



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



In the matter of:

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) ISCR Case No. 15-03307
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Applicant for Security Clearance

Appearances

For Government: Aubrey De Angelis, Esquire, Department Counsel

For Applicant: Cheryl Van Ackeren, Esquire

06/30/2017

Decision

WHITE, David M., Administrative Judge:

Applicant had three delinquent mortgage debts, involving investment properties, which arose from circumstances beyond his control and were fully resolved in 2016. Resulting security concerns were mitigated. Based on a review of the pleadings, testimony, and exhibits, national security eligibility is granted.

Statement of the Case

Applicant submitted a security clearance application on April 29, 2013. On March 24, 2016, 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). The action was taken 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 for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (Answer) on June 15, 2016, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on August 8, 2016. The case was assigned to me on August 29, 2016. On November 22, 2016, I granted Applicant's request for an indefinite continuance due to his work-related unavailability for a proposed hearing in late 2016. After the availability of all parties was coordinated, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on May 2, 2017, setting the hearing date for May 18, 2017, and I convened the hearing as scheduled. The Government offered Exhibits (GE) 1 through 5, which were admitted without objection. Applicant offered Exhibits (AE) A through G, which were admitted without objection, and testified on his own behalf. Four other witnesses also testified for Applicant. I granted Applicant's request to leave the record open until June 1, 2017, to permit submission of additional documentary evidence. Applicant timely submitted AE H, which was admitted without objection, and the record closed as scheduled. DOHA received the transcript of the hearing (Tr.) on May 31, 2017.

On June 5, 2017, I notified the parties that I considered the case to be appropriate for summary disposition, and provided ten days within which to object in accordance with the DOHA Director's procedural guidelines for summary dispositions promulgated on November 12, 2016. Applicant's counsel responded on June 5, 2017, expressing no objection. On June 19, 2017, Department Counsel reported that the Government objected to the summary disposition.

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines*, implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as implemented by SEAD 4. I considered the previous adjudicative guidelines, as well as the new AG, in adjudicating Applicant's national security eligibility. Although this decision is issued pursuant to the new AG, my decision would be the same under either set of guidelines.

Findings of Fact

Applicant is 52 years old. He is married, with two children ages 13 and 8. He worked on a part-time subcontractor basis for a defense contractor from March 2006 until January 2017, when he became a full-time employee. He enlisted in the Army in 1983, then served 5 years in a Ranger battalion and 16 years in Special Forces before honorably retiring as a master sergeant (E-8) in November 2004. He has held security clearances without incident for more than 33 years. He is a high school graduate, and took some college classes about real estate investment after he retired from active duty. (GE 1; AE A; Tr. 29-33, 51-53.)

Applicant joined his college professor, and several other students with whom he studied real estate investing, in a group that bought distressed residential properties, rehabilitated them, and resold them for a profit. After about a year and a half, market conditions had changed to the point that this investment model was no longer sufficiently profitable to continue. Applicant then started working with another company that arranged lease-option investments in 2006. He was matched with prospective home buyers who could not then qualify for their own mortgage loans, but sought to rent a home while improving their credit eligibility. Under these arrangements, Applicant purchased four residential properties for prospective buyers who entered into a two-year lease contract with an option to purchase the property after two years. The first two such arrangements were very successful. The second two involved buyers who wanted “fixer-upper” properties, and became problems when the tenant/buyers stopped paying rent and had to be evicted. (Tr. 32-46.)

As a result of these difficulties, Applicant temporarily fell behind on the first and second mortgage loans on the two “fixer-upper” properties, A and B. He used personal funds and his own labor to effect the numerous repairs the properties required, and consulted with an accountant who specializes in real estate transactions to work toward resolution of the loan delinquencies. The three delinquent debts alleged in the SOR involve the first and second mortgages on property A (§§ 1.a and 1.c), and the second mortgage loan on property B (§ 1.b). Applicant has always kept his personal finances, including the mortgage on his residence, fully paid and current. (Tr. 46-50, 57.)

