



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



In the matter of:

ISCR Case No. 15-05450

Applicant for Security Clearance

Appearances

For Government: Andrew Henderson, Esq., Department Counsel

For Applicant: *Pro se*

October 20, 2016

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is alleged to be indebted to one creditor in the approximate amount of \$50,419. Applicant mitigated the Financial Considerations security concerns, because the debt was fully resolved through litigation. Eligibility for access to classified information is granted.

Statement of the Case

On March 29, 2016, 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; 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 21, 2016, and requested a hearing before an administrative judge. The case was assigned to me on July 28, 2016. The Defense

Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 28, 2016, scheduling the hearing for August 10, 2016. Applicant waived the 15-day notice requirement. (Tr. 4.) The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 4, which were admitted without objection. The Applicant offered Exhibits (AE) A through F, which were admitted without objection. Applicant testified on his own behalf. The record was left open for Applicant to submit additional exhibits and on August 16, 2016, Applicant presented AE G. Department Counsel had no objections to AE G, and it was admitted. DOHA received the transcript of the hearing (Tr.) on August 19, 2016.

Findings of Fact

Applicant denied SOR allegation 1.a, which alleged that Applicant was indebted on a home equity loan that had been charged off in the amount of \$50,419. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 36-year-old employee of a defense contractor. Applicant served in the Army from 2004 to 2010. He achieved the rank of sergeant, E-5. He has worked for various government contractors since leaving the Army in 2010. He has held a security clearance since 2006. He is single and has no children. (GE 1; GE 2; Tr. 21-23.)

In 2005, at the age of 25, Applicant purchased a home. He financed the purchase with two loans, a \$200,000 loan with an adjustable rate mortgage and a \$50,000 home equity loan. He did not understand what an adjustable rate mortgage was at that time. In about 2008, the adjustable rate mortgage adjusted upward, and Applicant could no longer afford the higher payments. The property was foreclosed upon by the primary mortgage holder in 2009. His primary mortgage was resolved through the foreclosure. (Tr. 22-37.)

Applicant made payments on his home equity loan through December 2013. At that point, he hired an attorney, who advised him to stop making payments because of “unscrupulous” activities on the part of the lender. He was referred to the attorney by the teller at the bank that held the home equity loan, when he went in to make payments on this debt. The basis of Applicant’s legal claim was that the lender had fraudulently been charging Applicant for home insurance over a five year period on the home, which Applicant did not own, despite the lender’s awareness of the foreclosure. Applicant’s attorney filed a complaint against the lender in civil court in May 2014. The lender and Applicant settled out of court in January 2015. Documentation from the lender shows that the lender agreed to pay Applicant \$45,000 in damages, and there is “no outstanding balance” owed by Applicant on this debt. It is resolved. (GE 3; AE A; AE B; AE F; AE G; Tr. 13, 22-38.)

Applicant participated in financial counseling after the foreclosure. He learned about adjustable interest rates and how to properly manage money. (Tr. 36-37.)

Applicant purchased a new home in 2013. He has \$50,000 worth of equity in it. He has never been late on his mortgage payments. He also owns two rental properties that are fully paid for. They are valued at \$120,000 each. He has no other delinquent accounts identified on his most recent credit report. He set up mobile alerts by email and phone to help him monitor his financial situation. He has approximately \$40,000 in savings. (GE 4; AE C; AE D; AE E; Tr. 30-34.)

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 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.

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 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.

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, as follows:

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.

Applicant was indebted on his home equity line of credit in the amount of \$50,419, as alleged on the SOR. This debt was delinquent from 2014 to January 2015, after he stopped making loan payments on advice of his attorney during litigation to dispute the debt. The Government established a prima facie case for disqualification under Guideline F.

Two Financial Considerations Mitigating Conditions under AG ¶ 20 are applicable:

- (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 continued to pay on his home equity line of credit loan from 2009 to 2013, despite the foreclosure on the property that secured the loan. It was only after he received legal advice that the lender was acting improperly by charging Applicant for insurance, despite no longer possessing the property, that Applicant ceased payments

on this loan. Applicant's attorney filed suit against the creditor and they settled out of court. As part of the settlement, Applicant was deemed to have "no outstanding balance" on this account, and Applicant received an additional \$45,000 payment from the creditor. This debt is resolved and Applicant's finances are under control. He has no other delinquent debt. He can be trusted to monitor his finances closely and resolve his debts in the future. Applicant has acted responsibly by following the advice of his counsel and educating himself on how to avoid future debt. Substantial mitigation under AG ¶¶ 20(c) and 20(d) was established.

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 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 served in the Army for six years. He has addressed his sole delinquency and it is resolved. He has matured since he first purchased the home in 2005 and now understands the different types of mortgages. He is unlikely to experience similar financial problems in the future.

Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Financial Considerations security concern.

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

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.

Jennifer I. Goldstein
Administrative Judge