



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



In the matter of:)
)
) ISCR Case No. 15-00230
)
Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Department Counsel
For Applicant: *Pro se*

08/17/2017

Decision

DAM, Shari, Administrative Judge:

Applicant did not mitigate the security concern raised under the guideline for financial considerations. National security eligibility for access to classified information is denied.

History of the Case

On May 14, 2014, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On April 1, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued to Applicant a Statement of Reasons (SOR), alleging a security concern under Guideline F, Financial Considerations. The action was taken under DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) in effect on September 1, 2006. On June 8, 2017, new AG were implemented and became effective that day. I considered both sets of guidelines in reaching this decision, and it would be the same under either set.

On May 5, 2016, Applicant responded to the SOR in writing and elected to have his case decided on the written record in lieu of a hearing. (Item 3.) On June 28, 2016, Department Counsel prepared a File of Relevant Material (FORM), containing seven Items, and mailed it to Applicant on June 30, 2016. He received the FORM on July 18, 2016, and had 30 days from its receipt to file objections and submit additional information.

Applicant did not provide a response to the FORM, object to the Government's evidence, or submit documents. The Government's evidence is admitted. On June 7, 2017, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me.

Findings of Fact

Applicant denied the sole allegation in the SOR. (Item 3.) After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 41 years old and married. He earned a bachelor's degree in 2011. He has worked for a defense contractor since 2008. (Item 4.)

In 2005, Applicant helped his wife refinance the mortgage she had on their current residence and placed his name on the mortgage documents. In 2009, they purchased another house prior to selling their current residence and incurred an additional mortgage payment. Applicant was unable to sell their current residence because of the housing market. He subsequently defaulted on the mortgage loan used to buy the second house by failing to make more than \$27,000 in required payments, and the bank foreclosed on the property in January 2013. In April 2013, the house was sold and there was a \$59,878 deficiency. (Item 3.)

In his Answer, Applicant admitted that he held a mortgage with a certain bank, but denied that he was indebted to the bank subsequent to the foreclosure on the property. He asserted that he does not owe a deficiency balance on the mortgage. (Item 3.) In the FORM, Department Counsel notified Applicant that he did not provide credible information, such as a Cancellation of Debt Form 1099C, or other documents to confirm his assertion.

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the disqualifying and mitigating conditions in the AGs. 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 overarching adjudicative goal is a fair, impartial, and commonsense decision. 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 national security eligibility will be resolved in favor of the 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. Directive ¶ E3.1.15 states that 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who applies for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk 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 sensitive information. See Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F: Financial Considerations

AG ¶ 18 sets out the security concerns pertaining to financial considerations:

Failure 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 describes three conditions that could raise security concerns and be disqualifying in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant has a large unresolved mortgage delinquency that he has been unable or unwilling to resolve since April 2013. The evidence raised the above disqualifying conditions.

AG ¶ 20 provides four conditions that could mitigate those security concerns:

(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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

AG ¶ 20(b) provides minimal mitigation of the raised security concerns. In 2009, Applicant purchased another residence before he sold the one in which he was residing. At that time the housing market was stagnant, causing him difficulty in locating a buyer. While the housing market situation was a circumstance beyond his control, his decision to purchase another house before selling his residence was a factor within his control. There is insufficient evidence to conclude that he acted responsibly under the circumstances.

The evidence does not establish mitigation under AG ¶ 20(c) or AG ¶ 20(d). Applicant did not provide documentation that he obtained financial counseling for the problem and there is no evidence that the delinquent debt is resolved or under control. He did not submit evidence that he made a good-faith effort to resolve the matters. Applicant insisted that he is not responsible for the mortgage delinquency; however, he did not provide documented evidence to verify his position. AG ¶ 20(e) does not apply.

Whole-Person Concept

AG ¶ 2(a) requires an administrative judge to evaluate an applicant's national security eligibility by considering the totality of the applicant's conduct and all relevant circumstances, commonly referred to as the whole-person concept. Under AG ¶ 2(c) the ultimate determination of whether to grant eligibility for a security clearance must include an overall commonsense judgment based upon careful consideration of the guidelines

and the whole-person concept. The administrative judge should also consider the following nine adjudicative process factors listed at AG ¶ 2(d):

(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 relevant facts and circumstances surrounding this case. Applicant is a 41-year-old man, who has worked for a defense contractor since 2008. In 2013, a bank foreclosed on his property after he failed to make more than \$27,000 worth of required mortgage payments. Although he stated he does not owe any mortgage deficiency after the foreclosure sale, he failed to provide proof of his position. In its FORM, Department Counsel clearly pointed out that the documents he submitted with his Answer did not resolve the allegation. Despite being on notice of the Government's concern, he failed to submit additional evidence. Overall, the record evidence leaves me with doubts as to Applicant's national security eligibility. Applicant did not meet his burden to mitigate the financial considerations security concerns.

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:

AGAINST APPLICANT

Subparagraph 1.a:

Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant access to classified information. National security eligibility is denied.

Shari Dam
Administrative Judge