



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 14-01649
)
Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

01/29/2015

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 June 19, 2014, the Department of Defense Consolidated Adjudication facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD CAF 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 July 24, 2014, and requested a hearing. The case was assigned to me on September 3, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 28, 2014, setting the hearing for December 2, 2014. The Government offered exhibits (GE) 1 through 6,

which were admitted into evidence without objections.¹ Applicant testified and offered exhibits (AE) A through M, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on December 11, 2014.

Findings of Fact

Applicant is 37 years old and has worked in communications systems for a government contractor since 2009. He has a bachelor's degree and is working on his master's. He is single with no children. He served in the Marine Corps for five years and received an honorable discharge. He was injured while in the Marine Corps and receives a Veterans Affairs (VA) disability as a result. He held a security clearance while in the Marine Corps.²

The SOR alleges Applicant was indebted on a past-due account in the amount of \$13,699 with a loan balance of \$191,619 (SOR ¶ 1.a) and had three properties foreclosed between 2010 and 2013 (SOR ¶ 1.b). The debt was listed on credit reports dated July 2010, January 2014, and May 2014. Applicant admitted the debt listed in SOR ¶ 1.a, but denied the SOR ¶ 1.b allegation. His admission is incorporated into these findings of fact. I make the following additional findings of fact.³

Between 2004 and 2006, Applicant and his then-girlfriend purchased three pieces of property. One was their principle residence (P1) and the other two were residential investment properties (P2 and P3). All three were located in different states. Both he and his girlfriend worked and had combined gross yearly incomes of approximately \$130,000. All three properties were financed by adjustable rate, interest-only mortgages. Sometime in 2006, the real estate market began a downward spiral. Applicant and his girlfriend quit their jobs so that they could focus on their investment properties. They had approximately \$200,000 in savings that they could use to pay expenses. The investment properties encountered several problems. Because the real estate market declined, the values of their properties also declined. This decline in value was also coupled with higher interest rates due to an increase in the adjustable rate mortgages. They were also having difficulty keeping tenants in the two rental properties. The rentals incurred significant income losses for years 2009 through 2012. The relationship between Applicant and his girlfriend became very strained because of the financial problems they encountered. They used most of their savings by this time and they both sought to reenter the job market. Applicant was hired by his present employer after about 18 months of unemployment. It took his girlfriend about two years to find a job. He and his girlfriend broke up and they decided to dispose of their three properties.⁴

¹ Applicant initially objected to GE 2, which was sustained. After further questioning by Government Counsel, GE was reoffered and admitted without objection (See Tr. at 14-15, 47-51).

² Tr. at 5, 27, 30; GE 1, 2.

³ GE 4-6; Ans.

⁴ Tr. at 28-31, 57; AE A, E, F; Ans.

In 2009 Applicant was able to short-sell two properties. In November 2009, Applicant short sold the investment property, P2. The high balance of the loan was over \$321,000. Applicant received a letter from the mortgage holder in March 2012 indicating that the loan was “paid in full through short sale as of November 2009.” He received an IRS Form 1099-C (cancellation of debt), which was claimed on his tax return.⁵

In December 2009, Applicant short sold his residence, P1. The high balance of the loan was over \$432,000. Applicant received a letter from the mortgage holder in December 2009 approving the short sale. The property was sold for approximately \$350,000. He received an IRS Form 1099-C (cancellation of debt), which was claimed on his tax return.⁶

The record evidence shows that neither P1 nor P2 were foreclosed as alleged in SOR ¶ 1.b. Both properties were disposed of through short sales.⁷

Applicant attempted to sell P3 through a short sale. However, the value of this property decreased by about 75 percent and the rental income was operating at a loss. The original mortgage amount, along with a second mortgage, was approximately \$215,000. Two similar properties to P3 were valued at \$70,000 and \$84,000. The mortgage was sold to a new lender and it instituted foreclosure proceedings. The property was sold in September 2014 for approximately \$158,929. The past-due loan that is listed in SOR ¶ 1.a is the loan on P3. The foreclosure took over two years to finalize. Applicant has not been made aware of any deficiency related to P3 for which he is responsible.⁸

Applicant is current on all of his existing financial obligations. He has no new investment properties and indicated that he learned a great deal from his bad investment experience. His current gross yearly income is about \$84,000. He has about \$15,000 to \$20,000 in savings and he has a 401K account with about \$30,000 to \$35,000 in it. He is current on all federal and state taxes, his student loans, and car payments. He has about \$3,600 net remainder each month after all expenses are paid.⁹

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

⁵ Tr. at 31-33, 64; GE 4; AE A, D; Ans.

⁶ Tr. at 31-33, 64; GE 4; AE B, C; Ans.

⁷ Tr. at 34.

⁸ Tr. at 31, 39-41, 44; GE 5; AE G-M; Ans.

⁹ Tr. at 63-64; GE 2, 6; AE I.

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 multiple delinquent real estate debts that resulted in short sales and 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 short sales and foreclosure sale attributed to Applicant were recent. He has no further liability on the mortgages for P1 or P2, and he has not been made aware of any deficiency for P3. Since he is current on his student loans and has no other delinquent debts in other areas of his life, it is reasonable to conclude that these types of debts will not recur, nor do they cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) partially applies.

Although Applicant's decision to invest in real estate was a financial decision within his control where he must accept the inherent risks of investing, the national recession affecting real estate and inability to keep paying tenants in the rental

properties were conditions beyond his control. He acted responsibly by negotiating short sales on two of the properties and attempting to do so on the third property. AG ¶ 20(b) applies.

There was no evidence concerning financial counseling. There are clear indications that the debts have been resolved. He supplied documentary evidence showing resolution of the debts. AG ¶ 20(c) partially applies.

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 considered Applicant's service to the country and his service-related disability. I found him to be honest and candid about the circumstances that led to his debt liability. He used the means available to resolve his delinquent real estate debts. He also learned from his mistakes and has established a sound financial record since his investment collapse. His current financial picture is strong. 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

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

Robert E. Coacher
Administrative Judge