



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



In the matter of:)
)
) ISCR Case No. 16-02850
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esq., Department Counsel
Robert J. Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

03/23/2018

Remand Decision

MURPHY, Braden M., Administrative Judge:

Applicant provided sufficient documentary evidence to mitigate the security concerns under Guideline F, financial considerations. Applicant's eligibility for access to classified information is granted.

Statement of the Case

On October 20, 2016, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (Exec. Or.) 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 effective within the DOD for SORs issued after September 1, 2006.

On December 10, 2016, the Director of National Intelligence issued new National Security Adjudicative Guidelines (AG). The new AGs are effective June 8, 2017, for all decisions after that date, and they supersede the AGs that Applicant received with the SOR.¹ Any changes resulting from the implementation of the new AGs did not affect my decision in this case.

Applicant answered the SOR on January 4, 2017, and elected to have his case decided on the written record in lieu of a hearing. On January 12, 2017, Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 4. Applicant received the FORM on January 25, 2017. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond to the FORM, and did not object to the Government's evidence. The SOR and the answer (combined as Item 1) are the pleadings in the case. Items 2 through 5 are admitted into evidence without objection.

The case was assigned to me on October 1, 2017. On October 5, 2017, I e-mailed the parties and re-opened the record to afford Applicant the opportunity to submit additional information and documentation. Applicant responded the same day, and again on October 18, 2017. He submitted two narrative updates and two reference letters, which were marked as Applicant's Exhibits (AE) A through D, and admitted without objection. On October 19, 2017, having reviewed Applicant's submissions, I reopened the record until October 30, 2017, to allow Applicant additional opportunity to submit relevant financial documentation. Applicant indicated that he intended to respond. (HE I-III). I did not receive any further materials from Applicant before the record closed on October 30, 2017.

On November 28, 2017, I issued a decision denying Applicant eligibility for access to classified information. Applicant appealed. With his appeal brief, he included an October 30, 2017 e-mail to me, as well as a subsequent document from his mortgage lender.² On March 14, 2018, the DOHA Appeal Board found that Applicant had submitted materials that I had not received before issuing the prior decision. Accordingly, the Appeal Board remanded the case to me to reopen the record and permit Applicant to submit "a copy of the attachment actually contained in his email response" of October 30, 2017.³ I was to consider that attachment and issue a new decision.

On March 19, 2018, in response to my order, Department Counsel provided a copy of Applicant's October 30, 2017 e-mail to me (which I had not received) and the

¹ The new AGs are available on the DOHA website at <http://ogc.osd.mil/doha/DIRECTIVE%202017.pdf>.

² As the Appeal Board noted, the mortgage document Applicant attached to his appeal brief post-dated October 30, 2017, though it referenced mortgage payments both before and after that date. ISCR Case No. 16-02850 at 2 (App. Bd. Mar. 14, 2018).

³ ISCR Case No. 16-02850 at 2 (App. Bd. Mar. 14, 2018).

subsequent mortgage document (which he had attached to his appeal brief). Applicant provided a copy of the October 2017 mortgage statement he had originally submitted. I marked these documents as AE E, AE F and AE G, and admitted them without objection. (HE IV)⁴ The record closed on March 19, 2018.

Findings of Fact

Applicant admitted SOR ¶ 1.a and denied SOR ¶¶ 1.b and 1.c. I have incorporated his admission and subsequent explanations into the findings of fact. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 33 years old. After graduating from high school in 2003, he served honorably in the United States Air Force from December 2003 to November 2014. Since then, he has been employed in the defense industry. He has held a security clearance since 2004. He has worked for his current employer since November 2015. He has never married and has no children, but has a fiancée. Applicant has also been attending college full-time. (Items 2, 3; AE A, AE B)

Applicant submitted a security clearance application (SCA) in December 2015, in connection with his employment. His background investigation included a January 2016 credit report and a February 2016 background interview. (Items 2, 3, 4) Applicant's background investigation revealed several delinquent debts, three of which were alleged in the SOR.

The largest debt is SOR ¶ 1.b, Applicant's mortgage. Applicant purchased a home in May 2014, in his final months in the Air Force. He financed the purchase with a loan from the Department of Veterans Affairs. As of January 2016, the mortgage was in foreclosure, with \$13,165 past due and a total loan balance of \$214,514. (Items 1, 3, 4)

SOR ¶ 1.a (\$10,806) is the amount due in collection for an automobile that was repossessed. SOR ¶ 1.c (\$37) is a small account in collection to a credit union. The accounts are all shown as past due on Applicant's January 2016 credit report. (Item 4).

Applicant did not disclose any delinquent debts on his SCA, though he discussed them in his February 2016 background interview. (Items 2, 3) He explained that he fell behind on these debts after leaving the Air Force following a downsizing. As a result, his monthly income decreased by about \$400. (Item 3 at 4)

In his answer to the SOR, Applicant admitted the repossession, but denied the other two debts. He provided no explanations and no documentation of their current status. He provided updated information when I reopened the record, in October 2017. He explained that he earned \$15,000 less in annual income in the defense industry than

⁴ Hearing Exhibit IV. Even though it post-dated October 30, 2017, I admitted the January 2018 mortgage statement on grounds of equity.

he had earned in the Air Force. This led him to fall behind on his mortgage, and his car was repossessed. He stated that he was advised by friends that he could “rebuild” from the repossession but losing his home would be a “detrimental blow.” He explained that he and his fiancée successfully renegotiated their mortgage (§ 1.b) at a better rate, and are now current. He believed the small \$37 debt (§ 1.c) was leftover interest from an old loan that was repaid years ago. (AE A, AE B)

In Applicant’s October 2017 e-mail, he indicated that he had not banked with the creditor for debt § 1.c for many years. He also attached “the most recent statement for my mortgage.” He indicated that he was balancing two jobs, going to school and preparing for an upcoming deployment for work. (AE E)

Applicant’s October 2017 mortgage statement reflects that to that point in calendar year 2017, he had paid \$12,928 in mortgage payments. His most recent payment was made on October 4, 2017, for \$1,284. His next payment was due November 1, 2017, for the same amount. No late fees are indicated. (AE F)

Applicant’s January 2018 mortgage document reflects monthly payments of \$1,284 in August, September and October 2017 (before the record initially closed) and in November and December 2017, and January 2018 (after the record initially closed). There is also a \$ 1,918 county tax payment, in November 2017. The next payment is listed as due on February 1, 2018. Applicant had just under \$227,000 left on the principal balance. (AE G) This is about the same as the previous total balance owed (\$214,514) combined with the amount previously past due (\$13,165). This is likely due to refinancing, as he had indicated. The account (§ 1.a) is now current. (AE F)

Applicant submitted two recommendation letters from current supervisors, both of whom attested to his financial stability, the excellence of his work, and the responsible performance of his duties safeguarding classified information. (AE A - AE D)

Policies

As the Supreme Court noted in *Department of the Navy v. Egan*, it is well established that no one has a right to a security clearance.⁵ Further, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.”⁶

The adjudicative 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(a),

⁵ 484 U.S. 518, 528 (1988).

⁶ 484 U.S. at 531.

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, 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, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to 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 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 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.

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.⁷

AG ¶ 19 provides conditions that could raise security concerns: ¶¶ 19(a) “inability to satisfy debts” and (c) “a history of not meeting financial obligations” are applicable, given the record evidence of Applicant’s delinquent debts.

The financial considerations guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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; and

(d) the individual initiated and is adhering to good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant documented that his mortgage was current in October 2017, and remains so. SOR ¶ 1.b, the largest alleged debt by far, is mitigated.

The repossession debt remains unresolved. However, Applicant explained that he prioritized his past-due mortgage payments, so he and his fiancée would not lose their home, rather than resolving his auto debt. This was a reasonable decision, and, apparently, the correct one, since they remain in their home. Applicant is not required to pay or resolve every debt alleged in the SOR in order to mitigate the security concern shown by his finances. He need only establish a reasonable repayment plan, and take some concrete steps towards putting it in place. Applicant did that by establishing that his mortgage is now current. SOR ¶ 1.c is not a security significant amount, and it is an old debt related to a bank account that has long been closed. It is resolved.

Applicant also established that he fell behind on his mortgage and other debts after he lost income in the years after he left the Air Force. This was a circumstance beyond his control. Applicant undertook reasonable action to resolve his debts. Applicant met his burden of establishing that his debts are being resolved, are under control, or are no longer delinquent, as shown by the Government’s evidence. He established that he undertook good-faith efforts to resolve his debts. AG ¶¶ 20(b) and 20(d) therefore apply.

⁷ See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

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 the 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(a), 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. Applicant provided sufficient documentation that his debts are being resolved in a good-faith, responsible manner. Overall, the record evidence leaves me without questions or doubts as to 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

Subparagraphs 1.a-1.c: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

Braden M. Murphy
Administrative Judge