



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



In the matter of:)
)
) ISCR Case No. 11-09258
)
Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

11/07/2013

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations. Applicant's eligibility for a security clearance is granted.

Statement of the Case

On March 1, 2013, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. DoD acted 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), effective within DoD on September 1, 2006.

Applicant answered the SOR on March 20, 2013, and elected to have his case decided on the written record. Department Counsel submitted the Government's File of Relevant Material (FORM) on May 31, 2013. The FORM was mailed to Applicant on

June 4, 2013. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He submitted his response to the FORM on June 28, 2013 (Response). The case was assigned to me on July 17, 2013. On July 30, 2013, I issued a decision denying Applicant's request for a security clearance. On September 30, 2013, The Defense Office of Hearings and Appeals (DOHA) Appeal Board issued a decision remanding the case back to me for further review. I admitted additional evidence to consider as part of this remand. Appellant exhibit (AE) A (1-13) was substantive evidence submitted to the Appeal Board. It is admitted without objection. AE B (1-21) is additional evidence submitted by the Appellant as a result of the remand. The evidence is admitted without objection.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations. Those admissions are adopted as findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 49 years old. He is divorced and has two adult children. He has worked for his current employer, a defense contractor, since October 2010. He received a bachelor's degree in 1997. He was unemployed from March 2009 to October 2010. He served on active duty in the Navy from 1982 to 1986 and received an honorable discharge.¹

The SOR lists two delinquent debts, the first, a home equity loan (HELO) in the amount of about \$60,000 (SOR ¶ 1.a), and the second, a mortgage account with a past-due amount of about \$45,000 on a total mortgage amount of over \$152,000 (SOR ¶ 1.b). These debts are supported by credit reports dated May 2013, September 2012, and November 2010. The HELO was acquired by a new lender in September 2012. This lender is the same bank that also holds Applicant's mortgage; however, it is administered by a different division.²

Applicant's financial difficulties resulted from his 18 months of unemployment. Despite his unemployment, he was able to keep up with paying his bills including a settlement amount for a non-SOR debt in the amount of over \$8,000 in February 2012. Thereafter, he exhausted his savings while searching for new employment. When he could not make his current mortgage payments, he sought a loan modification from his mortgage holder, but it was denied in May 2010. In August 2011, he retained a law firm to assist him in negotiating with his two creditors to secure loan modifications. The record reflects that on May 28, 2013, Applicant was notified by his mortgage lender that he did not meet the requirements for a loan modification. Correspondence continued between Applicant and his lender in July, August, and October 2013 concerning his loan. He was informed that the loan was in foreclosure. He notified his lender that he

¹ Items 5-6.

² Items 1, 6 (p. 18) 7-9.

retained new representation and removed authorization for the law firm that he previously hired. He also presented a letter from his new representative whom he hired in August 2013. The new representative appeared in court on Applicant's behalf during his October 2013 foreclosure hearing. The judge granted Applicant's request to delay the foreclosure until January 2014 to allow Applicant time to develop payment options for both the mortgage loan and the HELO.³

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.

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, and has the ultimate burden of persuasion 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible

³ Items 4, 6; Response; AE A (1-5), B (2, 14-21).

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

AG ¶ 18 expresses the security concern for financial considerations:

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. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has delinquent debts that remain unpaid or unresolved. I find both disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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.

Both of Applicant's debts are recent and remain unresolved. I find mitigating condition AG ¶ 20(a) does not apply. Applicant provided evidence that he was unemployed for about 18 months, which contributed to his financial problems. However, in order for this mitigating condition to fully apply, Applicant must demonstrate responsible behavior in light of the circumstances. He first hired a law firm to negotiate a modification for him. When that effort proved unsuccessful, he hired a second representative that made a court appearance at his foreclosure hearing and secured a continuance to allow for the development of payment options concerning the two delinquent loans. This demonstrates responsible behavior. I find AG ¶ 20(b) applies. Applicant failed to present evidence of financial counseling, but there is some evidence that Applicant's financial problems are being resolved. Thus, there is sufficient evidence that he is making a good-faith effort to resolve the two debts. I find AG ¶¶ 20(c) partially applies, and 20(d) also applies.

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 the 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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's past military service and his unemployment. I also considered his good-faith attempts to resolve his mortgage and HELO debts through negotiation. Additionally, he has not incurred any other delinquent debts.

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 under Guideline F, 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
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.

Robert E. Coacher
Administrative Judge