



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



In the matter of:)
)
 REDACTED) ISCR Case No. 12-03235
)
 Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

06/13/2014

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated the financial considerations security concerns. His financial problems were a result of high medical cost incurred in treating his wife’s serious medical condition and the financial collapse of a family-owned business. Applicant was able to put his financial house in order and resolve his debts over the past three years. His past financial problems no longer raise questions about his eligibility for classified information. Clearance is granted.

Statement of the Case

On February 12, 2014, the Department of Defense (DOD), in accordance with DOD Directive 5220.6, as amended (Directive), issued Applicant a Statement of Reasons (SOR), alleging security concerns under Guideline F (Financial Considerations). Applicant answered the SOR and requested a hearing (Answer).

On April 10, 2014, Department Counsel notified the Hearing Office that the Government was ready to proceed with a hearing. On April 22, 2014, a notice of hearing (NOH) was issued setting the hearing for May 16, 2014. The hearing was held as scheduled. Government Exhibits (Gx.) 1 – 7 and Applicant’s Exhibits (Ax.) A – D were

admitted into evidence without objection. Applicant testified and I granted his request for additional time to submit documents post hearing. He timely submitted Ax. E, which was admitted without objection. The hearing transcript (Tr.) was received on May 28, 2014.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following findings of fact:¹

Applicant is in his early forties. He is an engineer and has been working for a defense contractor since 1999. Before going to work for his current employer, Applicant served in the U.S. military for seven years, receiving an honorable discharge. He has held a security clearance since 1991. (Tr. at 9-10; Gx. 1)

Applicant married in 2001. He was working full time as a defense contractor and his wife was running a family-owned business. Their combined income allowed them to lead a typical middle class lifestyle. They had no problems paying their bills on time. In 2004, Applicant's child was born and, shortly thereafter, his wife started having medical issues. His wife's health continued to deteriorate and, even after multiple medical tests, doctors were baffled as to the cause. (Tr. at 28-30)

Applicant's wife's condition left her unable to manage the family-owned business. Employees, who she counted on to run the business in her absence, took advantage of the lack of oversight and diverted money into their own pockets. Applicant was not fully aware of their financial trouble, as his wife was in charge of the family's finances and kept him in the dark as to the extent of their problems. (Tr. at 30-38, 51-54; Ax. B)

In 2009, specialists were finally able to diagnose his wife's medical condition. Also, around this time, Applicant started to become aware of his family's financial problems. Applicant tried to meet the family's expenses on his income alone, to include financing the failing business. He was unable to do so because of the staggering cost of his wife's medical treatments, which his insurance company at first declined to cover. He fell behind on the mortgage payments on their home. His attempts to address his delinquent debts, to include his mortgage, were unsuccessful. (Tr. at 30-38, 53-54)

In 2011, Applicant submitted a security clearance application. He disclosed his financial problems. He was subsequently interviewed and provided details of his financial situation and efforts made to resolve his debts. He specifically discussed his mortgage, which he was paying on time, but he had a delinquency balance from when he missed several payments. He was working with the lender to modify the mortgage. At the time, Applicant still held out hope that he could save the family-owned business. His 2011 credit report reflects numerous debts in collection status or charged off. (Gx. 1; Gx. 3; Gx. 5)

¹ I have made only those reasonable inferences supported by the evidence and, where necessary, resolved any potential conflict raised by the evidence.

By 2013, Applicant came to the realization that, despite their best efforts, the family-owned business had failed. He and his wife closed the business. His wife's medical condition continued to pose severe limitations on her daily activities, but doctors were able to place her on a well-regulated treatment program covered by insurance. This new treatment program allowed Applicant's wife to look for and start a new career. Applicant volunteered for a new project at his job that provided for increased pay. He supplements his earnings with a part-time job. With his family's financial prospects improving, Applicant contacted his creditors, to include his mortgage lender, to address his debts. He resolved approximately \$20,000 of debt that he had discussed during his clearance interview two years earlier. His 2013 credit report reflects the satisfaction of a number of debts that were previously reported as delinquent. These debts are not reflected on the SOR, as they were resolved before it was issued. (Tr. at 34-42, 55-59, 64, 70; Gx. 4; Gx. 6; Ax. C – E)

Applicant's delinquent mortgage debt was the only debt he had not resolved before the SOR was issued. According to the SOR, the delinquency amount owed was approximately \$19,000. Applicant has resolved the mortgage debt through a recently approved modification agreement. He submitted proof of paying his new monthly mortgage payment a month in advance of the due date. He is able to afford his new monthly mortgage payments and, after three more payments, his payments will decrease and the loan will be rehabilitated. Applicant also submitted documentation that his home is worth about \$50,000 more than the mortgage balance owed. He explained that it took him a long time to negotiate a modification agreement because his lender kept changing, losing his paperwork, and changing requirements for the modification. He also recognizes that his past failed attempts to address his mortgage also impeded his recent efforts to resolve the debt. (Tr. at 42-50; Gx. 5 – 6; Ax. C – E)

