



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



In the matter of:

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) ISCR Case No. 15-01737
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Applicant for Security Clearance

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel

For Applicant: *Pro se*

11/18/2016

Decision

WHITE, David M., Administrative Judge:

Applicant defaulted on three mortgage loans, failing to make more than \$212,000 in agreed payments, and incurred more than \$9,700 in delinquent consumer debt over the past seven years despite continuous employment. He demonstrated neither sufficient explanation for these debts, nor changes to avoid recurring financial problems. Resulting security concerns were not mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SF-86) on August 22, 2011.¹ On October 19, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations).² The action was taken

¹Item 2.

²Item 1.

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 that came into effect in the Department of Defense on September 1, 2006.

Applicant submitted a written response to the SOR on December 21, 2015, and requested that his case be decided by an administrative judge on the written record without a hearing.³ Department Counsel submitted the Government's written case on February 4, 2016. The Defense Office of Hearings and Appeals (DOHA) provided a complete copy of the File of Relevant Material (FORM)⁴ to Applicant on February 10, 2016. The FORM was received by Applicant on February 29, 2016, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant submitted no additional material in response to the FORM during the time provided, did not object to its consideration, and did not request additional time to respond. At some point between April 19, 2016, when Applicant's case file was forwarded to the DOHA Hearing Office for adjudication, and April 25, 2016, DOHA received an undated response to the FORM with additional material from Applicant. Department Counsel entered no objection to the consideration of this late response, and it is admitted into evidence as Applicant's Exhibit (AE) A. I received the case assignment on September 9, 2016.

Findings of Fact

Applicant is 56 years old. He graduated from college with a bachelor's degree in May 1983, was commissioned as an Army officer, and served on active duty until June 1986. He then served in the Army Reserve until October 2000, when he returned to active commissioned service and reached the rank of colonel. Since submission of his SF-86 in 2011, he has retired from active duty and seeks to renew his security clearance in connection with his employment by a defense contractor.⁵

In his response to the SOR, Applicant admitted the allegations in SOR ¶¶ 1.a through 1.d, with explanations. Applicant's admissions are incorporated in the following findings.⁶

³Item 1.

⁴Department Counsel submitted five Items in support of the SOR allegations. Item 3 is the summary of an interview from the OPM Report of Investigation. It was neither attested to nor adopted by Applicant, and no witness authenticated the document. Accordingly, it is inadmissible per Directive ¶ E3.1.20 and will not be considered in determining Applicant's eligibility for a security clearance. There is no relevant information contained in Item 3 that would reasonably support mitigation of the unresolved debts alleged in the SOR, and the relevant adverse information is cumulative with the information contained in Items 1, 2, 4, and 5.

⁵Item 2.

⁶Item 1.

Applicant owns two houses. He and his wife occupy their residence in state A, which they purchased in 2005. They rent out their former residence in state B, which they purchased in 2001 while Applicant was stationed at a nearby Army installation. Both houses were purchased with mortgage loans that are now delinquent, as described below.⁷

SOR ¶ 1.a concerns the first mortgage loan on Applicant's current residence in state A. He opened this Veterans Affairs (VA) loan in May 2005, borrowing \$284,700. He stopped making payments toward this loan in September 2009 because he was experiencing "financial challenges" including mortgage payments on his former residence, children in college, and his wife being between jobs. As of February 3, 2015, he was delinquent in the amount of \$126,102 on this loan, under which he had agreed to make monthly payments of \$1,550. He delayed foreclosure proceedings by trying to negotiate a loan modification while continuing to live in the residence without making loan payments. On January 20, 2016, the lender approved a Trial Period Plan calling for Applicant to make three monthly payments of \$3,473 in March through May of 2016. He provided no evidence of payments, or of his ability to make these increased mortgage payments, pursuant to this proposal.⁸

SOR ¶ 1.b concerns the first mortgage loan on Applicant's former residence in state B. He borrowed \$126,000 from the original lender in April 2004, agreeing to make monthly payments of \$384 per month. He stopped making payments toward this loan in February 2013, and was delinquent in the amount of \$15,105 as of February 3, 2015. He entered into an agreement with the lender in late 2015 calling for monthly payments of \$881.30, and provided proof that he made one such payment during January 2016. The outstanding balance on this loan after that payment was \$138,3128.⁹

SOR ¶ 1.c concerns a second mortgage loan on Applicant's residence in state A that he also opened in May 2005. It was charged-off in the amount of \$71,150 after he stopped making payments in August 2009. He offered no evidence of progress toward resolving this admitted debt.¹⁰

SOR ¶ 1.d concerns a charge account that Applicant opened in January 2006. He stopped making payments to this creditor in August 2011, and the account was charged off in the amount of \$6,579. Applicant provided an account statement, dated January 21, 2016, from the collection agency currently holding this debt. The statement showed that he agreed to a \$50 withdrawal from his bank account on January 30, 2016,

⁷Item 1; Item 2; Item 4; Item 5.

⁸Item 1; Item 2; Item 5. AE A.

⁹Item 1; Item 5; AE A.

¹⁰Item 1; Item 4; Item 5; AE A.

and reported a balance due that had grown to \$9,770. No evidence of past payments toward this debt was provided.¹¹

Applicant provided no evidence establishing his current income or household budget. He offered no evidence of financial counseling, of savings or retirement investments, or of other indicators of financial responsibility. The record lacks any evidence concerning the quality of Applicant's professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

Policies

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 (DCs) and mitigating conditions (MCs), which 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, 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. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 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. Under Directive ¶ E3.1.15, "[t]he 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." Section 7 of Executive Order 10865 provides: "[a]ny 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."

¹¹Item 1; Item 4; Item 5; AE A.

A person applying for access to classified information 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 access to classified information. 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 classified information.

Analysis

Guideline F, Financial Considerations

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

Department Counsel asserted, and the record evidence established, security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

Applicant is seriously delinquent on three mortgage loans and a consumer loan, toward which he stopped making payments between 2009 and 2013. These delinquencies arose despite his continuous employment during that time, and he offered no evidence of ability to resolve them. His pattern and history of financial irresponsibility raise security concerns under DCs 19(a) and (c), and shift the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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;

(d) the individual initiated 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.

Applicant admitted that he incurred four major delinquencies over the past seven years. He provided evidence of offers from his two first mortgage loan creditors calling for him to make monthly payments of \$3,473 and \$881 toward loans that he said he could not afford to pay when the monthly payments were \$1,550 and \$384, respectively. He offered no proof that he would be able to meet these greatly increased monthly payments. Instead, he incurred \$212,357 in delinquencies on loans secured by those properties over the past seven years, while also incurring almost \$10,000 in delinquent consumer debt. He offered proof of paying less than \$900 toward any of these debts, despite being offered repeated opportunities to do so, and did not show responsible action toward his obligations under the circumstances of his wife's loss of employment. Accordingly, the record is insufficient to establish mitigation under any of the foregoing conditions.

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 pertinent facts and circumstances surrounding this case. Applicant is an accountable and experienced adult, who is responsible for the voluntary choices and conduct that caused the financial problems underlying the security concerns expressed in the SOR. His delinquent mortgage and consumer debts arose over the past seven years. He enjoyed continuous employment throughout that period. He offered insufficient evidence of financial counseling, rehabilitation, better judgment, or responsible conduct in other areas of his life to offset resulting security concerns. The potential for pressure, coercion, and duress from his financial situation remains undiminished. Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from his financial considerations.

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

Subparagraphs 1.a through 1.d: Against Applicant

Conclusion

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

DAVID M. WHITE
Administrative Judge