



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



In the matter of:)
)
) ISCR Case No. 14-02647
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

01/29/2015

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is granted.

Statement of the Case

On August 28, 2014, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) 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 effective within the DOD for SORs issued after September 1, 2006.

On October 1, 2014, Applicant answered the SOR and elected to have his case decided on the written record. On December 1, 2014, Department Counsel submitted the Government’s file of relevant material (FORM). Applicant received the FORM on December 18, 2014, and was afforded an opportunity to file objections and submit

material in refutation, extenuation, or mitigation. Applicant submitted additional information. The case was assigned to me on January 20, 2015.

Findings of Fact

Applicant admitted the allegation in SOR ¶ 1.a in part and denied the remaining allegations. The admission is incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 40 years old, married, and the father of three children. He served in the Navy from 1994 to 1998 and received an honorable discharge. While in the Navy he held a security clearance. He has worked for his present employer since 2000.

Applicant experienced financial problems when he was unable to secure renters for an investment property he owned. He fell behind on the mortgage payments for the investment property in December 2013. He pursued a short sale on the property. Two contracts for short sale fell through. The third contract was completed in October 2014. He provided documentation of the sale and confirmation that the loan was paid in full and the lien on the property was released. Applicant resolved the debt in SOR ¶ 1.a.¹

The debt in SOR ¶ 1.b is for Applicant's mortgage loan on his primary residence. He indicated he made consistent payments on the mortgage loan, except in January 2014, when he fell behind. The following month he caught up his payments and the account is current. He provided supporting documents.²

Applicant acknowledged he was past due in early 2014 in the amount of \$142 for the debt in SOR ¶ 1.c. He was using a debt consolidation program to make the payment on this account and learned in May 2014 that the debt consolidation payment was not covering the minimum payment required. Applicant corrected and increased the payment to cover the amount and the debt is current. He provided supporting documents.³

The debt in SOR ¶ 1.d was paid in February 2014. Applicant closed the account in May 2014. He provided supporting documents.

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

¹ Item 3; Response to the FORM with attachments.

² Item 3.

³ Item 3.

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. 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, 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, and has the ultimate burden of persuasion as to 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 that an applicant may deliberately or inadvertently fail to 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.

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.

The guideline notes several conditions that could raise security concerns. I have considered the following under AG ¶ 19:

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

Applicant had debts that became delinquent when he had difficulty renting his investment property in late 2013. I find the above disqualifying conditions apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under AG ¶ 20:

- (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.

Applicant fell behind on his investment property mortgage when he had difficulty finding tenants. He fell behind one month on his primary residence mortgage. He had two other debts that were in a past-due status. Applicant resolved all of his financial issues. He completed a short sale on the investment property in October 2014, and there is no balance owed. He caught up the following month on his primary residence mortgage. He adjusted the payment plan on a consumer debt so his payments would cover the monthly minimum, and he paid the amount owed on the final debt and closed

the account. AG ¶ 20(a) applies because Applicant no longer owns investment property, which caused his financial issues. Therefore, future problems are unlikely to recur. His difficulty in finding tenants was beyond his control and he acted responsibly by selling the property and paying other debts that were delinquent for a short time. Applicant resolved his financial problems, and there are clear indications his finances are under control. AG ¶¶ 20(b) and 20(c), and 20(d) apply.

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 the 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. 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.

Applicant is 40 years old. He served in the Navy for four years and received an honorable discharge. He has had steady employment with the same employer since 2000. He experienced some financial problems when he had difficulty renting investment property he owned. He acted responsibly by selling the property and resolving the remaining debts. The record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant successfully mitigated the security concerns arising under Guideline F, 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, Guideline F: FOR APPLICANT

Subparagraphs 1.a-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.

Carol G. Ricciardello
Administrative Judge