



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



In the matter of:)
)
) ISCR Case No. 14-00820
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esquire, Department Counsel
For Applicant: *Pro se*

10/10/2014

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant’s eligibility for access to classified information is granted.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on September 29, 2013. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on April 17, 2014, detailing security concerns under Guideline F, financial considerations and Guideline E, personal conduct. 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 For Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR on April 29, 2014. He submitted a notarized, written response to the SOR allegations dated June 13, 2014, and he requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a file of relevant material (FORM) and mailed Applicant a complete copy on August 22, 2014. Applicant received the FORM on September 10, 2014. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He submitted a response dated September 18, 2014. DOHA assigned this case to me on October 5, 2014. The Government submitted nine exhibits, which have been marked as Items 1-9. Items 1-5 and 7-9 are admitted into the record. Applicant's response to the SOR has been marked as Item 4, and the SOR has been marked as Item 1. His written response to the FORM is admitted into the record as Applicant Exhibit (AE) A, Item I - VII.

Evidentiary Ruling

Applicant objects to the admissibility of Item 6, the summary of his November 15, 2013 personal subject interview (PSI), on the grounds that this document, which is part of the Report of Investigation, has not been reviewed and authenticated as required by Enclosure 3, ¶3.1.20 of the Directive. Department Counsel has not responded to Applicant's objection. Item 6 indicates that Applicant's statements to the Office of Personnel Management (OPM) are unsworn. Applicant's objection is valid. Item 6 will not be admitted into the record.

Findings of Fact

In his Answer to the SOR, Applicant denied the factual allegations in the SOR.¹ He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 51 years old, works part-time as a technician for a Department of Defense contractor. Applicant began this employment in April 2013.²

¹When SOR allegations are controverted, the Government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. "That burden has two components. First, the Government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the Government must establish a nexus between the existence of the established facts and events and a legitimate security concern." See ISCR Case No. 07-18525 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 08-06605 at 3 (App. Bd. Feb. 4, 2010); ISCR Case No. 08-07290 at 2 (App. Bd. Nov. 17, 2009).

²Item 5.

Applicant was born in a country which was part of the former Soviet Union. He and his wife married in their former homeland in 1986. They have 27-year-old daughter. Applicant and his family emigrated to the United States in July 1992. He became a United States citizen in September 1999. His wife and daughter are naturalized United States citizens. His parents emigrated to the United States and are now United States citizens.³

Applicant completed his formal education prior to emigrating to the United States. Since his arrival in the United States more than 20 years ago, Applicant has worked many jobs, including dispatcher, technician, delivery driver, real estate agent, and programmer. He broke his hip causing him to miss work time in 2007. He was unemployed from June 2005 until March 2006. Applicant has several non DOD-related part-time positions that he continues to work.⁴

In 2006, Applicant and his wife purchased a second home, which was financed with a mortgage and a home equity loan. Applicant intended to live in the home as he and his wife had marital difficulties. The house needed repairs before he could move into the house. Before he completed the repairs, he broke his hip and missed time from work, causing him to miss his mortgage payments.⁵

Applicant decided to sell the house at the same time as the economic downturn started. He sought to sell the house as a short-sale. He also advised that he would need to satisfy both loans at the time of the sale. His real estate broker found several purchasers for the house, but could not finalize the sale because the real estate broker could not find a lender to satisfy both loans. Finally, in 2012, his real estate broker found a purchaser and a bank, which would satisfy both loans. The sale of his property finalized in 2012.⁶

Lender A initially financed the primary mortgage of \$224,000 and the home equity loan of \$56,000 on Applicant's house. Lender A transferred the \$56,000 home equity loan through its right of assignment to Lender B, a successor to the creditor identified in SOR ¶ 1.a, on March 29, 2012.⁷

Applicant provided a number of documents related to the sale of his house. By letter dated November 10, 2012, Loan Processing Company C notified Applicant that it would be collecting and processing the loan payments for Lender B. This document

³Item 5.

⁴Item 5.

⁵Item 5.

⁶Item 4.

⁷Item 8; Item 9.

identifies the same loan number as listed for the creditor in SOR ¶ 1.a.⁸ On March 29, 2012, Applicant, his wife, the purchaser of his property, and the buyer's agent signed an Affidavit of Arm's Length Transaction. On the same date, Loan Processing Company C mailed Applicant a letter accepting his offer of \$8,000 as full settlement of the \$56,000 home equity loan identified in SOR ¶ 1.a.⁹ On April 12, 2012, Lender D advised Applicant that it was amending its January 31, 2012 approval letter for the sale of his property. In the letter, Lender D advised that it waived its right to record any deficiency on the loan, set out some settlement criteria, and provided instructions on payment. It directed that the closing on the property must occur by April 27, 2012.¹⁰ Applicant submitted a copy of the April 27, 2012 closing statement, which shows the \$8,000 payment (split between Applicant and the purchaser) to Loan Processing Company C.¹¹

The SOR also identifies a debt owed to the City in which Applicant lives. Applicant provided documentation, which reflects a payment to the county tax collector on April 25, 2012. Applicant advises that this debt had to be paid before closing on the sale of his house.¹²

The credit report of record reflects Applicant disputed SOR ¶ 1.a. It also reflects that he timely pays his bills.¹³

When he completed his e-QIP, Applicant answered "no" to the following question in Section 26: Financial Record- Delinquency Involving Routine Accounts:

Other than previous listed, have any of the following happened?

In the last seven years (a) you defaulted on any type of loan? and (d) you had bills or debts turned over to a collection agency?

Applicant denies that he intentionally falsified his answer to this question. In his response to the SOR, Applicant pointed out that when filing out the e-QIP, he answered "yes" to the question about debts more than 120 days delinquent and provided details about the problems with the mortgage on his second home. He also provided

⁸Item 7; AE A, Item II.

⁹AE A, Items IV and V.

¹⁰AE A, Items III and VI.

¹¹AE A, Item I.

¹²AE A, Item VII.

¹³Item 7.

information about an arrest. Since he paid the debt owed to the City, he was unaware that the debt was listed as unpaid.¹⁴

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.

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. . . ." An applicant has the ultimate burden of persuasion for 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 an 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.

¹⁴Item 4; Item 5.

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.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

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

Applicant developed financial problems after purchasing a second home when he broke his hip and could not work. The Government’s evidence reflects that some of the debts related to this home had not been resolved. These two disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through ¶ 20(f), and the following are potentially applicable:

- (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's debts are related to a second house purchased in 2006 and arose when he was unable to work after he broke his hip. He decided to sell that house, but his broker had great difficulty finding a lender who would agree to resolve both loans on the property. These are factors beyond his control. Applicant acted reasonably by placing his house for sale. Eventually, Applicant did sell the property and resolved all the debts associated with this property. AG ¶ 20(b) applies.

Applicant is not in need of financial counseling as he pays his bills. He made a good faith offer to Lender B to resolve his home equity loan. The lender accepted his offer, and he resolved the debt when he closed on the sale of his second home. He paid the debt to the city. AG ¶¶ 20(c) and 20(d) apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation; and,

(b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

For AG ¶ 16(a) to apply, Applicant's omission must be deliberate. The Government established that Applicant omitted material facts from his September 2013 e-QIP, when he failed to acknowledge that he defaulted on his mortgage loan on his

second house. In his response to the SOR, he denied that he intentionally falsified this information on his e-QIP. When the allegation of falsification is controverted, the Government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's intent or state of mind at the time the omission occurred.¹⁵

While he did not provide the correct answer to the question about a mortgage default, Applicant provided sufficient information about the financial problems he was having with his second house to place the Government on notice that he had financial problems related to this property. Likewise, he was unaware of the collection debt from the City for a previously paid bill. Applicant did not intentionally falsify his answers on the e-QIP. SOR allegation 2.a is found in favor of Applicant.¹⁶

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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct,

¹⁵See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

¹⁶In its brief, the Government acknowledged that Applicant had mitigated security concerns under Guideline E.

but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's financial problems arose when he was unable to pay the mortgages on the second house he and his wife purchased. He made a decision to sell the property at the same time the economic downturn began. The change in the economic downturn created significant problems for selling the second house. Applicant eventually sold the house through a short sale and paid his debts related to the second house with the proceeds. Applicant pays his bills and lives within his financial means. He is responsible with his money and his debts. He did not intentionally falsify his answers on his e-QIP. Rather, he provided the Government with all relevant information to assess his security worthiness. Applicant cannot be pressured or coerced because of his past debts or answers on his e-QIP.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his finances and personal conduct under Guidelines F and E.

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
Subparagraph 1.b:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.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.

MARY E. HENRY
Administrative Judge