



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



In the matter of:)
)
) ISCR Case No. 11-12512
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

06/10/2013

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 February 1, 2013, 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 (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 March 8, 2013, and requested a hearing. The case was assigned to me on March 29, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 12, 2013, setting the hearing for May 15, 2013. The Government offered exhibits (GE) 1 through 4, which were admitted into evidence without objections. Department Counsel's exhibit index is marked as

Hearing Exhibit (HE) I. Applicant testified and offered exhibits (AE) A through E, which were admitted into evidence without objection. The record was held open for Applicant to submit additional information. He timely submitted AE E, which was admitted into the record without objection. DOHA received the hearing transcript (Tr.) on June 3, 2013.

Findings of Fact

Applicant is 52 years old and has worked as a supervisor for a government contractor for six years. He attended trade school. He is married for the second time. He has two adult children from his first marriage and four adult stepchildren from his second marriage. He has no military service, but has held a secret clearance in the past.¹

The SOR alleges Applicant was indebted on four accounts, including two judgments, one consumer debt, and a second mortgage. The debts were listed on a credit report dated January 24, 2013. Applicant admitted all the debts, but indicated that he made payment arrangements for each of them.²

In 2007, Applicant acquired a four-unit apartment building from his parents. The building was in need of major repairs and renovation. The property was gifted to Applicant, and because of this he was unable to acquire financing to renovate the building for some time. Unbeknownst to him, his wife secured a loan from a high-interest lender so that they would have the resources to renovate the building. They ran into financial difficulties when they could not pay their regular debts after paying the monthly payments on the high-interest loan. Applicant received assistance from his parents who paid the balance on the high-interest loan. He plans to pay them back when he has the four-unit apartment fully rented and can acquire an equity loan against the property. In 2009, he hired a debt consolidation company to establish a payment plan for his debts. He has used the plan to pay off several overdue debts, including the debt listed in SOR ¶ 1.c. That debt was paid in April 2013. The debts listed in SOR ¶¶ 1.a and 1.b were judgments entered against Applicant by his homeowner's association for delinquent fees and assessments. Applicant satisfied both judgments in December 2012. The last delinquent debt listed in the SOR was a second mortgage on his residence. Applicant settled this account and received a satisfaction and release of lien document indicating that this debt was fully paid. He has no other outstanding delinquent obligations.³

Applicant has completed the renovation on two units in the apartment building and is currently renting those. When he completes the renovation of the other two apartments, he will be able to rent those and receive approximately \$4,000 per month rental income from the building. There is no mortgage on the property. Applicant and his

¹ Tr. at 7-8, 31-32; GE 1.

² Answer.

³ Tr. at 32-42, 61; AE A-F; Answer.

wife both work and their combined net income shows that they have a sufficient remainder each month after paying their obligations.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.

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

⁴ Tr. at 47-48, 51-54; GE 3.

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 had multiple delinquent debts and judgments filed against him. The evidence is sufficient to raise the disqualifying conditions stated in AG ¶¶ 19(a) and 19(c).

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.

The judgments and delinquent debts attributed to Applicant were recent. He has paid all debts. Since he has no other delinquent debts in other areas of his life, it is reasonable to conclude that these types of debts will not recur, nor do they cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) partially applies.

Applicant's debts were within his control to make timely payments. He failed to do so. AG ¶ 20(b) is not applicable.

Applicant sought financial counseling in 2009 and continued with the program they established until all his debts were paid. There are clear indications that all the debts and liens have been resolved through payment. He made good-faith efforts to resolve all the debts listed on the SOR. He supplied documentary evidence showing payment for all those debts. AG ¶ 20(c) and ¶ 20(d) apply.

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 found Applicant to be honest and candid about the circumstances that led to his debt and judgment liability. He paid all the debts. I found nothing to indicate a likelihood that Applicant would find himself in a similar future situation.

