



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



In the matter of:)
)
) ISCR Case No. 14-03061
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

04/24/2015

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On July 24, 2014, 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 effective within the DOD for SORs issued after September 1, 2006.

On September 2, 2014, Applicant answered the SOR, and he elected to have his case decided on the written record. On December 2, 2014, Department Counsel submitted the Government’s file of relevant material (FORM). The FORM was provided to Applicant on December 3, 2014 and it was received on December 29, 2014.

Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant submitted additional information. The Government's exhibits (Items 1 through 7), and Applicant's exhibits are admitted. The case was assigned to me on March 12, 2014. I held the record open until April 20, 2015, to allow Applicant to submit additional information, which he did. It is marked Item 8.¹

Findings of Fact

Applicant did not affirmatively admit or deny the allegations in the SOR. Therefore, I will consider the two allegations as denials. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 53 years old. He married in 1988. He has two sons, ages 25 and 22. He retired from a state agency in early 2002, after working twenty years, and receives a pension. He has worked as a federal contractor since 2002. He has held a security clearance since 2001.

Applicant's credit report reflects two delinquent mortgages.² In Applicant's response to the FORM, he stated he began having financial problems when his young son was gravely ill. His son required on-going treatments, hospitalization, and surgery. The treatments required his wife to quit her job to stay home and care for their sick son. At the same time, Applicant's employer decreased his workload by forty percent. These events created a financial hardship for the family.³ The mortgage debt alleged in the SOR ¶ 1.a (\$106,881) became delinquent in approximately March 2012.⁴ He indicated that the debt in SOR ¶ 1.b (\$11,176), a second mortgage was settled in 2010 with three payments over a three month period.⁵

In a letter dated June 2013 provided to the creditor in SOR ¶ 1.a, Applicant requested the creditor consider his application for a loan modification. He explained that his son developed a medical condition sometime in 2008. It is unclear when his wife left her job, but sometime later she resumed work, but could only find temporary employment, which ended approximately six months later. She was not eligible for unemployment benefits because of her temporary work status. It is unknown how long she was out of work. She commenced full-time employment in August 2011. Applicant

¹ Item 9 is Department Counsel's memorandum reflecting the Government did not object to the submission of the additional document.

² Item 6.

³ Response to FORM.

⁴ Item 7.

⁵ Answer to SOR; Item 8.

indicated in his letter, that although both he and his wife are working their salaries are lower, and they have fewer benefits.⁶

In Applicant's response to the FORM, he stated he made immediate contact with the creditor in SOR ¶ 1.a in an attempt to work out a plan regarding his mortgage payments.⁷ He stated that despite his constant communication, the creditor was unresponsive and denied his requests. He provided a loan modification application and correspondence from June 2013. Applicant indicated in his answer to the FORM that legal action by his state's attorney general's office on behalf of those holding mortgages with this creditor prompted the creditor to begin to resolve the delinquent mortgages they held. Applicant provided a letter from the creditor dated June 2013 requesting additional information and a letter from October 2014, advising Applicant of who his point of contact is with the creditor. Applicant indicated in his response to the FORM that the loan modification process is slow, but as required by federal law the creditor is working on the modification.

Applicant indicated that he is expanding his business to presumably increase his income and that since his wife has returned to work, he is working hard to satisfy all of their financial obligations and become current on their payments.

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 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.

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

⁶ Response to FORM with attachments.

⁷ Applicant did not provide a date of when he contacted the creditor.

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, 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 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 that an applicant may deliberately or inadvertently fail to 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. I have considered the following under AG ¶ 19:

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

Applicant had two delinquent mortgage debts totaling approximately \$118,057 that became delinquent in approximately 2010 and 2011. I find the above disqualifying conditions have been raised.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under 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;
- (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 began having financial problems when his son became sick in 2008, and sometime later his wife had to quit her job to stay home and care for him. In addition, Applicant's workload at the time, decreased by forty percent. The mortgage loan in SOR ¶ 1.a became delinquent in March 2012.⁹ He has been attempting to modify this loan. He resolved the mortgage debt in SOR ¶ 1.b in 2010 with three payments to the creditor in March, April, and May 2010. AG ¶ 20(a) does not apply because Applicant is still resolving his delinquent mortgage.

There is ample evidence to show that the conditions that resulted in the financial problems were largely beyond Applicant's control. For the full application of AG ¶ 20(b) there must be evidence that Applicant acted responsibly under the circumstances. Applicant provided documents to show that he is attempting to obtain a loan modification for the delinquent mortgage alleged in SOR ¶ 1.a. In 2010 he resolved the debt in SOR ¶ 1.b. AG ¶ 20(b) applies. There is no evidence Applicant has received financial counseling. There is some evidence to show Applicant is attempting to resolve the large mortgage debt through a loan modification. Applicant's financial problems are under control. AG ¶ 20(c) applies. Applicant resolved the debt in SOR ¶ 1.b. Therefore, AG ¶ 20(d) applies to that debt.

⁹ Item 7.

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 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 53 years old. He worked for a state agency for twenty years and receives a pension. His son became sick and his wife stopped working to care for him. There was a downturn in the economy which impacted his business. Applicant is attempting to resolve the delinquent mortgage in SOR ¶ 1.a through a loan modification. This process is long and cumbersome and the delay in resolving this debt is not attributed to him. He resolved his other debt in 2010. There is sufficient evidence to meet his burden of persuasion. The record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the security concerns arising under Guideline F, 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, 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's eligibility for a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge