



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 16-03113
)
Applicant for Security Clearance)

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

01/16/2018

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings and exhibits, eligibility for access to classified information is granted. Applicant presented sufficient information to mitigate financial security concerns.

Statement of the Case

On March 1, 2016, Applicant submitted his latest Electronic Questionnaire for Investigations Processing (e-QIP) to retain a security clearance required for a position with a defense contractor. (Item 3)¹ Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on August 9, 2016. (Item 4, Personal Subject Interview (PSI)) After reviewing the results of the background investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance.

On January 26, 2017, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F. (Item 1) The action was taken under Executive Order 10865, *Safeguarding Classified Information*

¹ Applicant also submitted an e-QIP on August 22, 2014. (Item 2)

within Industry (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective in the DOD on September 1, 2006. On June 8, 2017, new AGs were implemented and are effective for decisions issued after that date.²

Applicant answered the SOR on February 23, 2017. He admitted two and denied one of the three allegations of delinquent debt with explanation. Applicant initially requested the case be decided after a hearing. On May 26, 2017, Applicant requested that the matter be decided on the written record. (Item 1) Department Counsel submitted the Government's written case on June 28, 2017. (Item 7) Applicant received a complete file of relevant material (FORM) on July 29, 2017. He was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant responded to the FORM providing additional information. (Item 9) Department counsel had no objection to consideration of the additional material. (Item 10) I was assigned the case on October 23, 2017.

Procedural Issues

Applicant was advised in the FORM that the summary of the PSI (Item 4) was not authenticated and could not be considered over his objection. He was further advised that he could make any corrections, additions, or deletions to the summary to make it clear and accurate, and could object to the admission of the summary as not authenticated by a Government witness. He was additionally advised that if no objection was raised to the summary, the Administrative Judge could determine that he waived any objection to the admissibility of the PSI summary. Applicant timely responded to the FORM, but he did not raise any objection to consideration of the PSI. Since there is no objection by Applicant, I will consider information in the PSI in my decision.

Findings of Fact

After a thorough review of the pleadings and exhibits, I make the following findings of fact. Applicant is 42 years old, and a June 1994 high school graduate. He was first married in September 1997, and divorced in June 2001. He has one child from a previous relationship. He married again in August 2014. He was employed as an information technology systems installer and operator for private and defense contractors in the United States. He was first granted eligibility for access to classified information in August 2009.

Applicant was employed as a foreign disclosure officer for a defense contractor in 2011. He served in Afghanistan in this position from February 2012 to May 2012, from January 2013 to June 2013, and from September 2014 to December 2014. He has been selected again as a foreign disclosure officer and is waiting for an updated security clearance to assume his job. While waiting to assume his new assignment, he has been

² I considered the previous AGs, effective September 1, 2006, as well as the new AGs, effective June 8, 2017. My decision would be the same if the case were considered under the previous AGs.

employed as a project manager for a hardware and plumbing company. (Item 2, e-QIP, dated August 22, 2014; Item 3, e-QIP, dated March 1, 2016; Item 4, PSI, dated August 9, 2016)

The SOR alleges and credit reports (Item 5, dated September 12, 2014; Item 6, dated May 13, 2016, Item 7, dated March 23, 2017) confirm the following delinquent debts for Applicant: a mortgage account past due for \$8,778 with a loan balance of \$154,186 (SOR 1.a); a charged off home equity loan for \$16,216 (SOR 1.b); and a dental account in collection for \$739 (SOR 1.c). The total amount of the delinquent debt is approximately \$25,000.

In March 2007, Applicant and his then girlfriend purchased a condominium together for approximately \$128,000. Neither of them could afford the mortgage alone so they had to be co-owners and co-mortgage holders. They also obtained a \$16,000 home improvement loan to work on the residence. The condominium lost value in the real estate downturn in 2009, and is presently valued at approximately \$80,000. Applicant and his girlfriend separated in 2009. Neither could afford the mortgage payments on their individual income. They tried to sell the condominium but to no avail.

