



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



In the matter of:)
)
) ISCR Case No. 09-02454
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: John N. Griffith, Esq.

December 10, 2010

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 May 14, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. DOHA 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 Department of Defense on September 1, 2006.

Applicant answered the SOR on May 26, 2010, and requested a hearing before an administrative judge. The case was assigned to me on June 29, 2010. DOHA issued a notice of hearing on July 27, 2010, and the hearing was convened as scheduled on

August 17, 2010. The Government offered exhibits (GE) 1 through 8, which were received without objection. Department Counsel's exhibit index is marked as Hearing Exhibit (HE) I. Applicant testified, called a witness, and offered exhibits (AE) A through T that were admitted into evidence. Applicant's exhibit list was marked as HE II. DOHA received the hearing transcript (Tr.) on July 23, 2010.

Findings of Fact

Applicant is a 33-year-old employee of a defense contractor and works as a network security engineer. He has worked for his current employer since May 2008. He has a bachelor's degree in computer networking technology. He is single and has no children. He has held a security clearance since 2004.¹

The SOR alleges one delinquent debt for \$73,751 that Applicant admits (SOR ¶1.a). The debt was listed on credit reports obtained on December 2, 2008, September 9, 2009, November 24, 2009, June 15, 2010, August 13, 2010 and April 8, 2010.

In January 2004, Applicant purchased a condominium (condo). He bought the condo for approximately \$300,000. His parents assisted him with the purchase by providing a \$50,000 down payment. He agreed to finance the condo with a three-and-a-half year adjustable rate mortgage (ARM). Initially, his monthly payments were \$1,300. Soon after acquiring the property, Applicant's monthly payments increased significantly. At some point, the payments were double the amount he originally was paying. Even after depleting his personal savings and using his 401K savings plan funds, Applicant was having a difficult time making his mortgage payments. In approximately December 2005, he secured a home equity loan of about \$75,000. He used the proceeds for improvements to the condo and also to make his monthly mortgage payments. Applicant was still struggling to make the monthly condo payments so he took in a roommate to help with the payments. This effort did not help Applicant's financial situation. He then sought to sell the condo through a short sale. When a sale failed to transpire and Applicant could no longer make the payments, the condo went into foreclosure in September 2008.²

In December 2009, Applicant filed for Chapter 13 bankruptcy protection. His plan was approved and he currently makes monthly payments to the trustee of \$360. Prior to July 2010, his payments were \$190 per month. He made all of his payments. The debts included in the plan are the debt listed in the SOR and his student loan payments. Applicant was not delinquent on his student loan payments, but his bankruptcy attorney advised him to include those debts in his Chapter 13 bankruptcy. Applicant's most current credit report shows no other delinquent debts.³

¹ Tr. at 33-35, 38-41; GE 2.

² Tr. at 43; GE 5.

³ Tr. at 36-37; AE H, J; GE 8.

Applicant's supervisor testified that Applicant is an honest and trustworthy employee who has shown good judgment. Additionally, Applicant produced numerous character references who all expounded on Applicant's positive qualities and their belief that he deserves a security clearance. His employment performance reports indicated he is an excellent employee. Applicant also participated in financial counseling.⁴

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 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.

⁴ AE B-G, P, Q, I, O.

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 fell delinquent on a home equity loan and was unable or unwilling to satisfy his obligation. The evidence is sufficient to raise the above disqualifying conditions.

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.

Applicant was put into his financial difficulty when he financed his condo using an ARM that accelerated his payment amount. Applicant's experience with this type of loan and the disastrous consequences from it, make it unlikely that he will experience this type of financial transaction again. Additionally, this transaction does not cast doubt on his current, reliability, trustworthiness, or good judgment. This conclusion is supported by his character evidence. AG ¶ 20(a) is applicable.

Applicant's financial difficulties were partly caused by an increase in monthly payments caused by his ARM. Applicant should have known that this event would happen since by definition an ARM increases over time. This would not be considered a condition that was outside his control. Therefore, AG ¶ 20(b) is not applicable. However, Applicant acted reasonable by using his savings and retirement income to make his mortgage payments, by taking a roommate to help make his payment, and by trying to short sell his condo prior to foreclosure. He also filed Chapter 13 bankruptcy to address the unresolved home equity loan and is making his scheduled payments under the plan.

Applicant received financial counseling. His finances are being resolved and are under control. His monthly payments on his bankruptcy plan are sufficient to support a finding that he has made a good-faith effort to pay or otherwise resolve his remaining debts. AG ¶¶ 20(c) and 20(d) are applicable.

Applicant met his burden to establish sufficient mitigation evidence under AG ¶¶ 20(a), (c), and (d) on the sole debt listed in the SOR.

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 excellent work record, his character references, and the support from his direct supervisor. I also found Applicant to be honest and candid about his finances. Applicant found himself with an unfavorable real estate mortgage that ultimately caused him financial distress, including a foreclosure and bankruptcy. However, he made the best of the situation and is paying off the SOR debt through his bankruptcy plan. Otherwise, he has no unresolved delinquent debts.

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
Subparagraph 1.a:	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