



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



In the matter of:)
)
) ISCR Case No. 15-01992
)
)
Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

08/09/2016

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On November 20, 2015, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on December 10, 2015, and elected to have his case decided on the written record. On March 14, 2016, Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant, and it was received on March 24, 2016. Applicant was afforded an opportunity to file

objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government's evidence. The Government's documents identified as Items 2 through 7 are admitted into evidence. Applicant provided documents that are marked as Items 8 through 10 and are admitted into evidence without objection. The case was assigned to me on May 25, 2016.

Findings of Fact

Applicant denied all of the allegations in the SOR. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 44 years old. He graduated from a service academy in 1994. He served on active duty until 2000 when he was honorably discharged. He earned a master's degree in 1998 and another in 2006. He married in 1997 and divorced in 2007. He remarried in 2007 and has two children ages six and three.

Applicant purchased a condominium in 2001. After his 2007 divorce he wanted to sell the condominium so he could remove his ex-wife's name from the title and use the proceeds to pay his alimony settlement in full. In addition, he had purchased another home at the time. Due to the struggling real estate market in 2007, his condo was valued at less than the mortgage. He had always paid his mortgage timely. He was advised by his realtor to cease making mortgage payments to force the lender to short sale the house. The mortgage lender refused to short sale the house and it foreclosed in December 2010.

Applicant disclosed during his August 2013 interview with a government investigator and in his response to the FORM that his mortgage company and successor mortgage companies for the condominium were sued by the state in four class action lawsuits due to their handling of real estate transactions and dishonest loan modification processes. Applicant eventually received small cash settlements as part of class action lawsuits.

The mortgage debt alleged in SOR ¶ 1.a has been resolved. A March 2016 credit report lists the debt as "creditor grantor reclaimed collateral to settle defaulted mortgage." There is no deficiency amount supported by evidence.¹

The debt in SOR ¶ 1.c was for delinquent homeowner association fees associated with the foreclosed condo. Applicant was advised by his realtor when he was attempting to short sale the property to stop paying the fees as they would be included in the short sale. He complied with the advice. The debt was sold to a collection agency and not included with the foreclosure. The creditor obtained a judgment against Applicant, which he disclosed on his security clearance application. He paid the judgment through a court-ordered garnishment and completed payment in 2013. The

¹ Items 7, 8, 9, 10.

debt is listed on his August 2013 credit report. It is no longer on his September 2014 or March 2016 credit reports. It is resolved.²

Applicant denied the debt in SOR ¶ 1.b for an unpaid utility bill associated with the foreclosed property, indicating it was settled in 2012-2013. It was reported on his August 2013 credit report. It is not listed on his September 2014 or March 2016 credit reports. It is resolved.³

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 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 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, 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 as to obtaining a favorable security 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. Decisions include, by necessity, consideration of

² Item 5, 6.

³ Items 7, 8, 9, 10.

the possible risk that an applicant may deliberately or inadvertently fail to 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.

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 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.⁴

AG ¶ 19 provides conditions that could raise security concerns. The following is potentially applicable:

(a) inability or unwillingness to satisfy debts.

Applicant had a past-due mortgage debt and two debts associated with that property that were delinquent. There is sufficient evidence to support the application of the above disqualifying condition.

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

⁴ See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

(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; and

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

Applicant's condominium was foreclosed after he was unable to sell it. It was later learned through class action lawsuits that the lender's conduct raised questionable practices. The mortgage debt was resolved through the foreclosure. The other debts associated with the property were also resolved. Applicant has no other financial issues or delinquent debts. There is sufficient evidence to conclude that the financial issues happened under unique circumstances and are unlikely to recur. His behavior does not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶ 20(a) applies

Applicant financial issues were partially within his control, in that he did not have to sell the property necessarily at that time, but chose to do so because he had already purchased another house and he wanted to pay his alimony in full. However, his inability to complete the financial transaction due to the downturn in the real estate market and the conduct of the lender were circumstances beyond his control. I find Applicant acted responsibly under those circumstances and AG ¶ 20(b) applies.

The debts alleged in the SOR are resolved and there is no evidence that Applicant has other financial problems. AG ¶¶ 20(c) and 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 the 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 met his burden of persuasion. 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 mitigated the security concerns arising under Guideline F, financial considerations.

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.c: 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's eligibility for a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge