



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



In the matter of:)
)
-----) ISCR Case No. 14-00384
)
Applicant for Security Clearance)

Appearances

For Government: Philip J. Katauskas, Esq.
For Applicant: *Pro se*

10/17/2014

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant mitigated the Government's security concerns under Guideline F. Applicant's eligibility for a security clearance is granted.

Statement of the Case

On March 14, 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 (AG) effective within the DOD on September 1, 2006.

In a letter dated May 5, 2014, Applicant admitted in part and denied in part the first allegation raised in the SOR, and admitted the second and final allegation raised. He also requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was assigned the case on June 26, 2014.

The Defense Office of Hearings and Appeals (DOHA) initially issued a notice of hearing on July 23, 2014, setting the hearing for August 21, 2014. For administrative reasons, the hearing was reset and, in a notice dated August 21, 2014, the hearing was scheduled for August 27, 2014. The hearing was convened as scheduled.

The Government offered five documents, which were accepted without objection as exhibits (Exs.) 1-5. Applicant offered testimony, two witnesses, and three documents, which were accepted as Exs. A-C. He was given until September 3, 2014, to submit any additional materials. On September 2, 2014, the Government forwarded two additional documents from Applicant without objection. They were accepted into the record as Exs. D-E. The transcript of the proceeding (Tr.) was received on September 9, 2014, and the record was closed. Based on my review of the testimony and materials, Applicant met his burden in mitigating Guideline F security clearances. Security clearance is granted.

Findings of Fact

Appellant is a 36-year-old senior vice-president of a defense contractor, for which he has worked since the summer of 2013. He is highly regarded at work. Ex. C. Applicant has earned a bachelor's degree in management and a master of business administration degree. Applicant is presently working toward a master's degree in technology. He is a divorced father of two minor children. At issue in this case are a primary and a secondary residential mortgage on the same property.

In 2005, when Applicant purchased the residential property at issue, he was "in an extremely strong financial position" that lasted until about 2011. Tr. 47, 54-55. The house was initially used by him as his principal residence. He then moved in 2008, purchased a new home and, due to poor real estate market sales at the time, rented his former home to a relative. Tr. 57-58. It was his plan that the rent for the home would cover the primary and secondary mortgage payments. In 2011, he faced some financial setbacks. The setbacks included two tenants who stopped making rental payments to Applicant. The first tenant, a relative, was in poor health and grew unable to pay rent. She eventually moved. She was replaced by a new tenant whose income flow was interrupted by a government shutdown. When her salary resumed, however, she continued to avoid paying rent. Meanwhile, Applicant's own salary was slashed from \$280,000 to \$120,000, then to about \$70,000, and there was a general downturn in business. Tr. 50, 57-58. These factors adversely affected his ability to make timely payments on the house's home loans. Tr. 51. He tried to work with the lenders, but to no avail. Although he would eventually learn how to pursue an \$18,000 claim against the second tenant, the complaint was entered in 2014, too late to help Applicant during the 2011-2013 period. During that period, little progress was made due to Applicant's deficient income.

In early 2014, Applicant was able to enter into a foreclosure prevention and repayment agreement with his primary lender. Answer to the SOR, attachments 1-2. To expedite his progress on the two home loans he made: 1) a \$20,000 payment on the

debt noted at SOR 1.a for \$304,953, which offset the deficiency that was noted on the account, and 2) a payment of \$8,500 on the loan noted at SOR 1.b for \$75,393. Tr. 52-53; Answer to the SOR, attachments 3-6. It was implemented in early May 2014. His income was then impacted when his romantic relationship failed and he had to relocate back to his most recent house, instead of continuing to share expenses at his girlfriend's home. The expense jeopardized his ability to make timely payments on his new repayment plans. Tr. 78. After reviewing the situation, he planned a strategy for realistically addressing his two loans. He concluded that the fiscally responsible thing to do was to find a committed short sale buyer and pursue a short sale of the property.

Applicant has been working with his lenders to agree to a short sale. By July 2014, Applicant found a ready, willing, and able buyer. Applicant secured a sales contract on the property and a real estate settlement expert represented him as a third-party negotiator to obtain short-sale authorization from both the lenders. Ex. B. That expert affirmed that all necessary documentation and an executed contract had been submitted previously to the lender for review. Ex. B. Applicant provided evidence that the primary lender was still reviewing his short sale application as of August 25, 2014. Ex. D. Applicant testified that the fact the lenders have not identified any problems by this time speaks in favor of their permitting the short sale. Tr. 81-82.

A letter dated August 29, 2014, from the real estate settlement expert states that, based on her experience and discussions with the two lenders, she has "reasonable assurances that a short sale will be approved." Ex. E. If for some reason Applicant is denied a short sale with this buyer, he is committed to finding another buyer or finding a renter whose rent could pay for Applicant's monthly loan payments. Tr. 82, 84.

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.

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.

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

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence showing Applicant was delinquent on two home loans associated with a home purchase. Such facts are sufficient to invoke two of the financial considerations disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts; and

AG ¶ 19(c): a history of not meeting financial obligations.

Four conditions could mitigate these finance related security concerns:

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;

AG ¶ 20(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;

AG ¶ 20(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

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant was caught in a perfect storm of misfortune that is unlikely to recur. Two successive tenants were unable to make timely rental payments on the house at issue. Given the downward trend in the real estate market, Applicant planned on generating sufficient income through rental of the property to pay its mortgages. This became his most viable option after a soured economy and an unforeseen business downturn saw his personal income shrink from \$280,000, to \$120,000, to about \$70,000, which undermined his ability to use his own work-generated income to pay the mortgages. Applicant did not walk away from the property. Rather, he eventually raised sufficient funds to enter into repayment agreements with substantial first payments. However, a romantic breakup caused him to move, undermining his budgeting. After close scrutiny, Applicant realized his best route to honor his debt on the home was to seek a short sale. He secured the help of a professional agent with experience in negotiating such matters, then found a willing buyer. He completed and submitted the necessary paperwork to formally request a short sale. He has yet to receive final approval for the short sale, but the facts and the professional opinion of the agent indicate that a positive outcome should soon be forthcoming. For now, it's a waiting game. However, under the unique circumstances, it is clear Applicant has demonstrated currently sound judgment and devised a workable plan to address this debt and has implemented it. Mitigating conditions AG ¶ 20(a), AG ¶ 20(b), AG ¶ 20(c), and AG ¶ 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). 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 incorporated my comments under the three guidelines at issue in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Appellant is a 36-year-old manager of a defense contracting firm. He is well educated in his field, having earned a master's degree in business administration. He is presently seeking to complete a second master's program. Applicant is divorced with two minor children.

Applicant purchased a house that he had planned to use as his primary residence. He moved to another area at a time when the economy and real estate market were facing unfavorable times. Applicant decided to use the house as a rental property, using collected rents to meet his mortgage obligations. This constructively became his only option when his salary was drastically slashed to the point he could not pay any discrepancies between mortgage payments amounts owed and rental payments due. He briefly tried to establish a debt repayment plan, but soon realized his best way to honor his debt was through a short sale. With a short sales expert's help, he found a buyer and submitted the necessary requests for conveying the house as a short sale. His requests are still under consideration, which the expert says tends to show that his offer will be accepted. It is clear Applicant explored all of his options. He devised a plan, has implemented it, and all indicators tend to show he will be successful. Given the facts, evidence, and Applicant's highly credible testimony and demeanor, I have no doubts concerning Applicant or the earnestness of his efforts. I find Therefore, I conclude Applicant mitigated security concerns arising under Guideline F.

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.

Arthur E. Marshall, Jr.
Administrative Judge