



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



In the matter of:)
)
) ISCR Case No. 11-06212
)
Applicant for Security Clearance)

Appearances

For Government: Stephanie Hess, Esq., Department Counsel
For Applicant: *Pro se*

07/29/2013

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, testimony, and exhibits in this case, I conclude that Applicant mitigated security concerns under Guideline F, Financial Considerations. His eligibility for a security clearance is granted.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on February 10, 2011. On June 1, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. The DOD acted under 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 for SORs issued after September 1, 2006.

On June 29, 2012, Applicant answered the SOR in writing and elected to have a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on May 8, 2013. I convened a hearing

on July 8, 2013, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

The Government called no witnesses and introduced five exhibits, which were marked Ex. 1 through Ex. 5 and entered in the record without objection. Applicant testified, called no witnesses, and introduced one exhibit, which was identified, marked, and entered without objection in the record as Applicant's Ex. A. At the conclusion of the hearing, I left the record open until July 15, 2013, so that Applicant could, if he wished, provide additional information. Applicant timely filed one additional exhibit. Department Counsel did not object to the admission of Applicant's post-hearing submission.¹ I marked Applicant's post-hearing submission as Ex. B and entered it in the record. DOHA received the hearing transcript (Tr.) on July 16, 2013.

Findings of Fact

The SOR contains two allegations of financial conduct that raise security concerns under AG ¶ 18, Financial Considerations (SOR ¶¶ 1.a. and 1.b.). In his Answer to the SOR, Applicant admitted both allegations. Applicant's admissions are entered as findings of fact. (Answer to SOR.)

Applicant is 47 years old. After earning a bachelor's degree in 1988 and a master's degree in 1995, he embarked on a career as an investment banker. Since January 2011, he has been employed at an executive level by a government contractor. He seeks a security clearance for the first time. (Ex. 1; Tr. 22-24.)

In 2004, Applicant purchased a home in City A. He paid approximately \$2,400 a month on his first mortgage and approximately \$600 a month on second mortgage, an associated home equity loan. In 2007, he married, and he and his wife are the parents of two small children. Applicant also has two adult stepchildren from his wife's previous relationship. At his hearing, Applicant stated that he and his wife have separated. He has physical custody and care of his children. (Ex.1; Tr. 31, 33, 40-41.)

Applicant was employed as an investment banker in 2007. He was compensated with a salary and a yearly bonus of \$100,000. His employer sent him to work in City B, and, for three months, he received relocation benefits. Thereafter, Applicant was responsible for paying rent to live and work in City B. In addition, he was responsible for paying the first and second mortgages on the home he had purchased in City A. His wife was not employed outside the home, and Applicant was his family's sole breadwinner. In August 2007, Applicant put his home in City A up for sale. (Ex. 3; Tr. 30-31.)

¹ Correspondence between Applicant and Department Counsel regarding Applicant's post-hearing submission, including Department Counsel's statement of no objection to admission of the post-hearing submission, is designated in the record as Hearing Exhibit (HE) 1.

In 2008, when the United States experienced a severe economic downturn, Applicant began to experience financial difficulties. He did not receive the \$200,000 bonus he expected from his employer. He took a comparable position with another investment banking firm. That firm also experienced a downturn and was eventually unable to pay Applicant a salary. Applicant remained current on his mortgage payments until June 2009. He left his second employer in September 2009. (Ex. 3; Tr. 35.)

Applicant used his credit cards to pay for his household expenses. He also withdrew money from his retirement account for living expenses. (Ex. 3.)

Applicant continued to try to find employment. When he could not, he applied for and received approximately \$275 a week in unemployment compensation. From April 2010 to July 2010, he was hired by a company and received a salary. He also sought work as an independent investment banker. However, with the exception of the three months of salaried work in 2010, Applicant was unable to find work, and he received unemployment compensation until January 2011, when he went to work for his current employer. (Ex. 3; Tr. 35-36.)

Applicant's home went into foreclosure. Applicant was able to execute a short sale of the property. The holder of the first mortgage waived its right to pursue payment of the difference between the funds received at the short sale and the amount of the original mortgage loan. The holder of the home equity loan received \$16,900 from the short sale and refused to release Applicant from liability for repayment of the principal balance of \$152,927. Applicant's debt to the lender holding the home equity loan is alleged at SOR ¶ 1.a. (Ex. 3; Tr. 12-14.)

To resolve the home equity loan debt, Applicant retained counsel and sought a settlement. His counsel advised him to offer the creditor a lump-sum amount in settlement. Applicant testified that he has offered to settle the debt for \$18,000, and he has the settlement funds readily available. In a post-hearing submission, Applicant provided a letter he wrote to the creditor on June 7, 2013, explaining his financial situation and offering to settle the debt within 14 days for \$18,000. (Ex. B; Tr. 13, 42-43.)

