



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



In the matter of:)
)
 [NAME REDACTED]) ISCR Case No. 15-02140
)
 Applicant for Security Clearance)

Appearances

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

03/24/2017

Decision

BORGSTROM, Eric H., Administrative Judge:

Applicant established a track record of debt-resolution efforts and repayments, after encountering circumstances beyond his control. He mitigated the security concerns about his finances. Eligibility for access to classified information is granted.

Statement of the Case

On October 10, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 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 (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on January 19, 2016, and he elected to have the case decided on the written record in lieu of a hearing. On April 8, 2016, the Government submitted its file of relevant material (FORM) and provided a copy to Applicant. Applicant received the FORM on April 25, 2016. He was afforded an

opportunity to respond to the FORM within 30 days of its receipt and to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant responded to the FORM on May 20, 2016. The case was assigned to me on February 16, 2017.

On February 27, 2017, I reopened the record to permit the parties to supplement the written record. On March 14, 2017, Applicant submitted additional documents, and the record closed on March 15, 2017.¹

Procedural Issues

In the FORM, Department Counsel references FORM Items 1-7.² FORM Item 5 is an unauthenticated summary of a September 23, 2014 interview with a government investigator. In the FORM, Department Counsel advised Applicant that he could object to FORM Item 5 and it would not be admitted, or that he could make corrections, additions, deletions, and update the document to make it accurate. Applicant was informed that his failure to respond to the FORM or to raise any objections could be constituted as a waiver, and the evidence would be considered by me. Applicant responded to the FORM, and he raised no objections. Given Department Counsel's advisement and Applicant's education and work experience, I find his waiver to be knowing and intelligent.³ Therefore, FORM Items 4-7 are admitted into evidence as Government Exhibits (GE) 4-7, without objection.

In his FORM response and supplemental FORM response, Applicant submitted 31 documents, which are admitted into evidence as Applicant Exhibits (AE) A-EE, without objection.

Findings of Fact

The SOR alleges three delinquent debts, which Applicant admitted. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact:

Applicant is 34 years old. He received a bachelor's degree in May 2015. He was laid off in May 2009. In May 2009, he started a part-time business; however, he failed to find full-time employment until September 2011. He was unemployed again from September 2012 to July 2013. He has been employed full time for a DOD contractor since July 2013.

¹ My order and the accompanying email are admitted into the record as Administrative Exhibit (AX) I. Department Counsel's March 15, 2017 email is admitted into the record as AX II.

² FORM Items 1-3 consist of the SOR, the SOR cover letter, and Applicant's Answer. These documents are pleadings and are entered into the administrative record.

³ See ISCR Case No. 15-05252 at 3 (App. Bd. Apr. 13, 2016) (Applicant's waiver of the authentication element must be knowing and intelligent.). See ISCR Case No. 12-10810 at 2 (App. Bd. Jul. 12, 2016) ("Although *pro se* applicants are not expected to act like lawyers, they are expected to take timely and reasonable steps to protect their rights under the Directive.")

Applicant was married in 2007, and he has two children – ages 6 and 9. His wife was unemployed from 2009 until September 2014. In his supplemental FORM response, Applicant referred several times to his “former wife,” implying that they have recently separated or divorced.⁴

Applicant’s mortgage loan (SOR ¶ 1.a.) became delinquent in 2010, following his unemployment. He sought a loan modification and attempted to make partial loan payments; however, the lender would not accept these actions. Applicant refinanced the mortgage loan, but he was unable to sustain the loan payments due to his intermittent employment and his then-wife’s unemployment. He vacated the property in May 2014, and the bank agreed to a short sale. The short sale was unsuccessful, but the bank later proposed a deed-in-lieu of foreclosure. Foreclosure proceedings were initiated in October 2014 and completed in March 2016. As of June 2016, the unpaid principal balance on the loan was \$0.⁵

The debt in SOR ¶ 1.b. was charged off in December 2012 in the approximate amount of \$9,234. Applicant provided documentation of regular payments beginning in October 2015 that reduced the balance to \$7,134 as of March 2017.⁶

The debt in SOR ¶ 1.c. was placed for collection in July 2014 in the approximate amount of \$3,117. Applicant provided documentation of regular payments beginning in November 2015 that reduced the balance to \$1,117 as of March 2017.⁷

Applicant also provided documentation showing that he is current on his monthly financial obligations, such as car insurance, mortgage payments, credit cards, and utilities. He also provided a monthly budget, including his debt repayments, with a positive net monthly remainder. His supervisor praised Applicant’s exceptional work performance, work ethic, and character.⁸

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially

⁴ GE 4; AE Y.

