



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 14-00745 |
| |) | |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: *Pro se*

12/29/2014

Decision

WHITE, David M., Administrative Judge:

Applicant incurred some delinquent debt as a result of family members' conduct that was unknown to him at the time. He has taken positive steps to address the delinquencies, and substantially resolved them. Resulting security concerns were mitigated. Based upon a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application on October 3, 2013. On April 25, 2014, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, 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 for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (AR) on May 16, 2014, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on August 22, 2014. The case was assigned to me on August 27, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Video Teleconference Hearing on September 3, 2014, setting the hearing date for October 3, 2014. I convened the hearing as scheduled, with Department Counsel participating from DOHA Headquarters by video teleconference. The Government offered Exhibits (GE) 1 through 6, which were admitted without objection; and Hearing Exhibit (HE) I, a Government exhibit list. Applicant offered Exhibits (AE) A through P, which were admitted without objection, and testified on his own behalf. I granted Applicant's request to leave the record open until October 17, 2014, for submission of additional evidence. Applicant timely submitted AE Q, which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on October 14, 2014.

Findings of Fact

Applicant is a 62-year-old employee of a defense contractor, where he has worked since February 2006. He is a high school graduate, who honorably retired as a chief petty officer after more than 21 years of naval service. He has held a security clearance, without incident, since 1977. (GE 1.)

Applicant admitted the factual allegations set forth in SOR ¶¶ 1.a, 1.b, and 1.d, with explanations. He denied the allegation in SOR ¶ 1.c, with explanations concerning the foreclosure on his home mortgage. (AR.) Applicant's admissions are incorporated in the following findings.

Applicant and his wife have been married for 34 years, and she handled the family finances for most of that time because he was frequently deployed at sea. Until she had to stop working fairly recently due to back problems, she worked in banking and Applicant had no reason to doubt her financial management. They consistently had good credit until around 2007, when his wife started gambling in several state lottery games. She let several credit card bills go unpaid while unsuccessfully trying to win back the money to pay them. Applicant first learned about the problem when he was called into the office at work in 2008 and informed that his employer had received a garnishment order against his wages. This order was related to the \$12,836 default judgment to a collection agency alleged in SOR ¶ 1.a. Over the intervening years, the law firm collecting the judgment has turned the garnishment order on and off several times to incur additional legal fees. The balance due on this debt is down to less than \$3,000 with the garnishment having recently been cancelled again. Applicant, and his adult daughter who lives with him and his wife, have arranged to save several thousand dollars during pay periods of non-garnishment that he has available to help repay it. (AR Encl. 1; GE 4; AE A; AE C; Tr. 43-44, 49-59, 70-72.)

Applicant and his adult daughter took over management of the family finances and cancelled their credit cards after the garnishment started. In 2011, however, his wife stopped the automatic payments from their joint bank account toward their

mortgage loan without his knowledge, and used those funds to resume gambling for about two years. She also hid or destroyed all the mail they received concerning that loan. He first learned about this when a coworker's spouse, who worked in real estate, called to ask him why his home was being put up for public auction. He then called the mortgage lender who had initiated foreclosure proceedings, and was informed that they had not received payments during the past two years and the loan was then about \$26,000 past due. This is the debt alleged in SOR ¶ 1.c. Applicant asked how he could bring the loan up to date to avoid losing the home he had owned for 21 years, and was informed that he would have to make one payment of \$13,000, and increase his monthly payment from around \$1,200 to \$2,500. He could not afford to accept that proposed modification, so the lender sold the home in June 2013 for about \$60,000. Applicant and his family moved into a rental home. The total loan balance due had been about \$146,000 at the time of foreclosure but the lender has neither made any effort to collect a deficiency balance, nor reported an ongoing debt on Applicant's credit report. (AR, Encl. 3; GE 3; GE 5; AE K; AE N; Tr. 44-46, 62-68.)

Applicant joined as a claimant in the National Mortgage Settlement reached by the Consumer Financial Protection Bureau and his state's attorney general with his mortgage lender for their alleged improper and illegal foreclosure practices. At the time of his hearing, he had not yet received the offered payment from the consent judgment against the lender, but his financial counselor advised him that he would not owe anything further to the lender after their foreclosure action. (AR; AE N; Tr. 38-39, 66-67, 81-83.)