Applicant and his accountant worked to negotiate arrangements with the lenders on the two problem investment properties that would permit him to resolve those delinquencies. They were successful with respect to the property A. In May 2016, they concluded a payoff agreement with the second mortgage lender and fully resolved that formerly delinquent \$17,602 debt. (AE C.) In June 2016, the first mortgage lender on that property approved their application for loan modification under the Home Affordable Modification Program (HAMP) that had recently been expanded to make non-resident owners eligible for participation. The formerly delinquent \$46,728 balance due was rolled back into the principal in the modified loan. The property has been refurbished, is occupied by renters and, under the modified first mortgage loan terms, is breaking even for Applicant. (AE D; Tr. 57-58.)

Applicant was not able to retain possession of the second troubled, “fixer-upper,” investment property B. The first mortgage lender initiated foreclosure proceedings in 2013, before the HAMP was expanded to cover investors, and would not accept anything less than payment in full for the outstanding loan balance. That debt was fully resolved through the foreclosure, and all resulting tax obligations were resolved. This debt is not alleged in the SOR. However, Applicant remained indebted to the second mortgage lender on property B in the amount of \$7,004, as alleged in SOR § 1.b. He and his accountant were able to negotiate and complete a payoff agreement that fully resolved that debt in May 2016. (AE D; Tr. 38-43, 57, 61.)

Since resolving these three formerly delinquent investment-related debts in 2016, Applicant has remained current on all of his debt accounts. He is working full-time for his employer with a steady and predictable income, and his remaining three real estate investment properties are in good condition, occupied by renters, and profitable. His personal financial statement reflects a net monthly income of \$10,652 that covers his monthly living expenses of \$4,424 and debt payments of \$4,120 with a resulting monthly surplus of \$2,108. He also has net assets exceeding \$370,000 including more than \$67,000 in bank savings accounts. (AE B; AE H; Tr. 62, 67-87.)

Applicant had a distinguished military career, and provided numerous letters from current and former colleagues and acquaintances expressing their uniformly excellent opinions of his integrity, trustworthiness, and good character. Four witnesses traveled significant distances at personal expense to appear in person and provide testimony that was similarly impressive concerning Applicant's unimpeachable patriotism, character, and responsibility. During his testimony, Applicant demonstrated a full understanding of, and control over, his financial situation and a credible intention to maintain it in a responsible manner. (AE F; AE G; Tr. 28-118.)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 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 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person applying 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 classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “[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.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F, Financial Considerations

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

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.

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

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

Applicant ran into problems with two real estate investments that resulted in three formerly delinquent mortgage loan debts, which he was unable to satisfy before the

SOR was issued. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's alleged 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, 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; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant no longer purchases properties under the lease option program, from which his delinquencies resulted, and his remaining investment properties are all profitable. He now has a full-time salary, and more than \$2,100 in monthly surplus income. He is current on payments for the modified first mortgage loan alleged in SOR ¶ 1.a, and has fully complied with the negotiated payoff agreements that resolved the second mortgage debts alleged in SOR ¶¶ 1.b and 1.c. The delinquencies on those loans resulted from the unexpected defaults on agreed lease payments by his former tenants, with whom he was connected by a company that vouched for their responsibility before he invested in homes for them.

Applicant acted responsibly under unforeseen, difficult circumstances that were beyond his control, and there are clear indications that his financial issues are under control. His investment decisions involved some risk, but were reasonable when he made them. He followed the recommendations of professional counselors, and made good-faith efforts to effectively resolve his formerly delinquent debts. The record establishes clear mitigation of financial security concerns under the provisions of AG ¶¶ 20(a) through 20(d).

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(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.

According to 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 applicable 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 a mature adult, who took reasonable and effective action to resolve the relatively minor financial issues created by two temporarily unsuccessful real estate investments. He followed professional advice, and has resolved all of his formerly delinquent debt. The likelihood that financial problems will recur is minimal; and the potential for pressure, coercion, or duress is eliminated by resolution of Applicant's former delinquencies. Overall, the record evidence leaves me without doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He fully met his burden to mitigate the security concerns arising under the guideline for 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:

FOR APPLICANT

Subparagraph 1.a:

For Applicant

Subparagraph 1.b:

For Applicant

Subparagraph 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 national security eligibility and a security clearance. National security eligibility is granted.

DAVID M. WHITE
Administrative Judge