



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



In the matter of:)	
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)	
)	ISCR Case No. 14-00372
Applicant for Security Clearance)	

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

05/30/2014

Decision

LYNCH, Noreen, A., Administrative Judge:

On February 27, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) alleging security concerns arising under Guideline F (Financial Considerations) and Guideline E (Personal Conduct).¹ The action was taken under 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) implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on April 8, 2014. A notice of hearing was issued on April 17, 2014, scheduling the hearing for May 16, 2014. Government Exhibits (GX) 1-14 were admitted into evidence without objection. Applicant testified. He did not offer any exhibits for the record. The transcript (Tr.) was

¹At the hearing, the Government withdrew the allegations under Guideline E (Personal Conduct).

received on May 23, 2014. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his answer to the SOR, Applicant admitted one allegation for a debt, with explanation. He denied the two allegations for falsification under Guideline E (Personal Conduct).

Applicant is a 70-year-old employee of a defense contractor. He graduated from college in 1972. He served in the United States Marine Corps from September 1966 until November 1969. Applicant is divorced, and he has three adult children. Applicant has been with his employer since 2012. (GX 1) However, he has worked in the defense contracting field for many years. He held a security clearance in the military.

The SOR alleges an indebtedness for a past-due mortgage account in the amount of \$65,000. In addition, the SOR alleges two falsifications on Applicant's August 2013 security clearance application (SF 86).

In 2006, Applicant, his daughter, son-in-law, and a friend purchased and invested in a waterfront property. The property was unimproved, but it was designed for home building and was zoned residential. The purchase price of the property was \$750,000. (GX 10) Applicant's share was 25%. However, the downturn in the real estate market interfered with the profitability and interest in the property. Applicant's share of the mortgage was about \$5,000 a month. The other three partners dropped out of the deal, and Applicant alone was left with the mortgage loan. (Tr. 12) At the time of the purchase, Applicant earned approximately \$60,000 a year. (Tr. 32)

Applicant's daughter, who was a real estate agent, advised him about the waterfront property, and she believed it would be a good investment with a quick turnaround for a profitable sale. He did not do any independent research on the property.

In approximately 2009, Applicant contracted a disease that attacked his autoimmune system and left him ill. He required chemotherapy treatments and could not work. (Tr. 11) At that time, he had his own business. His inability to work resulted in delinquent debts. Applicant used his savings to pay bills that he could. However, eventually he could not maintain the mortgage payment on the waterfront property. In 2010, Applicant attempted a short sale. He stopped making payments on the mortgage loan, but the bank did not agree to a short sale. He knows the property sold after foreclosure. (Tr. 45) Applicant has not made any contact with the mortgage lender to discover whether he owes a deficiency balance. (Tr. 62) He does not believe that he has the responsibility to take any action after so many years.

Applicant could not recall many details about his various properties and investments. (Tr. 59) He stated that he forgot about one property that he owns which is valued at \$60,000. (GX 14)

In August 2013, Applicant completed a security clearance application. He disclosed his health problems that interfered with his ability to work. He also noted a foreclosure on a property. In response to Section 28, Applicant commented that he shut down his business due to an illness and could not fulfill some of his financial obligations. He also described the waterfront investment property and the forfeiture of the property. Applicant explained that he had no intention of deceiving the Government.

Applicant earns approximately \$115,000 annually. (Tr. 35) He pays alimony to his ex-wife, which amounts to about \$24,000 a year. He has a 401(k) which is valued at \$74,000. After expenses and debt payments, he has a net remainder of about \$623. (GX 2) Applicant does not handle his own financial affairs. (Tr. 65) His ex-wife pays all the bills and handles his checkbook. His pay is deposited to his ex-wife. Applicant uses a bank card to obtain cash for his expenses.

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The Government must present evidence to establish controverted facts alleged in the SOR. 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. . . ." ² The burden of proof is something less than a preponderance of evidence. ³ The ultimate burden of persuasion is on the applicant. ⁴

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 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.”⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying:

(a) inability or unwillingness to satisfy debts;

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

(b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;

(c) a history of not meeting financial obligations;

(d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;

(e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;

(f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern;

(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;

(h) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income; and

(i) compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

Applicant incurred a delinquent debt on a past-due mortgage payment. His credit report confirms his debt. Consequently, the evidence is sufficient to raise disqualifying conditions in ¶¶ 19(a) and 19(c).

AG ¶ 20 provides conditions that could mitigate security concerns. The following are potentially relevant:

(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 does not take responsibility for the mortgage default. Granted, he lost his other three partners and he became ill and could not work for a period of time. However, when he learned about the situation, he defaulted and never looked back. He did not act responsibly. He has not received financial counseling. With steady employment since 2012, Applicant has made no effort to contact the mortgage lender. He walked away from his obligation, with no attempt to rectify the situation. Applicant does not handle his own financial affairs today. He leaves it all to his ex-wife. AG ¶¶ 20(a), (b), (c) and (d) do not 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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case as well as the whole-person factors. Applicant is 70 years old. He served in the military and has worked in the defense contracting field for many years. Applicant suffered from an illness that left him unable to work for several years. He was forced to close his business.

Applicant decided to invest in a waterfront property in 2006. He did this on the advice of his daughter. He did not investigate or research the property. Due to the economic downturn, the property did not result in a profitable investment. Granted, he lost his other partners and was left with the mortgage account. However, despite the events beyond his control, he did not act responsibly. He walked away from his obligation. He did not honor a good-faith obligation. Despite several years of a steady income, Applicant has not attempted to resolve this financial issue. He does not handle any of his financial matters. I have doubts about his judgment, reliability, and commitment to address his financial issues.

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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline E:	WITHDRAWN

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's security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge