



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



In the matter of:

ISCR Case No. 15-05321

Applicant for Security Clearance

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel

For Applicant: *Pro se*

October 31, 2016

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant defaulted on a mortgage he co-signed for his parents. His decision to co-sign the loan happened ten years ago and occurred under circumstances that are unlikely to recur. His past behavior does not cast doubt on his current reliability, trustworthiness, or good judgment. Eligibility for access to classified information is granted.

Statement of the Case

On May 27, 2014, Applicant submitted an e-QIP. On March 15, 2016, the Department of Defense 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective September 1, 2006.

Applicant answered the SOR on April 20, 2016 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on May 31, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 22, 2016, scheduling the hearing for July 25, 2016. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 4, which were admitted without objection. Applicant offered Exhibits (AE) A through C, which were admitted without objection. Applicant testified on his own behalf. The record then closed. DOHA received the transcript of the hearing (Tr.) on August 2, 2016.

Findings of Fact

Applicant is 35 years old. He has been employed with a Government contractor for 12 years. He has held a security clearance that entire time and has had no security violations. He is not married and has no children.

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness and ability to protect classified information. The SOR identified two debts of approximately \$287,000 each. Applicant denied both allegations. Both of the alleged debts were listed on credit reports dated June 6, 2014; May 27, 2015; and May 23, 2016. (Answer; GE 2; GE 3; GE 4.)

Applicant testified that, in approximately 2003, his father was laid off from his job. In 2005, while still unemployed, his father decided to move to a home where the cost of living would be more affordable. Due to his father's unemployment, Applicant's father and mother asked Applicant to co-sign a mortgage with them to purchase a house in their new city. The house cost \$320,000. Applicant was 25 years old at that time, and was not financially savvy. He did not understand that co-signing the loan could make him legally liable for the entirety of the loan. His parents promised to sell their previous home in the more expensive city, and his father was actively looking for work in their new city. Applicant agreed to co-sign a single mortgage of approximately \$287,000. His parents put down approximately \$50,000 toward costs, fees, and the mortgage. (Tr. 16-25.)

Applicant's parents successfully made payments on the mortgage until approximately 2010. His father had found work in approximately 2006, but was again laid off in 2010. They could no longer afford the mortgage. Applicant was not aware that they defaulted on the loan until his parents had missed approximately seven payments. He did not get notices from the loan servicer because they were mailed directly to his parents. (Tr. 25-27.) Applicant's mother told him not to worry about it because she would either short-sell the property or the loan would be satisfied through foreclosure. The value of the home, which was approximately \$300,000 when they purchased it, had declined by \$200,000. Applicant trusted his mother and father to handle the situation independently and did not intervene. (Tr. 16-39.)

Tracing the history of the loan is difficult, but it is clear that Applicant co-signed only one \$287,000 secured loan. Applicant's credit reports show a home mortgage of \$287,858 opened with loan servicer 1, in May 2006. It first became delinquent in February 2010. It was a thirty-year loan. (GE 4 at page 5 tradeline 11.) The same loan was listed with loan servicer 2 (GE 4 at page 7 tradeline 19); and loan servicer 3 (GE 4 at page 6 tradeline 14.) Eventually it was transferred to loan servicer 4, who reported it using the same account number as that identified on the entry for loan servicer 1 (GE 3; at page 1.) That is the debt alleged in SOR subparagraph 1.a.

According to court documents, this loan was backed by a different financial institution (Investor). Investor was the trustee for the certificate holders which backed the loan made to Applicant that was serviced by the various lenders. (AE C.) Investor is the creditor identified in SOR subparagraph 1.b. When Applicant's parents defaulted on the home mortgage, Investor (not the loan servicer) filed suit to enable it to repossess the property. An Order for Default Judgment of Foreclosure and Order of Sale was entered against Applicant and his parents on March 21, 2014, in favor of Investor by the court. The amount of the judgment was for \$287,000, but the Order noted, "the sums in which the Borrowers are indebted to Plaintiff as indicated in ¶ 2 above in the judgment are for the purposes of foreclosure only and from which a Writ of Execution will issue. This judgment is not intended to be a monetary judgment against the Borrowers." (AE C.) As a result, this judgment was satisfied when the property was foreclosed upon as set out in the order and perfected through the foreclosure. (AE C.)

Applicant testified he is no longer helping his parents financially and he will not co-sign another loan. (Tr. 38-45.) He uses a budget to manage his finances. He has \$151,000 in a 401K savings account and has no problem meeting his monthly expenses. His July 2016 credit report, reflects that his credit card accounts, student loans, and car payment are current. That report identified no additional delinquencies. (AE A.)

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 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 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 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. 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, 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 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 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 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. Two are potentially applicable in this case:

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

In 2010 Applicant accumulated a significant amount of delinquent debt when his parents defaulted on the mortgage that he co-signed for them. His actions demonstrated both a history of not addressing his debt and an unwillingness to do so. The evidence is sufficient to raise the above disqualifying conditions.

One Financial Considerations mitigating condition under AG ¶ 20 is 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.

The evidence shows that Applicant's mortgage was resolved through foreclosure. This debt was incurred when he was 25, and naive about the ramifications of co-signing a loan for his parents. He trusted his mother and father to resolve the debt when he learned it was delinquent; and he did not follow through to make sure their decisions were responsible and in his best financial interest. However, he has learned from this experience and is unlikely to co-sign another loan in the future. His most recent credit report reflects that all of his other accounts are in good standing. He is now more mature and is saving for his future. His behavior happened so long ago, and occurred under such circumstances, that it is unlikely to recur and does not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶ 20(a) provides mitigation.

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):

- (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 relevant 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 exercised questionable judgment in the past when he co-signed the mortgage for his parents and then did not monitor the loan to insure his parents fulfilled their promise to him to pay the loan. However, the debt is resolved through foreclosure and Applicant has matured. He will not co-sign another loan for his family. He now operates using a budget and all of his other debts are in good standing. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Jennifer I. Goldstein
Administrative Judge