



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 14-01717 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

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

09/04/2015

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. In 2005, he filed for bankruptcy protection. The only delinquent obligation he has had since his debts were discharged was the result of a home purchase. The financial consideration security concerns have been mitigated. Clearance is granted.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on June 6, 2014, the DoD issued a Statement of Reasons (SOR) detailing financial considerations security concerns. DoD adjudicators could not find that it is clearly consistent with the national interest to grant or continue Applicant’s security clearance. On September 12,

¹ 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 (AG) effective within the DoD on September 1, 2006.

2014, Applicant answered the SOR and requested a hearing. On March 25, 2015, I was assigned the case. On April 25, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for the hearing convened on May 4, 2015.

At the hearing, Government's Exhibits (Ex) 1 through 4 and Applicant's Exhibits A and B were admitted without objection. Applicant testified at the hearing. The record was held open to allow Applicant to submit additional information. No additional material was received. On May 12, 2015, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he admitted the two SOR allegations. He admitted being past due on a mortgage that was in foreclosure and admitted to filing for Chapter 7 bankruptcy protection in 2005. I incorporate Applicant's admissions as facts. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 47-year-old who has done training and surveillance for a defense contractor since February 2014. (Tr. 49) He seeks to obtain a security clearance. For the period from February to August 2014, his gross pay, before taxes, was \$32,000. His wife's annual pay is \$49,000 as a teacher. (Tr. 50) From November 1987 through November 1990, he honorably served in the U.S. Navy separating as a petty officer third class (E-4). (Tr. 33) He then served in the active reserve until November 1991, when he was medically discharged. (Ex. 1) While in the reserve he received a Meritorious Service Medal. (Tr. 33)

Supervisors and coworkers state Applicant is responsible, industrious, motivated, dedicated, mature, intelligent, well-organized, and has exemplary performance. (Ex. A, BA) He has received numerous letters of appreciation and certificates of achievement. (Ex. B)

After leaving active duty, Applicant went back to school and obtained his teaching degree. (Tr. 34) He was initially unable to find a teaching position. (Tr. 34) He eventually obtained a teaching job in a different state and had a second, part-time job. (Tr. 35) However, his then-wife was not happy with the location, and they moved to another state where he obtained his Class A truck-driving certificate and went to work as a truck driver. (Tr. 35) He was also taking classes towards a master's degree. With his job, he was on the road for a week or two at a time. (Tr. 36) When he returned home, he noticed the bills were not being paid to the point that the water was shut off. (Tr. 36)

In August 2001, Applicant obtained a teaching position. (Tr. 37) His wife refused to go to the new location, filed for divorce, and a protracted and expensive child custody battle commenced. (Ex. A, Tr. 37) Applicant gained full custody of his son. (Tr. 38)

In June 2005, Applicant filed for Chapter 7 bankruptcy protection. (Ex. 3) In 2005, his debts were discharged. At the time of filing, he had a 10-year-old pickup truck,² his wife's vehicle was four years old, and they owned a 13-year old mobile home. (Ex. 4) When they filed, both Applicant and his wife were teachers with a combined monthly income of \$4,700, which equaled their monthly expenditures. (Ex. 4) Their assets were \$25,000 and their liabilities were approximately \$174,000, of which approximately \$33,000 was for student loans. (Ex. 4)

Following bankruptcy, Applicant's financial problems continued when his second wife, who he had married in 2003 became sick and required numerous surgeries. (Tr. 40) In July 2006, a year after the bankruptcy, he purchased a \$345,000 home with a \$276,000 first mortgage and a \$69,000 second mortgage, both were with the same lender and both were for a 30-year term. (Ex. 2, Tr. 41) Repayment terms required him to make \$2,332 monthly payments on the first mortgage and \$733 monthly payments on the second mortgage. (Ex. 3) The mortgage was "paid as agreed." In June 2008, when the mortgage was purchased by another lender, his monthly mortgage payment dropped from \$3,055 to \$2,708. In February 2009, his monthly mortgage payment dropped to \$2,497, when the mortgage was sold to another mortgage company. This account was also paid as agreed. In July 2012, his payment dropped to \$2,168. (Ex. 3) As the monthly mortgage payment dropped by approximately \$900 per month, the mortgage balance increased by approximately \$66,000. (Ex. 3)

Until the spring of 2013, Applicant made all of his mortgage payments in a timely manner. When the home was first purchased, he had a second job as a shuttle driver making \$160 to \$300 a day two or three times a week. (Tr. 43) His part-time job ended when his friend, the company's owner, died of a heart attack. (Tr. 44) For seven years, starting in 2006, Applicant received only one pay increase. (Tr. 42) During this period, his wife was working as a teacher and had a second job as a tutor. (Tr. 53)

Applicant states he purchased his home "at the exact wrong time" and was caught in the fall of the housing market. (Tr. 43) The mortgage was being paid, but he requested the mortgage company to lower the monthly payment. (Tr. 45) He was told he did not qualify for an adjustment because his mortgage payments were current. (Tr. 45) During the eight years they owned the house, the neighborhood deteriorated. (Tr. 48) Additionally, the home was burglarized and had mold. (Ex. B, Tr. 48, 54) Following foreclosure of the \$345,000 house, it is on the market for \$147,000 and has not sold. (Ex. B, Tr. 46)

