



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



In the matter of:)	
)	
)	ISCR Case No. 09-05004
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: D. Michael Lyles, Esquire, Department Counsel
For Applicant: *Pro se*

November 8, 2010

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I grant Applicant's eligibility for access to classified information.

Applicant completed his Electronic Questionnaire for Investigations Processing (e-QIP) on August 26, 2008. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on June 28, 2010, detailing security concerns under Guideline F, Financial Considerations, that provided the basis for its preliminary decision to deny him a security clearance. 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 (AG) implemented on September 1, 2006.

Applicant acknowledged receipt of the SOR on July 12, 2010. He answered the SOR in writing and requested a hearing before an administrative judge. DOHA received

the request, and Department Counsel was prepared to proceed on August 25, 2010. I received the case assignment on August 30, 2010. DOHA issued a notice of hearing on August 31, 2010, and I convened the hearing as scheduled on September 15, 2010. The Government offered five exhibits (GE) 1 through 5, which were received and admitted into evidence without objection. Applicant testified. He submitted seven exhibits (AE) A through G, which were received and admitted into evidence without objection. The record closed on September 15, 2010. DOHA received the transcript of the hearing (Tr.) on September 23, 2010.

Procedural Ruling

Notice

Applicant received the hearing notice less than 15 days before the hearing. (Tr. 11.) I advised Applicant of his right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. Applicant affirmatively waived his right to 15 days notice. (*Id.*)

Findings of Fact

In his Answer to the SOR, Applicant admitted all the factual allegations in the SOR. His admissions are incorporated herein as findings of fact. He asserted that he had mitigated the Government's security concerns. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 55 years old, works as a design engineer in telecommunications for a Department of Defense contractor. He began his employment with this company two years ago. The senior vice-president, a retired Major General from the United States Army, describes Applicant as a model employee, who has not caused any problems for his management chain of command. Applicant is a devoted professional, technically competent, and hardworking, who works on multi-million dollar projects. The senior vice-president indicated that there has not been any security issues or even a hint of impropriety from a security standpoint with Applicant. The senior vice-president is aware of the reason for the Government's security concerns and states that Applicant does not have financial problems. Another colleague also wrote a complimentary letter about Applicant's work ethic and work skills. Both consider Applicant trustworthy.¹

Applicant and his first wife divorced in December 2006 after many years of marriage. They have three children, ages 30, 28, and 24, and two grandchildren. Applicant remarried in 2008. His children are emancipated.²

¹Response to SOR; AE F.

²GE 1; Tr. 18-19, 37.

Applicant enlisted in the United States Navy in 1973, where he worked as a radioman. His active duty service ended in 1975 and he is in the inactive reserves. In 1975, Applicant received an engineering license from the Federal Communications Commission, and in 2007, he obtained additional training which resulted in a certification as a registered communications distribution designer.³

From 1983 until 1998, Applicant worked as engineer in the telecommunications industry for a major company. In late 1998, his company restructured and downsized, which caused lay-offs of many employees, including him. At this time, he earned approximately \$90,000 a year. For the next 10 years, Applicant worked various contract jobs, some at significantly lower salaries than he earned in 1998. During this period of time, he experienced two periods of unemployment. One occurred between 1998 and 1999 and the other one occurred between 2006 and 2007. Both necessitated filing for unemployment benefits, which he received.⁴

After he was laid-off in 1998, Applicant contacted an attorney to discuss his financial situation because Applicant want to keep his home. Upon the advice of this attorney, Applicant filed for Chapter 7 bankruptcy. Except for his home mortgage, the court discharged his debts in May 1999. Applicant has not filed a second bankruptcy since this time.⁵

Around 2005, Applicant refinanced his family home to buy an investment property to rent. He used the equity in his home for the required \$37,000 down payment on the investment property. He rented the investment property, but eventually the tenant stopped paying the rent. He initiated court proceedings against the tenant, but the results are unknown.⁶

In 2006, he and his first wife separated. Their divorce became final in December 2006. As part of their divorce, the court required him to sell both properties they owned and split the proceeds. By this time, the real estate sales market where he lived had begun to slow. He attempted to sell both houses through a short sale, but could not.⁷

Around the same time as his divorce, he worked fewer hours or not at all. Although she was working, his former wife missed several mortgage payments on the primary home, which put them 90 days behind in their mortgage. He also fell behind in his mortgage payments of the rental home. Both mortgage companies then foreclosed

³GE 1; Tr. 18-19.

⁴GE 1; AE A; Tr. 19-21.

⁵GE 3; Tr. 20, 29-30, 35. The investigator discussed an unverified Chapter 13 bankruptcy in her report, but did not discuss the verified Chapter 7 bankruptcy. GE 3.

⁶Tr. 22-23.

⁷AE B; AE C; Tr. 21-22, 35-38.

on these properties. The properties have been sold. Applicant does not owe the mortgage companies any additional money on his mortgage debts.⁸

While riding his bicycle in 2008, a car hit Applicant, causing physical injuries. He incurred medical bills, all which should have been paid by insurance. When he returned from an overseas assignment, he learned the bill in SOR ¶ 1.a had not been paid. He paid this bill in full.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 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. . . ." An applicant has the ultimate burden of persuasion for 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

⁸Response to SOR; AE D; Tr. 21-23.

⁹Response to SOR; AE E; Tr. 24.

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 an 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.

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.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and especially the following:

19(a) inability or unwillingness to satisfy debts.

19(c) a history of not meeting financial obligations.

Applicant developed financial problems when he and his first wife separated and the court directed he sell the family home and an investment property at the same time his work assignments declined. He was unable to pay his debts for a period of time. These two disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through 20(f), and especially the following:

20(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.

20(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.

20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant and his first wife divorced in 2006 after many years of marriage. At the same time, his work assignments through contract jobs declined. Both are circumstances beyond his control. In an effort to comply with the court order in his divorce, he tried to sell his primary residence and investment property through a short sale. He hired a company to help him with the sale, but he was unable to sell the properties. His effort to sell the property in a tight real estate market is reasonable. His wife failed to assist him with the payment of the mortgage on the primary residence and his tenant stopped paying the rent on his investment property, factors which contributed to his financial issues. With his limited income, he could not pay the mortgages and the mortgagor foreclosed on both properties. After the properties were sold, he did not owe any additional money to the mortgage company. He paid he one remaining debt in the SOR. His finances are under control and his debts are resolved. AG ¶¶ 20(b) and 20(c) apply in this case. AG ¶ 20(d) applies to SOR ¶ 1.a.

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 an 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a

reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. When Applicant was laid-off from his job in 1998, he became concerned about losing his house. He contacted an attorney, who recommended that he file a Chapter 7 bankruptcy. He did and the court discharged his debts in May 1999. He paid his debts until his divorce and a decline in work in 2007. He attempted to sell his houses through a short-sale, but could not. The mortgagor sold the property after foreclosing on it. Applicant does not owe any money on his mortgages. He has sufficient income to meet his monthly expenses. His fiances are stable and he pays his bills. His past financial problems are resolved and not a security concern. He has mitigated the Government's security concerns.

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 finances under Guideline F.

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
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 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 eligibility for a security clearance. Eligibility for access to classified information is granted.

MARY E. HENRY
Administrative Judge