG ¶ 20 (d) 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 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 the facts and circumstances surrounding this case. In 2007 and 2008, Applicant experienced financial problems when he separated from his wife for six months. He acted responsibly in keeping in contact with his mortgage company and the lender on his truck. The mortgage company paid him for returning the keys to the home. He has received no demand for payment following the foreclosure. Likewise, he remained in contact with the lender and voluntarily returned the truck when he could no longer make his payments.

In the six years since Applicant's financial difficulties, his financial picture has greatly improved. His credit score has improved. He was credit worthy enough to purchase a home and a new truck. He has only one credit card and the balance is paid each month. He and his wife are making \$120,000 annually. His financial problems are in the past.

The issue is not simply whether all his debts are paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2 (a)(1).) Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his financial considerations.

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, Financial Considerations: FOR APPLICANT

Subparagraphs 1.a and 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. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge