



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



In the matter of:)
)
) ISCR Case: 11-06811
)
)
Applicant for Security Clearance)

Appearances

For Government: Pamela Benson, Department Counsel
For Applicant: *Pro se*

05/30/2012

Decision

DAM, Shari, Administrative Judge:

Applicant mitigated the Government's security concerns raised under Guideline F, Financial Considerations. His eligibility for a security clearance is granted.

On February 24, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On November 3, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under the guideline for 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 Department of Defense for SORs issued after September 1, 2006.

On December 13, 2011, Applicant answered the SOR in writing and elected to have a hearing. On February 14, 2012, DOHA assigned the case to me. On March 23,

2012, DOHA issued a Notice of Hearing, setting the case for April 19, 2012. The case proceeded as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence without objection. Applicant testified and offered Exhibits (AE) A through C into evidence without objection. The record remained open until May 14, 2012, to give Applicant an opportunity to submit additional information. DOHA received the hearing transcript on April 26, 2012. Applicant timely submitted a document that I marked as AE D and admitted into the record without objection.

Findings of Fact

In his Answer, Applicant admitted the factual allegation contained in the SOR. His admission is incorporated into the findings of fact herein.

Applicant is 41 years old and married. He and his wife have two children, ages eight and ten. In 1994 he earned a bachelor's degree in marketing and sales. After graduating from college, he worked in sales for private companies. In 2005 he began working as a sales manager for a mid-market region with his current employer. (Tr. 19.)

In 2008 or 2009, Applicant and his wife purchased a piece of property in another state, intending to build a home and eventually move there. (Tr. 21.) The house was completed about a year and a half later. His mortgage was \$579,000. (Tr. 23.) Due to changes in the location of his employment, he decided to sell the house. He placed it on the market with a purchase price of \$640,000. After months of being on the market without a response, he lowered the price and received an offer for \$525,000 sometime in 2010. (Tr. 24.) He submitted the offer to his mortgagor and requested a short sale. The bank denied the request and performed an appraisal. It determined that the house was worth more money. (Tr. 25.) He again listed the house for \$640,000. After six months without an acceptable offer, the price was lowered to \$500,000. (Tr. 26.) In December 2011 he received another offer. On May 7, 2012, the house sold for \$425,000 via a short sale. (Exs. C, D.)

Applicant stopped making mortgage payments in 2010 after the mortgagor rejected the first offer of \$525,000 because a representative from his mortgagor told him they could not help him until he was deficient on his mortgage. (Tr. 25, 31.) His deficiency was \$65,607 when the SOR issued. He noted that the depressed real estate market affected his ability to sell his home. (Tr. 24.)]

Applicant understands that there may be taxes due as a result of the short sale. He earned about \$130,000 last year, and his wife earned over \$100,000. He has money available to pay any taxes due as a consequence of the sale. (Tr. 29-30, 32, 36.) He stated that the house is the only delinquency on his financial record. (Tr. 20.) Credit bureau reports (CBR) from March 2011 and January 2012 confirm that. (GE 2 and 3.)

Applicant testified candidly and credibly. He and his wife own the home that they reside in. He is current on his mortgage payments. (Tr. 31.) He submitted his most recent performance evaluation. His supervisor complimented him for his productivity.

His supervisor stated that Applicant is a “positive professional who works with integrity.” (Ex. A.)

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 (AG) 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 AG ¶ 2(a), describing 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 “any doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.”

Directive ¶ E3.1.14 requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 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.”

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 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.

Analysis

Guideline F, Financial Considerations

The security concerns pertaining to Financial Considerations are 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 a condition that could raise a security concern and may be disqualifying:

(a) inability or unwillingness to satisfy debts.

Applicant was unable to resolve a delinquent mortgage debt until May 2012 when he sold his house. The evidence raised the above disqualification.

After the Government raised a potential disqualifying condition, the burden shifted to Applicant to rebut and prove mitigation of the resulting security concern under this guideline. AG ¶ 20 includes two conditions that could mitigate the security concern arising under this guideline:

(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; and

(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.

AG ¶ 20 (b) applies. When Applicant placed his house on the market in 2010, the housing market was depressed. As a consequence, he had difficulty selling his house. That situation and a change in his employment situation were unforeseen circumstances, beyond his control. He followed his mortgagor's direction for managing the sale, demonstrating responsible behavior. On May 7, 2012, the house sold, indicating that the problem is resolved. AG ¶ 20 (c) has some application.

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.

According to 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 facts and circumstances surrounding this case. Applicant is an intelligent and responsible 41-year-old man, who encountered difficulties selling his home in the current real estate market. The initial offer on his property for \$525,000 did not satisfy his mortgage, which eventually resulted in its recent short sale for \$425,000. Applicant's income and savings will allow him to pay any outstanding taxes related to his mortgage. There is no other derogatory information in the file. The likelihood of a recurrence is minimal, given his experience with the real estate market. He has removed any potential for pressure, coercion, exploitation, or duress, and is no longer at any risk for having to engage in illegal acts to generate funds.

Overall, the record evidence leaves me without questions as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from 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

Subparagraph 1.a: For Applicant

Conclusion

In light of all 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.

SHARI DAM
Administrative Judge