



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-06644

Appearances

For Government:

Aubrey De Angelis, Esquire, Department Counsel

For Applicant:

Pro se

September 14, 2017

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on January 16, 2015. (Government Exhibit 1.) On June 15, 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, 2006.¹

Applicant answered the SOR in writing (Answer) on July 8, 2016, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on September 7, 2016. The case was assigned to me on September 12, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on November 22, 2016. I convened the hearing as scheduled on January 26, 2017.

The Government offered Government Exhibits 1 through 5, which were admitted without objection. Applicant offered Applicant Exhibits A through I, which were admitted without objection. Applicant testified on his own behalf. DOHA received the final transcript of the hearing (Tr.) on February 3, 2017. Applicant requested that the record remain open for the receipt of additional exhibits. He submitted Applicant Exhibits J through L, which were all admitted without objection, and the record closed.

Findings of Fact

Applicant is 53 years old, married for the second time, and has eight children. He is seeking to retain national security eligibility for a security clearance.

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has a history of having past-due debts. Therefore he is potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds.

In his Answer, Applicant admitted the single allegation in the SOR with explanations. He also submitted additional evidence to support his request for a finding of national security eligibility.

1.a. Applicant admitted that he was indebted for a past-due mortgage debt in the amount of \$69,461. The loan balance on his house is \$429,881. As discussed under “Mitigation,” below, Applicant had an outstanding 30-year military career before transitioning into the defense industry. From the time they were married in 2002, through his retirement in 2011, and up to 2016, Applicant’s wife took care of the family finances, including paying the mortgage. She did not do a good job.

Applicant was interviewed by an investigator from the Office of Personnel Management on April 29, 2015. During that interview, Applicant was informed that the mortgage was delinquent and that a foreclosure process had started. The investigator

¹ I considered the previous Adjudicative Guidelines, effective September 1, 2006; as well as the new Adjudicative Guidelines, effective June 8, 2017. My decision would be the same if the case was considered under the previous Adjudicative Guidelines.

states in his Report of Investigation, "Subject [Applicant] was not aware of any foreclosure proceedings and is shocked at the information. He is contacting the mortgage company as soon as possible, but does not know yet how he will handle if the account is his." (Government Exhibit 2 at 2.)

In his Answer Applicant stated the following concerning the aftermath of this interview:

I was really upset and embarrassed. After that interview, I contacted my wife immediately who [had] been taking care of ALL our finances for over 15 years and asked about it. She related that she was going to make some phone calls and let me know what happened. Well, she did and said that everything was ok. (Emphasis in original.) (See Tr. 21-24.)

In reality, as opposed to what she told him, Applicant's wife did nothing for a year. Applicant received an email from DOHA in April 2016, shortly before issuance of the SOR, asking about the status of their still-delinquent mortgage. It was then Applicant discovered that his wife had never made a payment on their mortgage since they bought the house in 2011. He was asked at the hearing what his wife did with their mortgage money. He testified, "I have no idea because I always used to ask her hey, you know, we are saving money, right – yes, we are. Okay. I didn't have to worry, you know. I mean nothing came up to where I had to get involved and engaged which, unfortunately, you know, is bad on my part." (Tr. 26.)

Applicant was also unemployed after retiring from the U.S. Navy from November 2011 through September 2012, when he began working as a contractor. During that period of unemployment he was not receiving his retirement pay or his disability pay. This also caused financial difficulties. (Applicant Exhibit E at 16-17; Tr. 27-29.)

At this point, mid-year 2016, Applicant took control of the family finances. Applicant contacted the mortgage company at that time to see what he could do about preventing the foreclosure and resolving his delinquent mortgage. To that end he began the process of modifying his mortgage through the mortgage company's loss mitigation program. This process took several months, and required considerable documentation from Applicant. It was finally successfully completed by Applicant, and accepted by the mortgage company, in February 2017. At the time the record closed Applicant had made two timely payments in accord with the trial modification agreement. (Applicant Exhibits D, E, F, G, H, J, K, and L; Tr. 37-42.)

At the same time Applicant and his wife began an intensive financial counseling program. Their financial instructor submitted a letter on Applicant's behalf, setting forth the program. As part of the program, and in order to be able to fulfill the requirements of the trial modification agreement, Applicant has been able to save \$40,000 between June 2016 and January 2017. This money is to be used, in part, to make mortgage payments. (Applicant Exhibits C, and I; Tr. 29-31, 34-37, 52-53.)

Applicant's current financial situation is stable. He makes a sufficient income, is able to maintain his household without problems, and the most recent credit report in the record shows no new delinquent accounts. (Government Exhibit 5; Applicant Exhibit I; Tr. 42-47.)

Mitigation

Applicant had an outstanding 30-year military career, retiring as a command master chief petty officer (E-9). During his career, Applicant held positions of increasing and important responsibility. His DD-214 reflects over eleven years of sea duty, and almost three years of overseas service. He received many awards and decorations during his career. (Applicant Exhibit B, and E at 28-29; Tr. 49-50.)

Applicant submitted extremely laudatory character reference letters from people who have known him in both his military and civilian capacities. The writers include senior non-commissioned officers, senior commissioned officers, as well as senior civilians. Several of the writers also were either current or past supervisors of Applicant. He is uniformly described as a trustworthy, extremely dependable, and honest individual and leader. (Applicant Exhibit A.)

Policies

When evaluating an applicant's suitability for a national security eligibility and 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 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, "Any 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, “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, 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 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, “Any 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

Paragraph 1 (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 personal 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 had a severely past-due mortgage, which he did not or could not resolve. Both of these conditions apply, thereby shifting the burden to Applicant to mitigate them.

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, 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 is a successful, accomplished, retired senior non-commissioned officer in the Navy. He trusted his wife to handle the family finances, both before and after his retirement. This situation, which began during his many deployments, and is not at all unusual in the service, turned out to be a mistake that almost cost Applicant his house, among other things. However, once fully aware of the issue, in the past year Applicant has taken responsibility for his finances and worked diligently to resolve them. After many months of work, he and the mortgage company have reached a trial modification agreement, which he is successfully paying. He has taken financial counseling, and provided bank records indicating a present and future ability to pay his mortgage and other bills without problem. The Appeal Board has stated, "An applicant is not required to show that [he] has completely paid off [his] indebtedness, only that [he] has established a reasonable plan to resolve [his] debts and has taken significant actions to implement that plan."² His current financial status is stable, and he evinces a credible intent and ability of being able to maintain that stability into the future. He has fully mitigated the allegation in the SOR. Paragraph 1 is found for Applicant.

²ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)).

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.

Under AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility 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 pertinent facts and circumstances surrounding this case. Applicant has mitigated the concerns regarding his financial situation. He is a mature and able individual who, once recognizing the family issues that caused this problem, has worked diligently and successfully to resolve them. Overall, the record evidence does not create substantial doubt as to Applicant's present suitability for national security eligibility, and a security clearance.

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

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 national security eligibility. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge