



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



In the matter of:)	
)	
)	ISCR Case No. 12-00072
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

09/17/2013

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On May 21, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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) effective within the DOD on September 1, 2006.

Applicant answered the SOR on June 6, 2013, and requested a hearing before an administrative judge. The case was assigned to me on August 9, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 9, 2013. I convened the hearing as scheduled on August 28, 2013. The Government offered

Exhibits (GE) 1 through 5, and they were admitted into evidence without objection. Applicant testified, and he offered Exhibits (AE) A through F. Exhibits that were provided as part of Applicant's answer were marked A-1 through G-1. All of Applicant's exhibits were admitted into evidence without objection. The record was held open until September 11, 2013, to provide Applicant the opportunity to present additional exhibits, which he did. They are marked AE G through I. They were admitted into evidence without objection.¹ DOHA received the hearing transcript (Tr.) on September 5, 2013.

Findings of Fact

Applicant admitted SOR allegation in ¶ 1.c and denied the remaining allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 35 years old. He is a high school graduate and has earned some college credits. He served in the Marine Corps for approximately two years before being honorably discharged due to medical issues. He married in 2001 and divorced in 2009. He has a daughter, age seven, from the marriage. He has worked for his present employer, a federal contractor, since 2005, and held a security clearance since 2004.

Applicant and his wife purchased a home in 2005. When they divorced in May 2009, Applicant was unable to maintain the mortgage payments because of the loss of his wife's income. He is the primary custodial parent for his daughter. After his divorce he struggled financially. He had two loans on his home. One of the loans was for 80% of the amount financed (SOR ¶ 1.c) and the other for 20% (SOR ¶ 1.a). In July 2009, he contacted the mortgage company for the 80% loan to request a modification of the loan. He received a temporary modification in October 2009, and was to make payments for three months as a trial period. He made the payments, but the loan company denied the modification. A new company took over the loan, and Applicant made payments from October 2009 to April 2011. In April 2011, he received a letter stating the modification could not be approved because they did not have the necessary documents. Applicant resubmitted the documents in June 2011 and was to make the first payment on this agreement in August 2011. He received another letter saying the company did not receive the documents. He then discussed the loan with the company and was told the house was in foreclosure. He stopped making loan payments at that time. Applicant still wanted a loan modification to keep the house. He repeatedly sent the paperwork and the company would lose it or say they never received it. He contacted the loan company every five days for two years. He received a letter in August 2013 advising him the loan would be modified. The trial period is to begin on October 1, 2013, with a payment of \$1,100 for three months. After the trial period is completed, the loan will be permanently modified.²

¹ Hearing Exhibit I is Department Counsel's memorandum.

² Tr. 43, 50-77; AE A, A-1, C-1, G, H, I.

The 20% loan in SOR ¶ 1.a was \$4,259 past due. Applicant stopped paying on the loan when he was told the house was being foreclosed. He contacted the creditor and told them that the house was being foreclosed. He was advised to stop paying the 20% loan until the foreclosure was resolved. The creditor agreed that he could pay the arrearages once a modification was approved. He paid the past-due amount in June 2013 and is making monthly payments of \$173 on this loan. The creditor accepted his payments.³

The debt in SOR ¶ 1.b (\$1,300) was for a credit card that his ex-wife was to pay when they divorced. He was unaware the debt was delinquent until he received the SOR. He paid \$1,412 to resolve the debt.⁴

The debt in SOR ¶ 1.d (\$16,555) was for a boat Applicant purchased in May 2006 for \$27,000. His mother cosigned the loan. In October 2011, the boat needed \$9,000 of repairs that Applicant could not afford. He continued to make the \$257 monthly payments until January 2012. Applicant advised his mother that he could not meet the loan obligations. His mother contacted the creditor requesting the boat be voluntarily repossessed, which it was in February 2012. Applicant's mother received a letter advising the boat was auctioned off in March 2012 and the balance on the loan was \$16,550. He stated he did not learn about the deficiency letter his mother received until after he received the SOR. Applicant stated he thought his mother was working out a payment plan. Applicant acknowledged it was his responsibility to follow up on the deficiency owed on the loan. In June 2013, he made arrangements with the creditor to pay \$150 a month on the deficiency. He has arranged automatic withdrawals from his account. He has made three payments to date.⁵

