



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



In the matter of:)
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) ISCR Case No: 15-07175
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)
Applicant for Security Clearance)

For Government: Caroline Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

09/29/2016

Decision

DAM, Shari, Administrative Judge:

Applicant mitigated the financial security concerns raised as a consequence of a delinquent home equity loan. Eligibility for access to classified information is granted.

Statement of the Case

On December 29, 2014, Applicant submitted a security clearance application (SF 86). On March 12, 2016, 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 (AR) on April 6, 2016, and requested a hearing before an administrative judge. On June 2, 2016, the Department of Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On July 18, 2016, DOHA issued a Notice of Hearing setting the case for August 17, 2016. The case was heard as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence. Applicant testified and offered Applicant Exhibits (AE) 1 through 3 into evidence. All exhibits were admitted without objections. DOHA received the hearing transcript (Tr.) on August 25, 2016. The record remained open until September 14, 2016, in order to provide Applicant time to submit additional documents. Applicant timely submitted AE 4, which was admitted into the record without objection.

Findings of Fact

Applicant admitted the sole allegation in SOR ¶ 1.a, referencing a charged off account (Answer). His admission is incorporated herein.

Applicant is 43 years old and divorced from his wife since December 2008. They separated in January 2006 and have 3 children, ages, 18, 15, and 11. Applicant has full custody of the children, all of whom reside with him. He lives with his fiancée. Applicant earned a bachelor's degree in 1994. He began a position with a defense contractor in January 2015, who is sponsoring him for a clearance. He was subsequently terminated from that position pending this proceeding. He then received unemployment compensation. For the past five months he has worked for another employer. He coaches his daughter's softball team. (Tr. 13-22, 25.)

In 1997 Applicant and his former wife purchased a house. In 2003 they assumed a home equity loan to resolve outstanding debts. After Applicant and his children moved out of the marital residence in January 2006, he continued to make payments on the mortgage and home equity loan without assistance from his wife. On the advice of his attorney, he stopped making both payments in 2007. At the time he was also paying all expenses related to caring for his children. The bank charged off the home equity loan in 2008 and subsequently foreclosed on the house. (Tr. 26-29; GE 4.)

In November 2014, the bank holding the mortgage and home equity loan executed a Release of Mortgage for the property, documenting that the mortgage lien was cancelled. (AE 4.) Applicant testified that subsequently he never received an IRS 1099-C form related to the home equity loan, referencing a deficiency balance. He said the matter is resolved. (Tr. 30.) According to Applicant's August 2016 credit bureau report (CBR), Applicant obtained a new mortgage in April 2015 from the bank that held his previous mortgage and home equity loan. (AE 3.)

Applicant submitted a budget. He and his fiancée have a net monthly income of \$7,180. Included in the budget is a monthly payment of \$52 to the Internal Revenue Service (IRS) for a \$3,000 debt owed by Applicant for withdrawing money from his 401(k) to manage expenses while unemployed and between positions. After paying expenses, they have about \$1,330 remaining at the end of the month. (Tr. 22-23; AE 2.)

He testified that the home equity debt alleged in the SOR was the only debt on which he has ever defaulted. (Tr. 35.)

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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 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." Section 7 of Executive Order 10865 provides that an adverse decision shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.¹

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.

Applicant's home equity loan became delinquent in 2007 and was charged off in 2008. It was not resolved for several years. 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;

¹ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

(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.

Applicant's home equity loan became delinquent under circumstances that are unlikely to recur, and do not cast doubt on his current reliability, trustworthiness, or good judgment. The evidence establishes mitigation under AG ¶ 20(a). Applicant's delinquent loan arose as a result of marital issues, and his inability to pay it and other living expenses for himself and children. These were circumstances beyond his control. He did not present sufficient evidence demonstrating that he attempted to responsibly manage the debt while or after it was charged off. Limited mitigation under AG ¶ 20(b) is established.

Applicant did not provide evidence that he participated in credit, financial, or budgetary counseling. However, he submitted evidence indicating that the delinquent loan is resolved and a budget demonstrating that his finances are under control. Mitigation is established under AG ¶ 20(c). Based on his attorney's advice, he stopped making payments on the loan sometime after he moved out of the marital home. That loan was not resolved until after the house went into foreclosure. Thus, there is minimal evidence to conclude that he made a good-faith effort to resolve it or support the application of AG ¶ 20(d) as to the allegation.

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 pertinent facts and circumstances surrounding this case. Applicant is a credible 43-year-old man, who experienced, for the first time, financial difficulties after he separated from his former wife in 2006. At this time, he has resolved a delinquent home equity loan and established a new mortgage with the bank that held said loan and his foreclosed mortgage. His financial obligations are under control. The record evidence leaves me without questions or doubts 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
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Subparagraph 1.a:	For Applicant
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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