



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



In the matter of:)	
)	
)	ISCR Case No. 13-00915
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

01/23/2014

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is granted.

Statement of the Case

On October 21, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) 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 DOD on September 1, 2006.

Appellant answered the SOR on November 7, 2013, and requested a hearing before an administrative judge. The case was assigned to me on December 19, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 6, 2014. I convened the hearing as scheduled on January 14, 2014. The

Government offered exhibits (GE) 1 through 4, and they were admitted into evidence without objection. Applicant testified and offered Applicant's Exhibit A. The record was held open until January 28, 2014, to provide Applicant the opportunity to present additional documents, which he did. It was marked AE B and admitted into evidence without objection.¹ DOHA received the hearing transcript (Tr.) on January 23, 2014.

Findings of Fact

Applicant admitted both allegations in the SOR with explanations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 49 years old. He graduated from high school in 1983. He served in the Navy from 1986 to 1992 and was honorably discharged. He was married from 1987 to 2004. He has a grown son.

In 2006 Applicant relocated for a job. He purchased three properties in his new location, one was his primary residence. All three houses were foreclosed. He financed the properties with no down payments and with 80% and 20% mortgage loans. His plan was to fix up the two properties and rent them. He was able to rent one property for about six months.²

In 2007, Applicant was in a serious motorcycle accident when a vehicle did not stop at a red light and hit him. The driver did not have insurance and was driving on a suspended license. Applicant was out of work from March through August. When he returned to work he was only able to work part-time due to his physical therapy. He worked part-time for about a month. He held a security clearance at the time but lost it because he began having financial problems when he was unable to work. He did his best to pay his monthly expenses and was able to pay his truck and motorcycle payments. He attempted to make partial payments on his mortgage loans, but the mortgage companies would not accept partial payments. The properties were foreclosed and sold. The laws in the state where Appellant lives does not allow for a deficiency on a primary residence. After foreclosure, the other two properties were sold. The 80% mortgage loans were satisfied. The 20% mortgage loans are the debts alleged in SOR ¶¶ 1.a (\$72,438) and 1.b (\$39,462).³

Applicant had periods of unemployment for short periods of time in 2008 and 2009. He was unemployed about 30 days in 2010; six weeks in 2011; four months in 2012; and seven months in 2013.⁴

¹ Hearing Exhibit I is Department Counsel's memoranda.

² Tr. 17-18, 23-24, 33-36.

³ Tr. 18-19, 22-25, 30, 36-38.

⁴ Tr. 21-22.

In 2010 Applicant contacted the creditor in SOR ¶ 1.a to provide a partial payment, but it would not accept the partial payment. He recently was able to negotiate a settlement plan with the creditor. He will make five monthly payments of \$200 to show good faith and then the creditor will provide a settlement offer. He intends to settle the debt.⁵

Applicant contacted the creditor for the mortgage in SOR ¶ 1.b. It has agreed to refinance the loan so Applicant can make affordable payments. The creditor agreed to accept \$200 monthly payments. The creditor has agreed to provide a settlement offer in the future. If Applicant cannot pay the settlement the creditor will continue to accept \$200 a month payments. Applicant has arranged an automatic payment through his bank account for the payments.⁶

Applicant is current on all of his bills. He withdrew money from his 401K account, paid the taxes, and used the remaining money to pay his bills.⁷

Applicant understands he took a risk when he purchased two rental properties, but at the time the real estate market was robust. It collapsed in 2008. He admitted he made a poor decision at the time. He was living within his means until he was in the motorcycle accident.⁸

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 are used 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.

⁵ Tr. 19-20, 25-27, 39; AE A.

⁶ Tr. 26-27; AE A, B.

⁷ Tr. 28-29.

⁸ Tr. 35, 42.

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 not drawn 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, 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 and 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 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 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. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

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

Applicant has two delinquent debts relating to mortgage loans that are unpaid. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's inability to meet his financial obligations initially occurred due to an accident that was not his fault. These circumstances are unlikely to recur and do not cast doubt on his current reliability, trustworthiness or good judgment. However, because Applicant is still resolving the two mortgage loan debts they are still current. Therefore, AG ¶ 20(a) only partially applies.

Applicant was financially solvent until he was involved in accident where a person who was uninsured and driving on a suspended license hit him on his motorcycle after running a red light with her vehicle. He was unable to work and began having financial problems. This caused him to lose his security clearance and his ability to maintain steady well-paying employment. Applicant's financial problems were beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant withdrew money from his 401K retirement account to catch-up on his bills. His only remaining delinquent debts are the two 20% mortgage loans on two rental properties that were foreclosed. Applicant has negotiated affordable monthly payments with the creditors with a promise from one creditor to provide a settlement amount in the future. He has an automatic monthly payment plan with the other creditor. He hopes to receive a settlement offer in the future, but if not, he will

continue to make monthly payments. Applicant has acted responsibly. AG ¶ 20(b) applies.

Applicant has no other delinquent debts. There is no evidence he has received financial counseling, but there are clear indications his financial problems are under control. He has initiated a good-faith effort to repay his creditors and resolve the remaining two debts. AG ¶¶ 20(c) and 20(d) apply.

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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 49 years old. He began having financial problems when he was in an accident and was unable to work. This caused him to lose his security clearance, which made it more difficult for him to work in his area of expertise. Prior to his accident he had purchased three real estate properties that were later foreclosed. He has two remaining mortgage loans that he is resolving. He has payment plans with the creditors and is hopeful he will receive settlement offers in the future to resolve the debts. Applicant admitted that he took a risk when he purchased the real estate, but at the time the market was booming. Although the market eventually collapsed, it was the accident and loss of his job that caused his financial problems. He is now financially solvent, except for the remaining two 20% mortgage loans. I found Applicant credible that he intends to continue to make monthly payments to the two remaining creditors and resolve these debts. His finances are not a security concern. Overall, the record evidence leaves me with no 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 under the financial considerations guideline.

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. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge