



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



In the matter of:)
)
) ISCR Case No. 14-00983
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: Marques O. Peterson, Esq.

09/09/2014

Decision

RIVERA, Juan J., Administrative Judge:

Applicant’s financial problem was primarily caused by his separation and the downturn of the financial and real estate markets. He maintained contact with the creditor, negotiated a payment agreement, and is current on his payments. There is no evidence of any prior or current financial irresponsibility. His financial problem is being resolved and under control. Considering the circumstances of this particular case, Applicant’s past financial problem does not show he currently lacks judgment, reliability, or trustworthiness. Clearance granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on December 6, 2012. The Department of Defense (DOD) issued him a Statement of Reasons (SOR) alleging security concerns under Guideline F (financial considerations) on April 28, 2014.¹ Applicant answered the SOR on May 20, 2014, and requested a hearing before

¹ The DOD acted 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* (Directive) (January 2, 1992), as amended; and the Adjudicative Guidelines

an administrative judge. The case was assigned to me on June 26, 2014. Applicant requested a postponement of his hearing from July 11, 2014, to August 19, 2014. The Defense Office of Hearings and Appeals (DOHA) issued the notice of hearing on July 28, 2014, scheduling a hearing for August 19, 2014.

At the hearing, the Government offered four exhibits (GE 1 through 4). Applicant testified, and presented 37 exhibits (AE A through KK). All exhibits, and the documents attached to his answer to the SOR, were admitted without objection and made part of the record. DOHA received the hearing transcript (Tr.) on August 25, 2014.

Findings of Fact

In his answer to the SOR, Applicant denied the SOR factual allegation. After a thorough review of all the evidence, including his testimony and demeanor while testifying, I make the following findings of fact:

Applicant is a 49-year-old employee of a defense contractor. He has been married and divorced twice, and he has a 19-year-old daughter attending college. He received a bachelor's degree in information technology (IT) and business in 1986, and was awarded a master's in business administration (IT and business) in 1993.

Applicant has worked for his employer, a not-for-profit corporation doing business with the Government, for 28 years. He possessed a secret level security clearance for 23 years and a top secret clearance during the last five years. Applicant supervises six employees. He is responsible for his employer's information system, finances, human resources, security, and library. He is also a program manager. There is no evidence to show that Applicant has ever compromised or caused others to compromise classified information. He requires a security clearance to perform his job. Applicant has been successful at his job. During the last three years, his performance has been rated exceptional.

In 2007, Applicant and his live-in partner (partner) purchased a \$1.2 million house with the intent to bring their families to live together. His partner had two children of her own. They had known each other for approximately 20 years, and they had been in a relationship for two to three years. To purchase the house, they put down \$150,000 cash; financed 80 percent on a first mortgage; and used a home equity loan to finance the remaining 10 percent of the purchase price.

At the time of the purchase, Applicant's salary was approximately \$115,000, and he and his partner had a combined income of around \$180,000. The house mortgage payment was approximately \$6,600, and it required about 70 percent of their combined disposable income to make the payments. Applicant testified that their financial situation was tight, but they were excited about their new home and being able to live together as

for Determining Eligibility for Access to Classified Information (AG), implemented by the DOD on September 1, 2006.

a family. Applicant purchased a condominium in 2004 for approximately \$425,000. He was planning on selling the condominium and using the proceeds to reduce the mortgage payments on the house.

About a year after the house purchase, Applicant and his partner started to have financial difficulties and began using their credit cards to pay their debts and day-to-day living expenses. Applicant incurred a large credit card debt, but by the hearing date he had almost paid off all the credit card debt he accumulated. There is no evidence he was delinquent on his credit cards or in any other debt except for the mortgage and the home equity line of credit.

Around 2008, the financial and housing market conditions changed and Applicant was unable to sell the condominium. In 2010, Applicant's relationship with his partner fell apart, and she moved out of the house with her two children. He tried to sell the house for its full price, but because of the downturn of the financial market, the house did not sell. Applicant sought the assistance of a real estate agent and a financial counselor to help him sell the house, and later to negotiate with the bank. Applicant was advised to do a short sale of the house. To qualify for the short sale, he was advised to miss three mortgage payments.

In October 2010, the bank authorized the short sale of the property for \$900,000. (AE C) Based on his advisors' opinions, Applicant had the mistaken belief that the short sale would release him of all financial liability for both the first mortgage and the home equity line of credit. In about July 2011, seven months after the short sale of the house, the bank collection agency initiated efforts to collect \$106,000 for the home equity line of credit.