Applicant and his wife now manage the family's finances together. Applicant submitted a copy of his family's written budget. After paying their recurring expenses, they have approximately \$500 a month in discretionary income. Applicant expects their discretionary income to increase in the coming months as their mortgage payments decrease and they pay off a car loan on their late-model car. He has over \$35,000 in a retirement savings account. (Tr. at 59-67; Ax. E)

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are only eligible for access to classified information "only upon a finding that it is clearly consistent with the national interest" to authorize such access. Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry*, § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant's eligibility, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an

administrative judge applies the guidelines in a common sense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

The Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, 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.” Directive ¶ E3.1.15. An applicant has the ultimate burden of persuasion to establish their eligibility.

In resolving the ultimate question regarding an applicant’s eligibility, an administrative judge must resolve “[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security.” AG ¶ 2(b). Moreover, “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.²

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. 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.³

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” E.O. 10865 § 7. Thus, a decision to deny a security clearance amounts to a finding that an applicant, at the time the decision was rendered, did not meet the strict guidelines established for determining eligibility for access to classified information.

Analysis

Guideline F, Financial Considerations

The potential security concern regarding an applicant with financial problems is explained at 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

² See also, ISCR Case No. 07-16511 at 3 (App. Bd. Dec. 4, 2009) (“Once a concern arises regarding an Applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance.”)

³ See, ISCR Case No. 11-13626 (App. Bd. Nov. 7, 2013) (security clearance determinations require administrative judges to make predictive judgments).

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.

Applicant's history of financial problems raises this concern and establishes the disqualifying conditions at AG ¶¶ 19(a), inability or unwillingness to satisfy debts, and 19(c), a history of not meeting financial obligations.

The guideline also lists a number of conditions that could mitigate the concern. The following mitigating conditions were raised by the evidence:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's past financial problems were mainly attributable to matters outside of his control, notably, his wife's serious medical condition that went undiagnosed for several years. Additionally, the family-owned business failed and they went from a two-family income to one. Applicant was unable to pay all the family's bills, including their mortgage, on his income alone. He did not walk away from his financial obligations. Instead, after doctors were able to diagnose his wife's medical condition and start her on a new treatment program, he took concrete steps to address his debts.

Applicant's first step was to close the failing business that was draining the family's finances. He then volunteered for a work assignment that increased his pay. He supplements his income through part-time work. With this increased cash flow, Applicant reached out to his overdue creditors and started to address his debts. He resolved a substantial amount of debt before the SOR was issued. He also submitted proof of his efforts through the years to address his mortgage debt, culminating in the recent modification of his mortgage loan. He submitted proof of paying his mortgage as required by the modification agreement, which mitigates his past failed efforts to resolve

his mortgage. He also submitted proof of his ability and commitment to continue to meet all his financial obligations.

Applicant has now taken control of his finances and submitted proof of a favorable track record of debt repayment that mitigates his past financial problems. AG ¶¶ 20(a) through 20(d) apply. Accordingly, Applicant's past financial problems no longer raise a security concern.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).⁴

Applicant's past financial problems were not a result of gambling, frivolous or reckless spending, or other matters raising a security concern. Instead, his financial problems were caused by the high cost of treatments for his wife's serious medical illness and the financial collapse of a family-owned business. Applicant has resolved the debts he and his family accumulated during this period of financial turmoil. He was fully upfront and candid about his financial problems during the security clearance process. Applicant's actions in resolving his debts and the candor he demonstrated during the security clearance process mitigate the concern his debts might be used as a source of coercion or influence.

In addition, Applicant has served this nation in the military and as defense contractor for the past 20 years. Over that 20-year period, he has held a security clearance without issue. This favorable security record, including while going through the financial hardships of the last several years, also mitigates the security concerns raised by his past financial problems.

After considering all the evidence, I find that Applicant met his heavy burden of establishing his eligibility for continued access to classified information. His past financial problems no longer raise doubts about his judgment, reliability, or trustworthiness. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility for a security clearance.

⁴ The non-exhaustive list of adjudicative factors are: (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.

Formal Findings

I make the following formal findings regarding the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

 Subparagraph 1.a: For Applicant

Conclusion

In light of the record evidence and for the foregoing reasons, it is clearly consistent with the national interest to grant Applicant continued access to classified information. Applicant's request for a security clearance is granted.

Francisco Mendez
Administrative Judge