



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



In the matter of:

ISCR Case No. 15-07031

Applicant for Security Clearance

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel

For Applicant: *Pro se*

June 19, 2017

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is alleged to be delinquent on two debts, in a total exceeding \$79,634. Both debts are resolved. Eligibility for access to classified information is granted.

Statement of the Case

On June 17, 2016, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F.¹ The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

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

Applicant answered the SOR on July 30, 2016, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on December 5, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 14, 2016, scheduling the hearing for February 7, 2017. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 4, which were admitted without objection. (Tr. 13-14.) Applicant testified on his own behalf and called one witness. Applicant presented three documents, which I marked Applicant's Exhibits (AE) A through C. AE A through C were admitted without objection. The record was left open until March 7, 2017, for receipt of additional documentation. Applicant submitted nothing by that date and the record closed. DOHA received the transcript of the hearing (Tr.) on February 14, 2017.

Findings of Fact

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

Applicant is a 41-year-old employee of a defense contractor. He has been employed with the defense contractor since January 2007. He served on active duty in the Marine Corps from 1997 to 2002. He served in the Marine Corps Reserves from 2002 to 2005. He achieved the rank of Corporal. He received an Honorable Discharge. He is divorced since 2006, and has two children, ages 11 and 14. (GE 1; Tr. 17-19, 31-33.)

SOR ¶ 1.a alleged that Applicant was past due in the amount of \$65,154 on a \$105,045 mortgage. Applicant and his ex-wife purchased this home in approximately 2002, during their marriage. While Applicant was working in a combat zone, his ex-wife moved to another city and the home was rented to a tenant. The tenant caused the home to fall into disrepair. Applicant was unaware of the damage. Further, the tenant then passed away. Applicant did not have reliable access to the internet overseas and was not aware for a substantial period of time that the rent payments had not been paid by the tenant. As a result, insufficient funds were available to make his monthly mortgage payments. When Applicant learned the mortgage was delinquent, he felt he had no choice but to let the mortgage remain in default, as he could not afford to maintain the property without the rental income. Foreclosure proceedings on this property were initiated by the lender in 2008. Since 2008, Applicant retained a realtor, but was unable to rent or sell the house. Applicant cleaned and repaired the house. He attempted to negotiate a short sale with the bank, but the bank refused the negotiated offer. The foreclosure was finalized in January 2016. A letter dated May 20, 2016, informed Applicant that he was not liable for the deficiency of \$35,901, which was the amount due on the mortgage after the foreclosure sale. This debt is resolved. (GE 2; AE A; Tr. 18-22, 38-39, 56.)

SOR ¶ 1.b alleged that Applicant was delinquent on a collection account in the amount of \$14,480. This debt was for a joint credit card Applicant held with his ex-wife during the course of their marriage. His ex-wife continued to use the card after their

divorce, but she stopped making payments on the account. Applicant contacted the collection agent and attempted to negotiate payments on this debt. However, the creditor wanted payment in full. Applicant hired a financial advisor to dispute this debt based upon unfair credit practices set out in the Service Members Civil Relief Act. The entry was investigated after he filed a dispute and was subsequently removed from two of three credit reporting agency entries after investigation. The third credit reporting agency reported the debt as “closed” with no balance. This debt is resolved. (AE B; Tr. 23-26, 40-41, 59-60.)

Applicant attributes his past financial problems to his divorce and difficulties with his tenant. He explained that the divorce cause numerous delinquencies, including another foreclosure, that have since been resolved. He now checks his credit report monthly and is current on all of his other accounts. (GE 4; AE B; Tr. 58.) Applicant testified concerning his work to improve his credit rating:

I think I've shown, I mean, even if you just look from the previous credit reports and where I was at to where I am now it's taken a lot. It's very good or excellent for my credit score and have \$15,000 in debt. That was my vehicle I no longer own and then my credit card, you know. I think I'm in a good spot just hoping to be better. (Tr. 50.)

Applicant's evidence included three letters of recommendation and the testimony of a witness. His witness indicated that he has the “utmost confidence in [Applicant]” and finds Applicant truthful. (Tr. 66-69.) Applicant's manager, who wrote a letter on Applicant's behalf, indicated Applicant is a “dependable and responsible team member.” A coworker opined, “he has our full trust and respect as not only a great employee, but as a passionate and caring citizen.” His Facility Security Officer indicated Applicant is “trustworthy and a responsible individual.” (AE C.)

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 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who applies for access to classified information seeks to enter 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 Executive Order 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 *a/so* 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 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 personnel 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. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant was delinquent on two alleged debts, in a total exceeding \$79,634. His mortgage had been delinquent since 2008. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 20 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 including:

- (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;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant attributed his mortgage delinquency to a series of events beyond his control including his divorce, damage to his property, and the death of his tenant. These are circumstances beyond his control. He demonstrated that he attempted to address his debts in a responsible and timely manner. He spent his time and money to fix the damage to the property. He hired a realtor to try to rent or sell the property. He tried to negotiate a short sale with the bank. When those efforts failed, the bank foreclosed on the property and Applicant's deficiency was forgiven. Full mitigation with respect to the mortgage debt has been established under AG ¶¶ 20(b) and 20(d).

Applicant contested the delinquency in SOR ¶ 1.b with the credit reporting agencies, because a financial advisor advised him to dispute this debt under the Service Members Civil Relief Act. Applicant documented the entry was corrected on his credit report after he contested it. Mitigation under AG ¶ 20(e) has been established with respect to subparagraph SOR ¶ 1.b.

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 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 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(d) were addressed under those guidelines, but some warrant additional comment.

Applicant has a distinguished history of working in the defense industry and is respected by his witness, and those people who wrote letters of support on his behalf. He performs well at his job. He now closely monitors his credit. He currently has no delinquent accounts. 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 mitigated the Financial Considerations security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 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 Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Jennifer I. Goldstein
Administrative Judge