



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



In the matter of:)
)
) ISCR Case No. 15-03677
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

01/25/2017

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 January 16, 2016, 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 February 22, 2016, and elected to have his case decided on the written record. Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant, and it was received on March 30, 2016. Applicant was afforded an opportunity to file objections and submit

material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant did not object to the Government evidence identified as Items 1 through 6, and they were admitted into evidence. Applicant submitted documents that were marked as Applicant Exhibits (AE) A through C, and they were admitted into evidence without objection. The case was assigned to me on November 4, 2016.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a and 1.b and denied the allegations in 1.c and 1.d. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 60 years old. He is a high school graduate. He has worked for his employer since 1980. He was married from 1979 to 1984. He remarried in 1999. He has seven adult children and two adult stepchildren.

Applicant purchased a house in 2005 for \$238,000. In 2008, his wife lost her job, and he had difficulty making his monthly mortgage payments.¹

After Applicant got behind on his mortgage payments, he began working with a company that told him it could lower his mortgage payments. He paid the company and was told to stop making any mortgage payments, so the mortgage lender would negotiate a lower payment. Later the company told him it could not lower his mortgage payment. Applicant and his wife decided they would do a short sale on the house. Because the house had mold they thought they would have difficulty selling it, so they anticipated having to file bankruptcy. They moved out of the house in May 2015. In anticipation of filing bankruptcy, they stopped paying some of their bills. The house sold in January 2016.²

There are two mortgage loans alleged in SOR. The loan in SOR ¶ 1.c (\$48,600) is listed in the credit reports as a second mortgage and charged off. The other mortgage in SOR ¶ 1.d is listed as a conventional real estate mortgage of \$217,001 with a delinquent balance of \$54,381. Both loans are listed in credit reports from May 2013, March 2015, and October 2015.

Loan numbers provided on documents Applicant submitted correspond to the mortgage loans listed in his credit reports. As part of his answer, Applicant provided documents from the mortgage company that verifies that the second mortgage loan with the same account number as in SOR ¶ 1.c has been paid and the lien has been released.³

¹ AE A is a response to the FORM that is written by Applicant's wife. In it she takes responsibility for handling the family finances.

² Items 3, 4, 5, 6; AE A, C.

³ Item 1.

As part of Applicant's response to the FORM, he provided a document from the original lender that states: "We have enclosed the documents in connection with the payoff of the above reference loan." It references the conventional mortgage loan in SOR ¶ 1.d.⁴

Applicant's wife handled all of the finances, and he is generally unfamiliar with them and was unaware of their financial problems. He was going to take a loan from his 401k to pay his delinquent medical bills and any other late bills. Although Applicant did not provide documents to show he paid the small medical debts (SOR ¶¶ 1.a - \$275 and 1.b - \$141), I found his statement credible. No other information was provided about Applicant's current financial situation. No evidence of financial counseling was provided.⁵

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."

⁴ AE B.

⁵ Item 1, AE A.

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 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.⁶

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

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

⁶ See ISCR Case No. 11-05365 at 3 (App.Bd. May 1, 2012).

Applicant had debts that became delinquent. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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; and
- (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.

Applicant began experiencing financial problems in 2008 when his wife became unemployed. He had difficulty making his mortgage payments. He also had two medical debts that he intends to resolve. Applicant stated that he was able to short sell his house in January 2016. The documents substantiate that both mortgage loans are resolved (SOR ¶¶ 1.c and 1.d). Applicant's debts occurred under circumstances that are unlikely to recur. AG ¶ 20(a) applies.

Applicant attributed his financial problems to his wife's unemployment and his unfamiliarity with their finances. Applicant's wife's unemployment was beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant was able to short sell his house and resolve his mortgage loans. He acted responsibly under the circumstances. AG ¶ 20(b) applies.

Applicant has resolved his mortgage loans. He intends to resolve the two small medical debts. There is evidence that Applicant's financial problems are being resolved and are under control. AG ¶ 20(c) applies.

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 is 60 years old. He has worked for his employer since 1980. His wife became unemployed in 2008 and he was unable to pay his mortgage. He short sold his house in January 2016 and resolved his mortgage loans. He intends to resolve the small medical debts, which are a modest amount that would not raise a security concern. Applicant has 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
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Subparagraphs 1.a-1.d:	For Applicant
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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