In the summer of 2013, Applicant moved from the house, but continued to pay the electrical and water utility bills until April 2014. (Tr. 46, 51) Mold in the home had adverse effects on his wife's asthma. (Tr. 46) He offered a deed in lieu of foreclosure and also a short sale, but the lender was unreceptive. (Tr. 46) He has received no communication from the lender since vacating the home. (Tr. 53)

² Applicant stated he is still driving the same vehicle as he had at the time of the bankruptcy, it is now 15 years old, and his current wife's vehicle is six or seven year old. (Tr. 43, 57)

Applicant's teaching job ended when he was unable to pay the annual \$1,300 to \$1,500 cost of continuing education courses required to keep his teaching certificate. (Tr. 48)

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 must be considered 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, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

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 of 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

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

Applicant has a history of financial problems. In June 2005, he had to seek bankruptcy protection. In 2005 his debts were discharged and in 2006 he purchased a home. Changes in the real estate market resulted in the home's fair market value decreasing to less than half of its purchase price. Applicant has been unsuccessful in his attempts to reach a settlement agreement on the house, and he has not occupied the home since 2013. Disqualifying Conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

Five 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;

(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.

In July 2006, Applicant purchased a home at what he described as “at the exact wrong time” and was caught in the falling housing market. Through April 2013, all mortgage payments were timely made. His good credit allowed him to refinance the home each time reducing his monthly mortgage payment. His monthly payments dropped approximately \$900 while he held the mortgage on the house; however, the amount of the mortgage increased by \$66,000.

Applicant and his wife were teachers. They received no pay increases for seven years. They were able to meet their financial obligations because each had a part-time job. He was a shuttle bus driver, and she was a tutor. Applicant was involved in a protracted custody battle over his son. Additionally, his current wife required numerous surgical procedures. In 2013, he could no longer make his monthly payments and approached the mortgage company for help. He was told that since the mortgage was being timely paid he did not qualify for a payment adjustment. The mortgage company would not lower the monthly payment.

During the eight years Applicant owned the house, the neighborhood deteriorated. Additionally, the home was burglarized. Following foreclosure of the \$345,000 house, it is on the market for \$147,000, a 60 percent decrease in value, and still has not sold. Even after vacating the home in the summer of 2013, he continued to pay the electrical and water utility bills on the property until April 2014. Mold in the home had adverse effects on his wife's asthma, which added to their need to vacate the home. The lender was unresponsive to his offer of a deed in lieu of foreclosure and attempts for a short sale.

In June 2005, when Applicant filed for Chapter 7 bankruptcy protection he had a 10-year-old pickup truck, and his wife's vehicle was four years old. They owned a 13-year old mobile home. They were not living beyond their means.

Under AG ¶ 20(a), Applicant's only financial problem during the past 10 years relates to the home he purchased. This is a single delinquent obligation. For seven years after purchasing the home, he was able to timely pay his mortgage. His credit history was sufficient that he was able to reduce his monthly mortgage payment by \$900. When his part-time position as a shuttle bus driver ended, he was no longer able to make his mortgage payments. He acted reasonably by staying in contact with the mortgage company. He was unsuccessful in his attempts to reach a settlement on the property by his offer of deed in lieu of foreclosure and short sale. The loss of the home is an event unlikely to recur and his actions with relation to that foreclosure do not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶ 20(a) applies.

After leaving the Air Force, he went to school and obtained his teaching degree. However, his then-wife did not want to live where Applicant had obtained his teaching position. He moved to another state and obtained a commercial driver's license. As a truck driver he was gone for weeks at-a-time and when he returned home he found the bills were not being paid. When he obtained another teaching position, his wife did not wish to move and filed for divorce, which commenced a protracted child custody battle. He had remarried prior to his 2005 bankruptcy, but following the bankruptcy his financial problems continued when his new wife became sick and needed numerous surgeries. The falling real estate market, the burglary, and the mold in the house all contributed to his vacating the home. These factors (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation) are largely beyond his control. Additionally, he has acted reasonably. Even after surrendering possession of the home, he continued to pay the utility bills. AG ¶ 20(b) applies.

Applicant's annual salary is \$32,000 and his wife's salary is \$49,000. Together their household income of \$81,000 is sufficient to meet their current financial obligations. There are no other delinquent accounts. There are clear indications that his finances are under control. AG ¶ 20(c) 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 the facts and circumstances surrounding this case. In the past ten years, since Applicant's debts were discharged in bankruptcy, he has had only a single delinquent debt, which was related to the purchased of his home. Until April 2013, Applicant met his financial obligations in a timely manner and was able to lower his monthly payments by \$900. The loss of his part-time job, a 60% decline in fair market value of the home, the burglary, and mold contributed to Applicant returning the home to the lender. The single, delinquent obligation is not the type that indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Money was not spent frivolously.

The issue is not simply whether all his debts are paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(a)(1).) 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 security concerns arising from his financial considerations.

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, Financial Considerations: FOR APPLICANT

Subparagraphs 1.a and 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 a security clearance. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge