



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



In the matter of:)
)
) ISCR Case No. 16-01719
)
Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

02/12/2018

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On December 9, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on January 18, 2017, and requested a hearing before an administrative judge.

The case was assigned to me on September 12, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 6, 2017, scheduling the hearing for December 5, 2017. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified, but he did not submit any documentary evidence. DOHA received the hearing transcript (Tr.) on December 13, 2017.

Findings of Fact

Applicant is a 61-year-old employee of a defense contractor. He has worked for his current employer since 2009. He has an associate's degree. He is twice married and divorced, with two adult children.

Applicant was a realtor in a part of the country where home prices rapidly increased before the real estate market collapse in the latter part of the 2000s. When the market collapsed, his income dropped significantly, as did the value of his home. He was unable to make a living as a realtor, and he was unable to pay his mortgage loan or sell his home. An environmental disaster in 2010 made it that much more difficult to sell his home.

The SOR alleges a \$204,662 judgment, which is related to his foreclosure, and a \$20,502 delinquent debt. Applicant acknowledges responsibility for the foreclosure and the delinquent debt.

Applicant took a relatively low-level job in 2009 because it was the only job he could find. He worked full-time for more than two years while in part-time status. As such, he received no significant benefits, such as health insurance. He paid what debts he could on his limited income. He received a certification in his field, and he has been working full-time, with benefits, for several years.

Applicant retained an attorney for \$6,000 to assist him in negotiating with his creditors and to represent him at his hearing. The creditor for the \$20,502 delinquent debt agreed to accept \$6,000 in a lump-sum settlement of the debt, but Applicant could not afford that amount. The attorney returned \$4,000 to Applicant and informed him that he was better off using the \$4,000 to settle the debt and represent himself at his DOHA hearing. Applicant offered the \$4,000 to the creditor, but it was rejected, and the creditor has been uncooperative in further negotiations.

It has been about nine years since the mortgage loan and the other debt became delinquent. Applicant lives modestly in a home that he and his siblings inherited. He owns his car outright. The \$20,502 debt is no longer listed on his credit report, and his two most recent credit reports list no new debts with balances. Applicant remains willing to resolve any debt he legitimately owes if a fair arrangement can be made.

Policies

This case is adjudicated under Executive Order (EO) 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 (AG), which became effective on June 8, 2017.

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 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 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 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 national security eligibility will be resolved in favor of the national security."

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." The applicant has the ultimate burden of persuasion to obtain a favorable security 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 access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard 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 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 *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern 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.

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

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

Applicant has a history of financial problems. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (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; and
- (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.

The collapse of the real estate market made it impossible for Applicant to make a living as a realtor or to sell his house. An environmental disaster a few years later made it that much more difficult to sell his home. He took a relatively low-level job and paid what debts he could on his limited income. To his credit, he was able to keep his other accounts current. He has accrued no new debts. He failed in his attempt to settle one delinquent debt.

Applicant does not present a perfect case in mitigation. Delinquent debts are a continuing concern until they are resolved. However, at some point, debts become old, unenforceable, charged off, fall off credit reports, and no longer of interest even to the creditors. He acted responsibly under the circumstances. His financial decisions do not reflect questionable reliability, trustworthiness, or judgment. AG ¶¶ 20(a) and 20(b) are applicable.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	For Applicant
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Subparagraphs 1.a-1.b:	For Applicant
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Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge