



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



In the matter of:)	
)	
)	ISCR Case No. 14-00666
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Esq., Department Counsel
For Applicant: *Pro se*

01/15/2015

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On May 1, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted under Executive Order (EO) 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) implemented by the DOD on September 1, 2006.

Applicant answered the SOR (Ans.) on June 24, 2014, and requested a hearing. The case was originally assigned to another administrative judge on July 25, 2014, but was reassigned to me on August 21, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 26, 2014, setting the hearing for October 9, 2014. The Government offered exhibits (GE) 1 through 4, which were

admitted into evidence. GE 3 and AE 4 were admitted over Applicant's objections. Department Counsel's exhibit index is marked as Hearing Exhibit (HE) I. Applicant testified, called a witness, and offered exhibits (AE) A through D, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on October 20, 2014.

Findings of Fact

Applicant is 36 years old and has worked as a communication specialist for five years. He is a high school graduate who has completed some college courses. He has been married for 12 years and has two children. He served in the Army for eight years, including serving three combat tours in Afghanistan and Iraq where he received the Bronze Star for his actions, among many other decorations. He received an honorable discharge in the pay grade of E-6. He held a secret clearance while serving in the Army.¹

The SOR alleged Applicant was indebted on a mortgage account in the approximate amount of \$97,144, which resulted in foreclosure of the property. The debt was listed on credit reports dated November 2013 and July 2014. Applicant admitted the debt. That admission is incorporated into these findings of fact.²

In April 2009, while Applicant was serving his last deployment, he and his wife purchased a home in his wife's hometown. Once Applicant returned from his deployment and separated from the Army, he intended to move to this location and find employment. Applicant's wife's parents lived just a few blocks away from the recently purchased home. In February 2011, Applicant's in-laws began harassing Applicant's family. The harassment took the form of threatening notes, emails, phone calls, and text messages. The in-laws would constantly drive by Applicant's house during all hours of the day and night. Applicant finally contacted the police about the harassment and was told to seek a restraining order from the court against the in-laws. Applicant's wife petitioned the court for a restraining order in July 2011, which was granted. Even though a restraining order was granted, Applicant did not feel that his family was safe at their current location, so he began searching for a new home.³

Applicant found a home about ten miles outside town, and in May 2012, he purchased the property. He also put his existing home up for sale. It was on the market for about one year before he purchased the new home, but it did not sell. In order not to lose the new home, Applicant purchased it without selling his first home. He decided to rent the first home. His mortgage payment on this property was \$1,000 per month. He attracted some tenants to rent the property for \$800 per month. The tenants did not pay the full amount of rent from the very beginning, and eventually stopped paying rent

¹ Tr. at 5, 16, 28-31; GE 1.

² GE 3-4; Ans.

³ Tr. at 32-35; AE B.

altogether. Eight months later, the renters abandoned the property after causing significant damage.⁴

With no rental income, Applicant was having difficulty paying both mortgages. He sought a mortgage loan modification from his original lender for his first home. He was informed that the loan had been sold and he should contact the new mortgage holder. He did so, and has supporting documentation showing his communication with the mortgage holder about obtaining a modification dated August 2013, well before the SOR was issued. Applicant provided documents showing his ongoing efforts to seek a modification from the mortgage holder that run from August 2013 through June 2014. He was never informed by the lender that he did not qualify for a modification. At some point, (record is silent) Applicant contacted a realtor about the possibility of short-selling the property. The realtor advised that Applicant first needed to repair the tenant-caused damage and then they could put the house on the market for a short sale. Before he could effectuate the repairs, his wife became ill and he was unable to proceed further. He received formal notice of the foreclosure in February 2014. The property sold through foreclosure for \$70,000. He originally purchased the property for \$117,000, of which his mortgage amount was \$105,000. After the foreclosure, he contacted the mortgage holder about the status of any deficiency liability he may have. He was told to wait to receive an IRS form 1099 indicating a cancellation of debt. As of the hearing date, he has not received a form 1099, or any notice of deficiency.⁵

Applicant is current on his existing mortgage and on all his other obligations. His current mortgage balance is \$104,000 and his monthly payment is about \$700. His wife owns a small business that operates at the break-even point.⁶

Applicant was supported by the testimony of his supervisor. He characterized him as a highly trustworthy and reliable person with great integrity. He recommended that he retain his security clearance. Additionally, another supervisor wrote a supporting letter for him. She also states that in her six years of working with him, he has been a trustworthy and reliable employee. He received a quarterly award (January-March 2010) and an annual award (January 2011) from his employer for outstanding job performance. He also received a glowing recommendation from his military commander and presented his last three years of Army evaluation reports reflecting he was considered an overall "superior" soldier.⁷

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief

⁴ Tr. at 35-36, 54, 58, 60.

⁵ Tr. at 37-36, 41, 43-44, 51; AE A, C.

⁶ Tr. at 44, 58, 68; GE 3.

⁷ Tr. at 70-73; AE D.

introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions that are to be 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, administrative judges apply the guidelines 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.

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable 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 about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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* Executive Order 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 as follows:

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 under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant had a delinquent real estate debt that resulted in a foreclosure sale. The evidence is sufficient to raise the disqualifying conditions stated in AG ¶¶ 19(a) and 19(c).

Several 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

The foreclosure sale was recent. Since he is current on his home mortgage and has no other delinquent debts in other areas of his life, it is reasonable to conclude that

this type of debt will not recur, nor does it cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) partially applies.

Although Applicant's decision to purchase a second property without selling his first home was a financial decision within his control, the harassment from his in-laws, which necessitated the move and having tenants that defaulted on rent and caused extensive property damage to the house in question were conditions beyond his control. He acted responsibly by seeking a loan modification from the mortgage holder and by seeking information on pursuing a short sale. He provided documentation showing his continuous correspondence with the mortgage holder about trying to qualify for a modification well before the SOR issued. After the foreclosure, he also contacted the mortgage holder about his potential responsibilities for any deficiency that could result from the foreclosure sale. AG ¶ 20(b) applies.

There is no evidence in the record concerning any financial counseling, but the property sold through foreclosure, and there is no evidence that Applicant is liable for any deficiency from the sale. The mortgage holder informed him that he should receive a Form 1099 cancelling the debt. The evidence supports a determination that the debt has been resolved and that he made good-faith efforts to resolve the debt. 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 relevant 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.

I found Applicant to be honest and candid about the circumstances that led to his debt liability. I also considered his military record, including his multiple combat tours and his decorations, including the Bronze Star. He is well thought of by his supervisors and was described as trustworthy and a man of integrity. He found himself in a situation that led to him purchasing a second home to remove a threat to his family, even though this action ultimately caused his financial distress when he could not sell the first home and he suffered financially because of untrustworthy and unreliable tenants. I found nothing to indicate a likelihood that Applicant would find himself in a similar future situation.

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 financial considerations security concerns.

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
Subparagraph 1.a:	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 eligibility for a security clearance. Eligibility for access to classified information is granted.

Robert E. Coacher
Administrative Judge