The debt in SOR ¶ 1.e (\$3,930) is a credit card account. This was a debt Applicant's ex-wife was responsible for paying after their divorce. He was unaware of the debt until after he received the SOR. He contacted the creditor and paid \$20 to show he paid something. The creditor has already charged off the debt for tax purposes and will not accept further payments. Applicant received an IRS form 1099C showing the cancellation of the debt for \$1,428 in December 2012. Applicant intends on filing an amended income tax return for 2012.⁶

Applicant's facility security officer testified on his behalf. He has known Applicant professionally and personally since 2005. He considers Applicant an honest person of good moral character. He considers Applicant in the top 5 of 29 employees he supervises. He has been asked before to testify for others, but this is the first time he agreed to do so. He believes Applicant has a bright future with the company. A

³ Tr. 43-48; GE 5AE A, A-1.

⁴ Tr. 48-50; AE B, B-1.

⁵ Tr. 77-93; AE D, D-1.

⁶ Tr. 48; 93-96; AE E, E-1, G.

coworker and friend, who has been in the industrial security field for 27 years, testified on behalf of Applicant. He has known him for nine years and also believes he is an honest person of good moral character. He is a devoted father and a caring person. He believes Applicant can be trusted to handle classified material.⁷

Applicant acknowledges his divorce negatively impacted his finances and he made some poor financial decisions. He was spending \$1,000 a month for dance lessons for his daughter during a time when his finances were stretched. He was not saving the money from when he was not making monthly mortgage payments. Currently, all of his monthly expenses are paid timely and he does not have any delinquent debts not addressed. Since his divorce, he has worked with children as a soccer coach, been involved in charitable endeavors and volunteered with the soapbox derby. He has received special recognition rewards from his employer.⁸

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 not drawn 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 and has the ultimate burden of persuasion to obtain a favorable security decision."

⁷ Tr. 25-41; 98.

⁸ AE F.

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 of 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 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. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

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

Applicant had five delinquent debts, including two mortgage loans that he was unable or unwilling to pay. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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.

Applicant began experiencing financial difficulties when he divorced in 2009. He was unable to meet his mortgage payments without his ex-wife's income. His ex-wife was to pay certain credit card debts, but she did not, and Applicant was unaware they were delinquent. These conditions were beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant worked diligently with the company that held his larger mortgage to get a loan modification. He made payments on the loan, until he was told it was in a foreclosure status. He continued to pursue the loan modification and recently secured it. However, during the period he was not making mortgage payments, he was not saving this money. He did not follow-up responsibly on the debt owed on his repossessed boat. He resolved the credit card debts that were his wife's responsibility, and paid the past-due amount on his smaller mortgage and is making the monthly payments. I find AG ¶ 20(b) only partially applies.

Applicant is in a loan modification agreement on his larger mortgage and has paid the past-due amount on his smaller mortgage. He paid credit card debts that his ex-wife was responsible for. He has a payment plan to satisfy the deficiency owed on his boat. Applicant's financial problems are being resolved and are under control. AG ¶ 20(c) and AG ¶ 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 the 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.

Applicant is 35 years old. He experienced financial problems after he divorced and no longer had two incomes to pay the mortgages on his home. He was diligent in communicating with the mortgage companies and did not abandon the loans. The mortgage company for the larger loan was not very organized and consistently lost his paperwork or was unresponsive. Applicant eventually was able to modify his loan and is able to meet the monthly obligations. He has resolved or has payment plans for the remainder of the debts alleged. Applicant did not always make good financial choices, but I am convinced he is now acting fiscally responsibly, and he has learned valuable lessons. Overall, the record evidence leaves me no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the financial considerations guideline.

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

Carol G. Ricciardello
Administrative Judge