



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-08029
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel

For Applicant: *Pro se*

September 1, 2009

Decision

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Questionnaire for Sensitive Positions (SF86), on March 5, 2008 (Government Exhibit 1). On December 4, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F concerning the Applicant. 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant filed an Answer to the SOR on January 13, 2009, and requested a decision without a hearing. Pursuant to Paragraph E3.1.7 of the Additional Procedural Guidance at Enclosure 3 of the Directive, Department Counsel requested that a hearing be held in this case. (Transcript at 9.) Department Counsel was prepared to proceed on February 26, 2009. I received the case assignment on March 11, 2009. DOHA issued a

notice of hearing on April 8, 2009, setting the hearing for May 20, 2009. The hearing was convened on that date.

The Government offered Government Exhibits 1 through 4, which were received without objection. Applicant testified on his own behalf, called two additional witnesses, and submitted Applicant's Exhibits A through C, without objection. DOHA received the transcript of the hearing, and the record closed, on May 28, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

The Applicant is 39, married, and has a Bachelor's degree. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment.

Guideline F, Financial Considerations

The Government alleges that the Applicant is financially overextended and therefore at risk of engaging in illegal acts to generate funds. The Applicant admitted both allegations under this guideline. Those admissions are hereby deemed findings of fact.

The two allegations in the SOR concern the Applicant's ownership of a house in City One. In 2003, the Applicant and a friend bought a house together to live in and have as an investment property (rental house). The friend began having financial issues and, in 2004, the Applicant financed the rental house on his own and bought out his partner. This loan was a three year adjustable rate mortgage (ARM). In addition to the first mortgage (SOR 1.b.), the Applicant also took out a home equity line of credit, secured by the same rental house (SOR 1.a.). (Transcript at 22-24.)

Also in 2004, the Applicant moved from City One to City Two, in the same state. In order to maintain his mortgage payments, the Applicant rented the rental house to two friends of his. This arrangement continued until 2007. (Transcript at 24-27.)

While in City Two, the Applicant met and married his wife. She had three children from her first marriage and they have had two children since being married. In 2007, the Applicant was given an internal job opportunity to return to City One. He accepted the opportunity and returned with his wife and new child. The children of her first marriage decided to stay in City Two. This reduced their income by \$1,200 a month in child support. (Transcript at 28-30.)

Once they returned to City One, the Applicant and his wife decided to buy their own house, and had negotiations whereby the renters could buy the rental house or the Applicant would sell the rental house on his own. The renters declined to buy the rental house and the Applicant evicted them in early 2007. Upon reentering the premises, the

Applicant discovered that a lot of damage had been done and that a considerable amount of repair work would be needed to make the rental house marketable. (Transcript at 30-37.)

At the same time in 2007, the Applicant's three year ARM came into effect, which resulted in his mortgage payments for this property almost doubling. The Applicant described his financial situation in 2007 this way:

So with our kids not moving in, my renter basically deciding, you know, to get out of his agreement to purchase the [rental] house, my wife not being able to work [due to pregnancy], and the adjustable loan just continuing to increase the monthly payment, I couldn't afford the two mortgage payments. We had used most of our savings to buy the new house, put down a big down payment on that. We had put down a lot more –or put a lot more money into the other [rental] house to fix it up and my job - - the bonuses that I had discussed when I took the job, the new job, they really didn't pan out to be quite as high as I thought they were going to be as well. (Transcript at 38.)

Subparagraph 1.a. The Applicant admits that he owed approximately \$45,806 for a home equity line of credit on the rental house. As described further under 1.b., below, the rental house was foreclosed upon by the primary mortgage holder. The debt in this paragraph was a secured line of credit, which was erased by the foreclosure sale described below.

Subparagraph 1.b. The Applicant admits that he owed \$368,000 for a first mortgage on the rental house. The Applicant and his wife made the decision to turn the house back to the lender because they could not make the payments due to the situation described above, and were unable to make a short sale due to economic conditions.