⁵ AE L; AE N;

⁶ AE Z; Response to SOR.

⁷ AE V; AE W; AE X; AE Z.

⁸ AE J; AE O, AE P; AE Q; AE BB; AE U (The monthly budget includes a miscellaneous category for discretionary expenses such as dining out and entertainment. This item constitutes a net monthly remainder following the payment of monthly expenses).

disqualifying conditions and mitigating conditions, 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, administrative judges apply the guidelines 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."

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." The applicant has the ultimate burden of persuasion to obtain 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 the possible risk the 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.

Section 7 of EO 10865 provides that adverse 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 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. The following are potentially applicable in this case:

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

Applicant's delinquent debts total approximately \$8,251, and his financial problems began in 2010. Accordingly, the evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

The Government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a) and 19(c), thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.⁹ Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (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 sought partial payments, a loan modification, a short sale, and a deed-in-lieu of foreclosure on his delinquent mortgage loan. He has made regular payments on his two remaining delinquent debts since October 2015, and he is current on his monthly financial obligations. In light of Applicant's actions to resolve his delinquent debts, his financial indebtedness does not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) applies.

⁹ Directive ¶ E3.1.15. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005) (An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government.).

The application of AG ¶ 20(b) requires both that (1) Applicant's financial indebtedness resulted from circumstances beyond his control and that (2) Applicant acted responsibly under the circumstances.¹⁰ Applicant and his wife were unemployed for lengthy periods. Because these circumstances hindered Applicant's ability to address his delinquent debts, they constitute circumstances beyond one's control in the context of AG ¶ 20(b).

AG ¶ 20(b) also requires that an applicant act responsibly under the circumstances. Applicant became employed in July 2013. Despite efforts to modify his mortgage loan and to complete a short sale or deed-in-lieu of foreclosure, the property was foreclosed upon in March 2016. Notwithstanding the foreclosure, Applicant was actively engaged in seeking to resolve this delinquent debt. Furthermore, he has made regular payments on the two remaining delinquent debts over the last 17 months, while maintaining his other monthly financial obligations. Applicant's actions establish a reasonable plan for repayment and concomitant conduct in furtherance of that plan.¹¹ Therefore, AG ¶ 20(b) applies.

There is no record evidence of credit counseling; however, Applicant provided a monthly budget and documentation demonstrating that he has maintained his monthly financial obligations for at least a year. AG ¶ 20(c) applies.

The concept of good faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation."¹² There is no evidence of payments on the mortgage loan since 2010; yet, Applicant provided documentation of unsuccessful efforts to complete a short sale and a deed-in-lieu of foreclosure. He also provided documentation of regular payments for over 17 months on the remaining two debts. AG ¶ 20(d) applies.

The alleged debts have remained delinquent for several years; however, Applicant has developed a reasonable plan for debt resolution and repayment and has taken significant steps in furtherance of this plan. He has also shown that he can maintain his current monthly financial obligations while making debt repayments. I find that Applicant has mitigated the financial considerations concerns.

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

¹⁰ See ISCR Case No. 07-09304 at 4 (App. Bd. Oct. 6, 2008).

¹¹ See ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009) ("All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan.").

¹² See ISCR Case No. 08-12184 at 10 (App. Bd. Jan. 7, 2010) (Good-faith effort to resolve debts must be evidenced by a meaningful track record of repayment).

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F and the factors in AG ¶ 2(c) in this whole-person analysis.

Circumstances beyond Applicant's control – his periods of unemployment – contributed to his financial delinquencies. Although Applicant was unsuccessful in modifying his mortgage loan or completing a short sale, he made good-faith efforts to resolve this delinquent debt and he bears no further financial liability. He has established a track record of debt repayments while maintaining his current monthly obligation. His supervisor has noted his exemplary work performance, work ethic, and character. I conclude Applicant mitigated the financial considerations security concerns.

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 eligibility for a security clearance. Eligibility for access to classified information is granted.

Eric H. Borgstrom
Administrative Judge