



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



In the matter of:)	
)	
-----)	ISCR Case No. 12-01388
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: -----, Personal Representative

January 10, 2014

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on November 10, 2011. (Government Exhibit 1.) On June 5, 2013, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial Considerations) concerning Applicant. 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 Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on July 31, 2013, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on August 21, 2013. This case was assigned to me on August 26, 2013. DOHA issued a notice of hearing on August 27, 2013. I convened the hearing as scheduled on September 24, 2013. The Government offered Government Exhibits 1 through 7, which were admitted without objection. Applicant submitted Applicant Exhibits A through D, which were admitted without objection, called one witness (his wife), and testified on his own behalf. Applicant asked that the record remain open for the receipt of additional

documents. DOHA received the transcript of the hearing (Tr.) on October 7, 2013. Applicant submitted Applicant Post Hearing Exhibits A through F, which were all admitted without objection. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is 52 and married. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment.

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant admitted both allegations in the SOR under this Paragraph. He also submitted additional information to support his request for a security clearance.

The SOR lists two delinquent debts, totaling approximately \$164,117. The existence and amount of these debts is supported by credit reports dated November 22, 2011; March 20, 2013; and September 17, 2013. (Government Exhibits 2, 3, and 7.) (See *also* Interrogatories dated April 17, 2013. (Government Exhibit 5.)) The current status of the debts is as follows:

1.a. Applicant admits that he was indebted to a successor in interest to a bank for a second mortgage on his house in the amount of \$151,742.

The Applicant's house was purchased in 2005 using what is called "80/20 ARM" loans. In other words, the first mortgage covered 80% of the purchase price and the second loan the other 20%. Both loans were with the same mortgage company. The total price of the house was \$775,000.¹ Applicant stated that the original mortgage payments were about \$4,000 a month and he could make those payments without difficulty. When the housing crisis began in 2007-2008 the mortgage payments adjusted to \$7,000 a month. In that situation Applicant could no longer pay both the first and second mortgages. The first mortgage has always been paid in a timely fashion, but the second has not been paid since approximately 2008. Applicant and his wife have successfully negotiated with the first mortgage holder, and the payments on that loan have been reduced to a more reasonable level. (Government Exhibit 4, Exhibit 5 at 8-12; Tr. 37-41, 48-55, 63-64, 69-70.)

The second mortgage has been sold several times since it was made, making it frustrating and difficult for Applicant and his wife to negotiate a settlement. At least one written settlement offer was made by Applicant to the current note holder. (Government

¹The value of Applicant's home in September 2013 was approximately \$632,000. Accordingly, in terms of the second mortgage, the house is still in negative territory. (Applicant Exhibit C; Tr. 71-72.)

Exhibit 4; Exhibit 5 at 15-16; Tr. 68-69, 73-76.) Subsequent to the hearing, on September 30, 2013, Applicant was able once again to make contact with the current note holder. (Applicant Post Hearing Exhibit A.) A resolution was reached for a negotiated amount, which Applicant paid in full on October 30, 2013. (Applicant Post Hearing Exhibit F.) This debt has been resolved.

1.b. Applicant admits that he was indebted to a creditor in the amount of \$12,375 for a time-share.

This time-share was bought in about 2005. When the market fell, and the Applicant's mortgage payments increased as discussed above, he could no longer afford to make payments on the unit. After considerable negotiation with the time-share owner, the time-share was resold by the owner for the amount Applicant owed. A letter was submitted from the time-share owner stating that a request had been made to the credit-reporting companies to delete "our entire trade line." (Government Exhibit 5 at 10; Applicant Exhibit A; Tr. 35-37.) This debt has been resolved.

Other than the debts discussed above Applicant's financial situation is stable. He is able to pay his monthly bills, including the first mortgage on his house, in a timely fashion. (Government Exhibit 5 at 5-6, Exhibit 7; Tr. 55-59, 63-64.)

Mitigation

Applicant is a very successful manager in his career field. Applicant Exhibit B shows his career cycle, and how he has moved into positions of increasing responsibility. Applicant Exhibit D is a letter from the president of Applicant's employer, concerning Applicant's nomination for a President's Award for 2013. "The President's Award was established to give special recognition each year to individuals and teams for exceptional performance and achievement, work that directly and positively influences the future of our business."

Applicant Post Hearing Exhibits C, D, and E consist of Applicant's Performance Evaluations from 2004 through 2012. He is consistently viewed as a person who exceeds expectations, working hard at each job he has had, continually striving for success.

Applicant Post Hearing Exhibit B consists of letters of recommendation from co-workers of Applicant. He is described as an "ethical and inspirational leader," a person who is "reliable and trustworthy," and a fellow employee who "demonstrates integrity, honesty and leadership in every element of his character."

Policies

Security clearance decisions are not made in a vacuum. When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each

guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used as appropriate 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 describing the adjudicative process. The administrative judge's over-arching 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned 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." 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 avoided drawing 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, "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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. Security clearance decisions include, by necessity, consideration of the possible risk that the 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.

Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination 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

Paragraph 1 (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, by his own admission, and supported by the documentary evidence, had two delinquent accounts that he could not resolve. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), disqualifying conditions may be mitigated where "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." In addition, AG ¶ 20(b) states that disqualifying conditions may be mitigated where "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."

The evidence shows that both of the above mitigating conditions apply to Applicant. Like many people, Applicant's ability to pay or resolve his mortgages was adversely affected by the housing crisis and the recession. Applicant and his wife always paid their first mortgage, and made continuing efforts over several years to resolve the two main debts. Both debts have now been resolved to the satisfaction of the creditors. Based on the particular facts of this case, I find that he has also "initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," as required by AG ¶ 20(d).

Applicant has not received financial counselling. However, as found above, his current financial situation is stable. I find that "there are clear indications that the problem is being resolved or is under control," as required by AG ¶ 20(c).

Applicant has acted in a way that shows good judgment, making the best he could out of a difficult situation. The DOHA Appeal Board has stated, "A security clearance adjudication is not a proceeding aimed at collecting an applicant's personal

debts. Rather, it is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness."² As the DOHA Appeal Board has also said, "An applicant is not required to show that [he] has completely paid off [his] indebtedness, only that [he] has established a reasonable plan to resolve [his] debts and has taken significant actions to implement that plan."³ The stated mitigating conditions apply to the facts of this case.

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 relevant circumstances. 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. The administrative judge must 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. The discussion under Guideline F, above, applies here as well. While Applicant had financial problems in the past, they are now resolved. He is knowledgeable about his finances, and evinces a credible intent not to allow his finances to reach this point again.

Under AG ¶ 2(a)(2), I have considered the facts of Applicant's debt history. Based on the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is a low likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his financial situation. Accordingly, the evidence supports granting his request for a security clearance.

²ISCR Case No. 07-09966 at 3 (App. Bd. June 27, 2008).

³ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)).

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a. and 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.

WILFORD H. ROSS
Administrative Judge