Applicant acquired employment as a government contractor in January 2011. His annual salary is approximately \$153,000. Soon after acquiring his new position, Applicant began to systematically approach the creditors to whom he owed credit card debt. From January 2011 until December 2012, he settled approximately \$70,000 in delinquent credit card debt that had arisen during his unemployment. The SOR alleges at ¶ 1.b. that Applicant owed a credit card company a debt, in charged-off status, of approximately \$19,750. Applicant admitted the debt and asserted that he had negotiated a settlement with the creditor. At his hearing, he provided documentation from the creditor, dated January 22, 2013, corroborating that the debt had been settled in full. The debt alleged at SOR ¶ 1.b. was the last remaining credit card debt that Applicant owed. (Ex. 1; Ex. A; Ex. B; Tr. 24-25, 37-39.)

At his hearing, Applicant discussed his current financial situation. He reported that he had chosen to rent housing in order to have more discretionary money available to pay his delinquent debts. He stated that he had been counseled to consider filing for bankruptcy but had not elected to go forward with a bankruptcy petition. He explained that bankruptcy could be perceived as a professional negative for an investment banker or a person charged with handling the finances of a company. He stated that he had confidence in his ability to address and resolve his delinquent debts. (Tr. 26-27, 43-44.)

Applicant reported a net monthly income \$8,721. He reported the following monthly expenses: rent, \$2,400²; groceries, \$1,500; clothing, \$200; utilities, \$600; car expenses, \$600; life and other insurance, \$40; medical expenses, \$300; day care, \$1,000; and miscellaneous, \$500. Applicant's monthly living expenses total \$7,140. (Ex. 2.)

Applicant pays \$417 each month on his auto loan and \$200 a month on his wife's auto loan. Applicant's net monthly remainder is \$964. (Ex. 2; Tr. 51.)

On his personal financial statement, Applicant reported total assets of \$80,051. His assets included bank savings of \$8,278; stock and bonds totaling \$41,773; vehicles totaling \$25,000; and jewelry and coins totaling \$5,000. (Ex. 2.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant an applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider and apply 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 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, the administrative judge applies these guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's

² Applicant testified that he was moving to a new residence in August 2013, and his monthly rent would be \$1,900. (Tr. 40.)

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 in seeking 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly, under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant became unemployed, accumulated substantial delinquent debt, and was unable to pay his creditors. This evidence is sufficient to raise these disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant’s financial delinquencies. Unresolved financial delinquency might be mitigated if it “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.” (AG ¶ 20(a)) Additionally, unresolved financial delinquency might be mitigated if “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.” (AG ¶ 20(b)) Still other mitigating circumstances that might be applicable include evidence that “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” (AG ¶ 20(c)), or “the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” (AG ¶ 20(d)) Finally, if “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 options to resolve the issue,” then AG ¶ 20(e) might apply.

Applicant admitted a history of financial difficulties that arose when his livelihood as an investment banker was affected by the economic downturn that began in 2008. Applicant purchased a home in 2004, but he was transferred to another city by his employer, and it became necessary for him to maintain two households. As the downturn deepened, Applicant’s employers could not pay him. He was unable to find work, and he could not pay his home mortgage and home equity loan. He used credit cards to finance his household expenses, thereby incurring considerable delinquent debt. He arranged a short sale of his home. As a result, the creditor holding his primary mortgage waived its right to pursue further collection, but the creditor holding his home equity loan sought repayment of the entire delinquency.

The financial downturn that affected Applicant was a condition beyond his control. However, Applicant acted responsibly to cure his financial delinquencies. Since acquiring an executive position with a government contractor in January 2011, Applicant has acquired financial stability. He has paid or settled nearly \$70,000 in delinquent credit card debt. He has acquired counsel and attempted to resolve his delinquent home equity debt by making an offer of settlement to the creditor. At the time of his hearing,

however, the debt remained unresolved, although Applicant has set aside the funds necessary to make the settlement.

While it is true that not all of Applicant's delinquent debts have been fully satisfied, DOHA's Appeal Board has explained that an individual's good-faith partial payment of debts need not be a bar to access to classified information:

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has ' . . . established a plan to resolve his financial problems and taken significant actions to implement that plan.' The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ('Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.') There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

I conclude that the circumstances which gave rise to Applicant's financial delinquencies are not likely to recur in the future. Additionally, he acted responsibly when faced with a financial situation beyond his control. He has acted in good faith to pay or settle his delinquent debts, and although he has not satisfied them fully, he has displayed a determination to satisfy his income obligations in the future.

Applicant has acted responsibly in addressing his financial delinquencies. By his actions, he has demonstrated that he is serious about satisfying his creditors and avoiding future debt. While AG ¶ 20(e) does not apply in mitigation to the facts of Applicant's case, I conclude that AG ¶¶ 20(a), 20(b), 20(c), and 20(d) are applicable in mitigation.

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. Applicant is a mature person of 47 years. His financial problems began when a serious economic downturn affected his ability to earn his living as an investment banker. Applicant provided documentation showing that he is systematically and responsibly addressing his financial delinquencies. He has a plan for resolving the one remaining unsatisfied debt alleged in the SOR.

Overall, the record evidence persuades me that Applicant is mature, trustworthy, and capable of being entrusted with access to classified information. I conclude Applicant mitigated the security concerns arising from his financial delinquencies.

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.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 eligibility for a security clearance. Eligibility for access to classified information is granted.

Joan Caton Anthony
Administrative Judge