



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



In the matter of:)
)
) ISCR Case No: 15-04614
)
)
Applicant for Security Clearance)

For Government: Pamela Benson, Esquire, Department Counsel
For Applicant: *Pro se*

09/13/2016

Decision

DAM, Shari, Administrative Judge:

Applicant started experiencing financial difficulties between 2006 and 2013, mainly related to real estate investments. He mitigated the security concerns raised under the guideline for financial considerations. Eligibility for access to classified information is granted.

Statement of the Case

On July 14, 2013, Applicant submitted an electronic Questionnaire for Investigations Processing Investigation Request (e-QIP), as part of a re-investigation for a security clearance. On December 6, 2015, the Department of Defense (DOD) issued 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 for*

Determining Eligibility for Access to Classified Information effective within the DOD on September 1, 2006.

Applicant answered the SOR in writing (Answer) on December 30, 2015, and requested a hearing before an administrative judge. On April 21, 2016, DOHA assigned the case to me. On June 15, 2016, DOHA issued a Notice of Hearing setting the case for July 13, 2016. The case was heard as scheduled. Department Counsel offered Government Exhibits (GE) 1 through GE 4 into evidence without objection. Applicant testified and offered Applicant Exhibits (AE) A through AE H into evidence without objection. DOHA received the hearing transcript (Tr.) on July 21, 2016. The record remained open until August 8, 2016, in order to provide Applicant time to submit additional documents. Applicant timely submitted exhibits that I marked as AE I through AE L, and admitted without objection.

Findings of Fact

In his Answer to the 11 allegations in the SOR, Applicant denied ¶¶ 1.a, 1.b, and 1.g through 1.k, on the basis that he paid or resolved them. He admitted the remaining four allegations. All admissions are incorporated herein.

Applicant is 39 years old and married for ten years. He and his wife have two children, ages six and two. He earned a master's degree in 2007. He began working for his current employer in June 2000. He is a program manager and supervises several teams of employees. He is active in community organizations. (Tr.17-21.)

When Applicant completed his e-QIP in July 2013, he disclosed four foreclosures and other delinquent debts. (GE 1.) In August 2013 a government investigator interviewed Applicant about matters in his e-QIP, including the foreclosures and other debts. Applicant stated that he had purchased properties for investment purposes, but when the real estate market began its downward spiral in the mid-2000s, he could no longer afford to maintain or renovate some of them, or find appropriate tenants. (AE H.)

Applicant testified that he purchased ten investment properties between 2001 and 2005. He successfully sold four or five of them. The remaining properties, alleged in the SOR, went into foreclosure because he could not maintain or sell them. He said that he was never assessed a deficiency balance after any of the foreclosures. He asserted that the matters are closed and resolved. (Tr. 24-32.)

Based on a credit bureau report (CBR) from July 2013 and information from Applicant's e-QIP, the SOR alleged six real estate investments that resulted in foreclosures, and five delinquent debts. (GE 2, GE 3, and GE 4.) The debts arose between 2006 and 2013. A summary of the status of each debt is as follows:

SOR ¶ 1.a: The \$9,720 judgment for an unpaid real estate line of credit was paid and released in May 2013. This debt related to one of Applicant's investment properties. (Tr. 24; AE C.)

SOR ¶ 1.b: The \$422 jewelry debt was paid in June 2016. (Tr. 24; AE D.)

SOR ¶ 1.c: These three real estate investment loans, which were owed to Bank B, went into foreclosure and were resolved in 2008 and 2013. Applicant purchased the properties that secured these loans between 2001 and 2005. (Tr. 25-30, 40; AE I, AE K.)

SOR ¶ 1.d: This real estate investment loan owed to Mortgage Company L went into foreclosure in 2007. Applicant stated the company is no longer in business. He contacted the company which purchased Company L, and it has no information about his previous loans. It does not appear on his 2015 or 2016 CBR. (Tr. 38; GE 1; AE I.) This debt is resolved.

SOR ¶ 1.e: This real estate investment loan owed to Bank C went into foreclosure in 2007. Applicant testified that the matter was resolved and there was no deficiency due. At one point, he received a small payment from the bank for mishandling the loan. (Tr. 40; AE H, AE I.)