After he was notified of the bank's collection efforts, Applicant retained an attorney to help him negotiate with the bank. Applicant's attorney and the bank went through a lengthy period of negotiations. The attorney passed away in 2013, and Applicant personally negotiated a payment agreement with the bank in March 2014. Applicant and his partner signed a promissory note in which each agreed to pay \$53,000 to the bank during a 15-year period with no interest accrued. They both have a monthly payment of \$300. Documentary evidence submitted shows that Applicant and his partner have been making timely payments since April 2014. Additionally, in 2014, Applicant refinanced his condominium and made an \$11,000 down payment towards the loan. Although Applicant and his partner are jointly liable for the total debt, his share of the debt is only \$41,000.

Applicant appears to be in a solid financial situation. His yearly salary is approximately \$160,000. After paying his monthly debts and living expenses, he has \$1,500 to \$2,000 left over as disposable income. Additionally, Applicant has \$70,000 in savings accounts; \$20,000 in a checking account; a state college payment plan for his daughter with \$12,000; and a retirement plan with almost \$900,000. A review of Applicant's credit reports show that he is living within his financial means. Outside of the house mortgage and the home equity line of credit alleged in the SOR, there is no

evidence of any additional delinquent debts, or of Applicant having any prior financial problems. Applicant's financial problems are under control.

Applicant was candid and upfront during the security clearance investigation process. He disclosed his financial problems in his 2012 SCA, and was candid and forthcoming during a background interview, and at his hearing.

Policies

Eligibility for access to classified information may be granted "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person's suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government. "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

Under Guideline F, the security concern 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 having to engage in illegal acts to generate funds. (AG ¶ 18)

Applicant and his live-in partner purchased a house above their financial means. They intended to live in the house with their children. He planned on selling his condominium and apply the proceeds to reduce the house mortgage payments. Because of the real estate and financial market downturns, he was unable to sell the condominium. He and his partner experienced financial problems resulting from the use of their credit to pay debts and day-to-day living expenses. After the relationship fell apart in 2010, Applicant attempted without success to sell the house. Financial considerations disqualifying conditions AG ¶ 19(a): "inability or unwillingness to satisfy debts" and AG ¶ 19(c): "a history of not meeting financial obligations," apply.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

- (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;
- (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; and
- (f) the affluence resulted from a legal source of income.

Financial considerations mitigating conditions AG ¶¶ 20(a), (c), and (d) apply. (AG ¶ 20(b) only has partial applicability because Applicant bought a house above his financial means.) Applicant miscalculated his and his partner's financial resources when they bought a house above their financial means. The house was purchased as their residence and not for speculative or investment purposes. He intended to reduce the house loan by selling his condominium and putting down the proceeds of the sale to lower the house mortgage. Because of circumstances beyond his control (the downturn of the financial and real estate markets), he was unable to sell the condominium. Later, the relationship fell apart and Applicant was not able to sell the house.

Applicant maintained contact with the creditor and attempted to resolve his financial problem with the assistance of a real estate counselor, a financial advisor, and a lawyer. He obtained the creditor's approval for a short sale, and based on the wrong advice he received, believed the short sale would release him of all financial liability. When the collection process started, Applicant negotiated with the creditor, and ultimately secured a payment agreement. He is current in his payments and has the financial ability to pay the debt. Additionally, he refinanced his condominium and put down about \$11,000 toward the payment of the debt.

Applicant appears to be in a solid financial situation. His income is sufficient for him to pay his debts and maintain financial responsibility. He is living within his financial means. Outside of the house mortgage and the home equity line of credit debt alleged in the SOR, there is no evidence of any additional delinquent debts, or of Applicant having any prior financial problems.

Considering the evidence as a whole, I find that Applicant's financial problems occurred under circumstances unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and judgment. He demonstrated financial responsibility and there are clear indications that the financial problem is being resolved.

Whole-Person Concept

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c).

Applicant has worked for a Government contractor during 28 years while possessing a security clearance. He is considered to be an excellent performer and valuable employee. Except for the SOR allegation, there is no other evidence of financial problems or any other security concerns.

Applicant demonstrated financial responsibility handling the alleged debt. There is no evidence that he currently has a financial problem. He has learned a hard lesson and I find that his financial problems are unlikely to recur and do not show he currently lacks judgment, reliability, or trustworthiness.

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 the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant eligibility for a security clearance to Applicant. Clearance is granted.

JUAN J. RIVERA
Administrative Judge