



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



In the matter of:)
)
) ISCR Case: 15-07213
)
Applicant for Security Clearance)

Appearances

For Government: Douglas Velvel, Esquire, Department Counsel
For Applicant: *Pro se*

03/28/2017

Decision

WHITE, David M., Administrative Judge:

Applicant defaulted on two mortgage loans and six other debts, totaling more than \$31,000, since 2012. He filed for bankruptcy in June 2016, and reported a monthly deficit of income to expenses. Resulting security concerns were not mitigated. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Statement of Case

On July 7, 2014, Applicant submitted a security clearance application. (Item 2.) On April 8, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. (Item 1.) 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* (AG), effective within the DOD after September 1, 2006.

Applicant submitted his Answer to the SOR on May 1, 2016, and requested that his case be decided by an administrative judge on the written record without a hearing. (Item 1.) On June 20, 2016, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing four Items, was mailed to Applicant on June 20, 2016, and received by him on June 28, 2016. The FORM notified Applicant that he could file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. On July 11, 2016, Applicant filed his Response to the FORM. Department Counsel did not object to the admissibility of Applicant's Response, which is marked Applicant's Exhibit (AE) A. The four FORM Items and AE A are admitted into evidence. DOHA assigned the case to me on March 6, 2017.

Findings of Fact

In his Answer, Applicant admitted each of the eight SOR allegations concerning two mortgage loans that were foreclosed in 2013; and six other commercial debts (totaling \$31,621) that have also been delinquent since late 2012. His admissions and explanations are incorporated into these findings of fact. (Item 1.)

Applicant is 44 years old and divorced, since January 2013, with three minor children in the custody of his ex-wife. He earned a high school diploma in 1990 and served on active duty in the U.S. Army from November 1992 to August 2000. He has been employed by a defense contractor in an overseas location, as a supply technician, since March 2010. He is seeking to renew his security clearance in connection with that employment. (Item 1; Item 2.)

Applicant previously owned two residential properties in the United States. He lived in the first one from June 2008 until September 2011, when he and his wife purchased and moved into the second one in another state. The mortgage loans originated at about \$140,000 on the first home, and \$174,500 on the second home. They were able to rent the first home to a tenant until she moved out around mid-2012. When they could not find another tenant, they unsuccessfully attempted to sell the first home. Applicant last made payments on these loans in October 2012. He was awarded sole possession of both properties in their January 2013 divorce decree, as well as responsibility for the associated mortgage debts. The lender foreclosed on both properties in 2013. Applicant's credit report reflects no outstanding balance due on either loan. (Item 1; Item 2; Item 3.)

The remaining six delinquent debts involve: a \$20,200 charged-off automobile loan toward which Applicant last made a payment in December 2012; two credit card accounts, totaling \$10,397, toward which he last made payments in August and September 2012; a \$408 medical debt from October 2014 that was placed for collection in March 2015; a \$208 collection account for a miscellaneous government debt owed since December 2012; and a \$408 unpaid cell phone bill. (Item 1; Item 3.)

In his May 2016 Answer, Applicant said that after he obtained an \$800 decrease in his monthly child support payments he was still unable to pay his mortgages or car loan, and other bills started becoming delinquent as well. He tried to pay off the smaller ones first, as he could afford to do so. He said that he was working with his lawyer so he could file for bankruptcy, which he did on June 15, 2016. The Chapter 7 filing sought discharge of unsecured potential claims by 15 creditors totaling an estimated \$31,132 (although ten of those claims were listed as, "Disputed," with a claim amount of \$1.00). The record contains no information on further progress of this bankruptcy proceeding, or demonstrating any other action to resolve even Applicant's smallest debts. Applicant's attorney wrote on June 27, 2016, that she anticipated a discharge in mid-September 2016 in the event that no unforeseen problems arose in the case. (Item 2; Item 4; AE A.)

The only record budget information concerning Applicant is contained in his bankruptcy filing. Schedules I and J report gross monthly income of \$8,639, net monthly income of \$4,306, and monthly expenses of \$4,310, resulting in a \$4 monthly deficit. However, his Official Form 122A-2, *Chapter 7 Means Test Calculation* shows that, using Internal Revenue Service National and Local Standards for certain expenses, his monthly disposable income deficit should be about \$745. (Item 4.) He said, "Over the past several years I have incurred debt from making poor financial decisions and not thinking things out thoroughly before obligating myself. I have learned greatly from this and have sought assistance from [his bankruptcy attorney]." (AE A.)

The record lacks sufficient evidence on which to base determinations concerning the quality of Applicant's professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

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 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, 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. According to AG ¶ 2(c), 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 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.

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.”

A person applying 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.

Analysis

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

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Applicant has a history of financial irresponsibility dating back to 2012, and continuing to date. His financial history and ongoing inability to pay his voluntarily incurred debts raise security concerns under the above disqualifying conditions, and shift the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's ongoing 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, 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;
- (d) the individual initiated 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's financial delinquencies are significant, ongoing, and reflect a pattern of spending beyond what his disposable income could support over the past five years. He recently sought to relieve himself from more than \$30,000 in debt through bankruptcy. However, the record evidence is insufficient to demonstrate that such issues are unlikely to recur and do not cast doubt on Applicant's current reliability, trustworthiness, or judgment. Accordingly, mitigation under AG ¶ 20(a) was not established.

Applicant claimed that the lost rental income when his tenant moved out in mid-2012 started his financial difficulties, which were exacerbated by his divorce in early 2013. However, he did not explain why these events caused him to stop paying the mortgage loan on his current residence and his automobile loan in late 2012, or his two maxed-out credit card accounts earlier that year. He has been fully employed in his current job since March 2010, and did not demonstrate responsible actions under those circumstances. Although he has obtained legal advice and the required financial counseling in connection with his bankruptcy filing, the record evidence is insufficient to demonstrate that such actions will resolve or bring his financial problems under control going forward. The timing of the filing in connection with his security clearance processing, without other evidence, suggests minimal good faith with respect to resolution of his admittedly legitimate delinquent debts. Accordingly, Applicant failed to rebut, extenuate, or mitigate the security concerns under AG ¶¶ 20(b) through 20(e).

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.

According to 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 pertinent facts and circumstances surrounding this case. Applicant is a mature adult, who is responsible for his choices and conduct that underlie the security concerns expressed in the SOR. Despite continuous employment, he chose to stop paying two mortgage loans, his car loan, and two large credit card debts in 2012. His continuing inability or unwillingness to pay his admittedly legitimate delinquent debts demonstrates an absence of rehabilitation or behavioral change. The likelihood that similar problems will recur remains a security issue, such that the potential for pressure, coercion, or duress is undiminished.

Overall, the record evidence leaves me with doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising under the guideline for financial considerations.

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: **AGAINST APPLICANT**

Subparagraphs 1.a through 1.h: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

DAVID M. WHITE
Administrative Judge