The other two SOR-listed delinquent debts arose from an unpaid traffic ticket and an unpaid bridge toll incurred by Applicant's son-in-law while driving the car that Applicant helped him to purchase by cosigning the loan. The car was formerly registered in Applicant's name, so the fines were assessed against him. When he found out about them, he paid them. He has since transferred ownership of the car to his son-in-law to avoid liability for such infractions in the future. (AR Encl. 2 and 4; AE B; AE M; Tr. 59-62.)

Applicant has been advised and assisted concerning resolution of his delinquent debts by a financial counselor since August 2013. His efforts have been successful in bringing all his accounts current, and he has incurred no new delinquencies in two years. He has completely removed his wife from access to family assets and credit so that she does not use those funds improperly. He does not gamble himself, carries a monthly surplus of income over expenses, and is now conscientious about monitoring the family finances. (AR; AE D through AE L; AE O; AE P; Tr. 46-49, 61, 66-79.)

Applicant submitted a copy of his most recent employee performance appraisal. It rates him highly, and contains complimentary comments about his reliability. He explained during testimony that his company's policies prevented his supervisors from providing other good-character evidence. (AE Q; Tr. 105-106.)

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 (DCs) and mitigating conditions (MCs), which 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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 protect or 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.

Analysis

Guideline F, Financial Considerations

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 record evidence potentially raises security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

Department Counsel also suggested potential applicability of AG ¶ 19(f) because the two larger SOR-listed debts were related to his wife's gambling away family funds while Applicant was not paying close enough attention. I do not find evidence of unwillingness on Applicant's part to satisfy his debts, but he admitted that he was unable to do so for several years due to that gambling. This inability created a brief but recent history of not meeting some of his financial obligations, thereby shifting the burden to Applicant to mitigate security concerns arising under these DCs. The SOR allegations and evidence do not support any other DC under this guideline.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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's financial problems arose due to his inattention to the family finances during a period of time when his wife became a compulsive gambler and lost substantial funds, as well as two traffic-related debts incurred by his son-in-law. Once he became aware of the nature and extent of his financial problems, he took reasonable and necessary steps to correct the sources of the problem and prevent any such recurrence. The evidence strongly suggests that financial issues are unlikely to recur and do not reflect adversely on Applicant's current reliability and judgment, establishing substantial mitigation under AG ¶ 20(a).

Applicant also offered evidence to support mitigation under AG ¶ 20(b). His wife's unexpected and unknown gambling problems were beyond his control, as was his son-in-law's traffic violations. Once he became aware of the resulting debts, he did everything in his power to resolve them. This establishes that he acted responsibly under the circumstances with respect to these debts.

Applicant has been actively engaged in financial counseling for more than a year. He brought all of his accounts current except for a small portion of the judgment debt alleged in SOR ¶ 1.a, which he intends to resolve as well. He demonstrated a solid basis on which to predict improved financial management, and sufficient income to remain financially solvent while preventing his wife from incurring further gambling losses. These facts establish additional mitigation under AG ¶¶ 20(c) and (d).

"An applicant is not required to show that [he] has completely paid off [his] indebtedness, only that [he] has established a reasonable plan to resolve [his] debts and has 'taken significant actions to implement that plan.'" ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)). Applicant has successfully established a meaningful track record of debt resolution that predated his security clearance application and successfully continues to date.

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 pertinent facts and circumstances surrounding this case. Applicant is a sincere and mature individual, who has accepted accountability for debts incurred by family members without his knowledge. His positive actions to address both the sources and results of his indebtedness have substantially eliminated the potential for pressure, coercion, or duress, and make continuation or recurrence of similar problems unlikely. Overall, the record evidence creates no doubt as to Applicant's present eligibility and suitability for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

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| Paragraph 1, Guideline F: | FOR APPLICANT |
| Subparagraphs 1.a through 1.d: | 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.

DAVID M. WHITE
Administrative Judge