The mortgage holder took back the property in November 2007 and held a foreclosure sale in early 2008. The state's anti-deficiency statute applied, which means that the mortgage holder is held to the amount received in the foreclosure sale and the Applicant has no current debt to them. (Government Exhibit 2 at 5-6; Applicant's Exhibit A.)

The Applicant's present financial situation is stable. His most recent credit reports show that he is current on the mortgage on his house, and on all of his other debts. (Government Exhibit 2 at 3, and Exhibit 4; Applicant's Exhibit A; Transcript at 50-51.)

Mitigation

The Applicant's real estate broker/mortgage broker testified. He has known the Applicant for 14 years, and personally rented a room to him at one time. He testified that the Applicant's credit is impeccable and, from personal knowledge, confirmed the basic

details of the Applicant's financial situation, as described in detail above. (Transcript at 61-65.)

The Applicant's wife also testified. She confirmed the basics of their personal situation, as described above. (Transcript at 67-71.)

The Applicant's current supervisor submitted a letter on the Applicant's behalf. This gentleman states, "[The Applicant] is always quick on his feet, with sensible reactions in all the circumstances I've seen him in. I feel confident in saying that he is capable of handling any situation with thoughtfulness and maturity." (Applicant's Exhibit B.)

Policies

Security clearance decisions are not made in a vacuum. When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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. In addition, the administrative judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned 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, 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 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. Security clearance decisions include, by necessity, consideration of the possible risk that the 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.

Finally, as emphasized by President Eisenhower in Section 7 of Executive Order 10865, "Any determination under this order . . . shall be a determination 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. AG ¶ 19(a) states that, "inability or unwillingness to satisfy debts" maybe disqualifying. Under AG ¶ 19(c), "a history of not meeting financial obligations" may also raise security concerns. The Applicant admits that he owed the debts set forth in the SOR. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "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." In addition, AG ¶ 20(b) states that it may be mitigating if "the conditions that resulted in the financial problems were largely beyond the person's control (e.g., . . . a business downturn . . .), and the individual acted responsibly under the circumstances." AG ¶ 20(c) applies when, "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.” Finally, under AG ¶ 20(d), it is a mitigating factor where “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”

The Applicant made what he thought was a reasonable investment in real property. Like many people today, he has lost that investment when the market slumped. He was forced to make a hard choice, and elected to let the rental house go into foreclosure. Accordingly, he has no current debt on his first mortgage or his home equity line of credit because of the foreclosure sale and his state’s anti-deficiency statute. In all other respects, his financial situation is above reproach. His 24 month payment history as reflected in the credit report found in Applicant’s Exhibit A reveals no other late payments whatsoever.

I find the behavior occurred under such unusual circumstances that it is unlikely to recur, and it does not raise concerns about his current reliability, trustworthiness, or good judgment. The evidence shows that the problem is under control and that the situation will not be repeated. He has a firm grasp of his financial situation, and has shown that he can be relied upon in the future. The evidence raises all the mitigating conditions discussed above.

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. 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. In addition, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a) in making such a determination:

- (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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The Applicant got into financial difficulty because of the economic downturn and the decision by his renters to abandon an agreement to buy the rental house. He behaved in a reasonable fashion in attempting to resolve this situation, only using foreclosure as a last resort. The Applicant has behaved reasonably and appropriately in trying to resolve his debts, thereby AG ¶ 2(a)(6) applies. Under the particular circumstances of this case, I find that there is little

to no potential for pressure, coercion, exploitation, or duress (AG ¶2(a)(8)), and that there is little to no likelihood of recurrence (AG ¶2(a)(9)).

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 financial considerations. Paragraph 1 is found for the Applicant. He is currently eligible for a security clearance.

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 THE APPLICANT
Subparagraph 1.a:	For the Applicant
Subparagraph 1.b:	For the 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.

WILFORD H. ROSS
Administrative Judge