



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No.15-00906

Appearances

For Government: Aubrey M. DeAngelis, Esq., Department Counsel
For Applicant: *Pro se*

05/25/2017

Decision

LYNCH, Noreen, A., Administrative Judge:

The Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant alleging security concerns arising under Guideline F (Financial Considerations). The SOR was dated March 16, 2016. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) implemented in September 2006.

Applicant timely answered the SOR and requested a decision based on the written record in lieu of a hearing. Department Counsel submitted a File of Relevant Material (FORM), dated July 11, 2016.¹ Applicant received the FORM on August 3, 2016. Applicant did not respond to the FORM. The case was assigned to me on May 9,

¹The Government submitted seven items for the record.

2017. Based on a review of the case file, eligibility for access to classified information is denied.

Findings of Fact

In his answer to the SOR, Applicant denied the three allegations, and provided explanations for the allegations under Guideline F (Financial Considerations). (Item 3)

Applicant is a 41-year-old working for a defense contractor. He served on active duty in the military (U.S. Marine Corps) from 1994 to 2002, receiving an honorable discharge. He is married and has two children. Applicant has worked for his current employer since 2004. Applicant attended college while working from 2003 until 2012, but he has not yet obtained his degree. He completed a security clearance application in 2014. He has held a security clearance since 2004. (Item 4)

Financial Considerations

The SOR alleges three delinquent debts that total approximately \$51,235. (Item 1) The items are past-due mortgage loans on Applicant's residence and a delinquent account. (Item 1)

In his answer to the SOR, Applicant stated that he and his wife purchased a home in about 2004, which had a high rate of interest (not specified). Applicant noted that he had been paying interest only for about 10 years. When the economy faltered and he discovered that he had a \$490,000 loan for a house that was worth about \$285,000. (Item 3)

Applicant disclosed in his 2014 security clearance application that he had a rental property that was foreclosed because he lost tenants who did not pay rent. He stated that he "cleared up all issues and debt has been taken care of and taxes paid." Applicant estimated that the amount in question was about \$40,000.

He also described another financial issue in his security clearance application that concerned his home. Applicant noted that he had a "crummy loan" and was working on a loan modification. He elaborated that he was negotiating with the financial institution to get the modification. Applicant wrote that if he did not get the modification, he would decide what to do next. He noted the issues began in 2013. Applicant clearly stated that this issue was not due to a hardship, but that it was "just a really bad loan." He did not list any delinquent accounts. (Item 4)

Applicant stated in his answer that he applied for a loan modification several times, but he was denied. He took the advice of several people and stopped paying the mortgage. He was still denied on the basis that he made too much money. He stated that after a year he found someone for a short sale. He knew it was a financial decision that was smart to make, even though it showed up as a debt. He again emphasized that it was not a matter that he could not pay. (Item 3)

Applicant noted that he has savings in the amount of \$20,000 and his credit score is 658. He emphasized that he is not financially irresponsible and the only debt he has is a car note. His credit report for 2016 confirms that he pays his accounts as agreed.

As to SOR allegation 1.a, Applicant's mortgage account is past due in the amount of \$33,960. Applicant denied this allegation, stating that the mortgage account was for his previous home and the account was closed via a short sale on June 16, 2015. There is no information in the record to confirm this assertion.

As to SOR allegation 1.b, Applicant denied the past due account in the amount of \$685. He does not understand why this is an issue. It is a "really old account". He stated that it was closed with no outstanding balance. His credit reports show a delinquent account. (Item 5)

As to SOR allegation 1.c, Applicant denied that this is in question because it was a second mortgage on his residence and it was part of the short sale. He stated that on his 2014 credit report, it shows it was closed via a charge off.

Applicant's credit report, obtained in 2016, reflects that allegation 1.a was charged off. It does show that he paid on this debt until 2013 and then stopped paying. It also shows a home equity loan in the amount of \$16,590 (allegation 1.c) was unpaid and charged off.

There is nothing in the record that shows Applicant's current financial earnings or any attempts to obtain financial counseling. He did not respond to the FORM to supplement the record.

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”² The burden of proof is something less than a preponderance of evidence.³ The ultimate burden of persuasion is on the applicant.⁴

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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.”⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying:

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt; and
- (c) a history of not meeting financial obligations.

The Government produced credible evidence to establish that Applicant had delinquent debts. The credit reports confirm the debts. Consequently, the evidence is sufficient to raise disqualifying conditions ¶¶ 19(a) and 19(c).

AG ¶ 20 provides conditions that could mitigate the 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;
- (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 stated that he found himself in a “crummy loan” with a high interest rate when the economy faltered and his house was worth less than the loan. He could not get a modification due to his income and so he made a “smart financial decision” even though it showed up as a debt. He stated that he had the means to pay but believes he is not responsible for the debt. He provided no information as to any short sale. He also believed that if a debt is charged off that it is sufficient to ignore the debt. He showed no good-faith efforts in this case. Granted, he has a current credit report that shows he pays accounts as agreed, but that does not mitigate the large mortgage accounts that he stopped paying even though he had the money to pay. A delinquent debt is not mitigated because it is charged off. Applicant has not presented sufficient information to overcome the Government’s case. None of the mitigating conditions apply.

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 an applicant’s conduct and all the 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. I have noted Applicant’s service in the military. He has had a clearance since 2004. He is 41 years old and provides for his family. He served in the U.S. Marine Corps and received an honorable discharge. He has a record of paying his accounts. However,

because he realized that the interest-only loan that he obtained for his house was now not to his financial favor, he cannot ignore the loans when he has the ability to pay. I have doubts about his suitability to retain his clearance. Clearance is denied.

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: AGAINST APPLICANT

Subparagraphs 1.a-1.c: 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 a security clearance. Clearance is denied.

NOREEN A. LYNCH
Administrative Judge