SOR ¶ 1.f: This real estate investment loan owed to Bank W went into foreclosure. It was resolved in 2010. (AE I, AE J, AE L.)

SOR ¶ 1.g: The \$209 owed to a credit service for a medical bill was paid in 2013. Applicant said the debt does not appear on his 2015 or 2016 CBRs. (Tr. 42-45; GE 1.) It is resolved.

SOR ¶ 1.h: The \$65 debt was a utility bill owed for one of Applicant's former rental properties. Applicant said that he paid it in July 2013. It does not appear on his 2015 or 2016 CBRs. (Tr. 45-49; AE E, AE H.) It is resolved.

SOR ¶ 1.i: The \$204 debt for a credit card account was resolved with the creditor. Applicant said he did not open or use the card that was sent to him, and was not liable for fees related to it. The debt no longer appears on his 2015 CBR. (Tr. 50; AE B, AE H.)

SOR ¶ 1.j: The \$793 medical debt owed to a hospital was fully paid in 2016. Applicant had been making payments on it and other bills owed to this creditor. (Tr. 51-52; AE F.) It is resolved.

SOR ¶ 1.k: The \$135 medical debt owed to the same hospital as noted above was paid in 2016. (Tr. 51-52; AE F.) It is resolved.

Applicant's annual salary is \$124,000 and his wife's is \$70,000. (Tr. 22-23.) According to his 2016 CBR, his financial obligations are current, including student loans. (AE B.) He submitted performance evaluations from 2007 through 2015. All of them rate Applicant as "exceeding requirements." (AE G.) Applicant's supervisor is aware of the

security concerns underlying this hearing. (Tr. 21.) Applicant admitted that when he purchased the properties he was a “young investor” and did not consider the possibility of a market crash. (Tr. 31.)

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 (AG) list potentially disqualifying and mitigating conditions, which are useful 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(a) describing 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.

According to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 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 relating to the guideline for financial considerations are 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.

AG ¶ 19 notes two disqualifying conditions that could potentially raise security concerns in this case:

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

As documented by CBRs and his admissions, Applicant began experiencing financial problems between 2006 and 2013 that he had been unable or unwilling to manage. The evidence is sufficient to raise these disqualifying conditions.

After the Government produced substantial evidence of those two disqualifying conditions, the burden shifted to Applicant to produce evidence and prove mitigation of the security concerns. AG ¶ 20 sets forth conditions that could potentially mitigate financial security concerns:

- (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.

Some of Applicant's financial problems had been ongoing into 2016. Hence, the evidence does not establish mitigation under AG ¶ 20(a). Applicant attributed his financial problems to the real estate market collapse that occurred in the mid-2000s, and his subsequent inability to sell or maintain properties. While that market situation may have contributed to his problems and been a circumstance beyond his control, he bears some responsibility for the financial decisions he made when he decided to purchase ten properties within a short period of time, which were circumstances within his control. There is insufficient evidence to conclude that he attempted to responsibly manage his debts or obligations while they were accumulating. Hence, AG ¶ 20(b) has minimal application.

Applicant provided evidence to support the application of AG ¶ 20(c). Although he has not participated in credit or financial counseling, there are clear indications that his financial issues are under control, and all matters alleged in the SOR are resolved. He paid 5 of the 11 SOR allegations, exhibiting a good-faith effort to resolve those debts and establish mitigation under AG ¶ 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(a). They include the following:

(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) 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 include 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 facts and circumstances surrounding this case. Applicant is a credible and educated 39-year-old man, who has successfully worked for a defense contractor since 2000. In early 2001 he began purchasing investment properties, which he could not financially manage when the real estate market collapsed. As a consequence, he had difficulty paying his living expenses and maintaining the properties, which resulted in

foreclosures of the properties. At this time his financial situation is sufficiently stable, and he is no longer involved with investment properties. He is aware that further financial problems could jeopardize his security clearance and employment. The evidence leaves me without questions as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant mitigated the security concerns arising under the financial considerations guideline.

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 through 1.k: 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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

SHARI DAM
Administrative Judge