Applicant contacted the mortgage creditor and proposed various methods of resolving the mortgage including a short sale. Applicant tried to contact his former girlfriend and make arrangements to resolve the issue but she did not answer his correspondence. In November 2010, Applicant's girlfriend filed a Chapter 7 bankruptcy petition. Applicant could not proceed with any action on the condominium since it was included in the girlfriend's bankruptcy. The girlfriend's debts, including the mortgage, were discharged by bankruptcy in March 2011. (Item 9, Response to FORM, Bankruptcy Documents)

Applicant's efforts to dispose of the property and resolve the mortgage continued to be unsuccessful. The mortgage was sold numerous times pending a foreclosure. Applicant advised his employer that he was facing a foreclosure. Different creditors attempted to foreclose on the property but were delayed because of the pending bankruptcy. The foreclosure documents were sent to Applicant at a hotel at a remote site where he was living temporarily. Applicant had moved when he received another assignment. He kept in contact with the mortgage company to inform them of his new location. Applicant did not receive the foreclosure documents and was unaware of the foreclosure procedure. The property was finally foreclosed in June 2016 and purchased by the mortgage creditor. The mortgage creditor is now trying to sell the property. (Item 9, Response to FORM, Service of Process Documents)

The present mortgage holder intends to sell the condominium to satisfy the mortgage loan. The home equity loan was charged off. Applicant and his creditors for the mortgage and home equity loan are waiting for the condominium to sell to determine the amount of Applicant's liability, if any, for the two debts. The amount of Applicant's debt will be based on the sale price of the condominium. (Item 4, PSI, at 4-6, Item 9, Response to FORM)

In the PSI, Applicant reported that he thought the debt at SOR 1.c was an old dental bill. Applicant was never contacted about the bill or debt, and it is listed as closed or charged off on a credit report. He contacted the listed credit card company for the debt asked for information on the debt and informed them that he is not the owner or borrower on the debt. He has not received a response. (Item 9. Response to FORM)

Applicant presented a July 2017 credit report with a credit score of 680. The credit report shows only six debts and all are paid as agreed. There are no collection actions or other delinquencies reported. The three SOR debts are not listed on the credit report. (Item 9, Credit Report)

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 list potentially disqualifying conditions and mitigating conditions, which must be considered 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(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.

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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion in seeking 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 the 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

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 a person's reliability, trustworthiness, and ability to protect classified and sensitive information. (AG ¶ 18) The financial security concern is broader than the possibility that an individual might knowingly compromise classified information to raise money. It encompasses concerns about an individual's responsibility, trustworthiness, and good judgment. Security clearance adjudications are based on an evaluation of an individual's reliability and trustworthiness. An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with their creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to meet their financial obligations. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is required to manage his or her finances in such a way as to meet financial obligations.

Adverse information in credit reports can normally meet the substantial evidence standard to establish financial delinquency. Credit reports confirm the SOR delinquent debts. This information is sufficient to raise security concerns under Financial Considerations Disqualifying Conditions AG ¶ 19:

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

Applicant's failure to pay debts may show an inability and history of not meeting his financial obligations. Once the Government has established adverse financial issues, the Applicant has the responsibility to refute or mitigate the issue. The available evidence presented by Applicant shows that the debts may have been resolved. The debts are no longer listed on his credit reports, and the property is in foreclosure. While Applicant has not paid the debts, he has taken action to have the debts resolved. I considered the information and documents Applicant provided as mitigation in response to the SOR and FORM. Applicant has raised the following Financial Consideration Mitigating Conditions under AG ¶ 20:

(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 problems were largely beyond the person's control (e.g. loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem from a legitimate and credible sources, such as a non-profit credit counselling service, and there are clear indications that the problem is being resolved or is under control; and

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

The mitigating conditions at AG ¶¶ 20(a), 20(b), and 20(d) apply. Applicant and his then girlfriend purchased a condominium together in 2007 because neither could afford the mortgage payment on their salary. They also co-signed a home equity loan for the property. The condominium lost value in the real estate downturn of 2009, and they were unable to sell the condominium. The couple separated in 2009. Applicant's girlfriend filed a bankruptcy petition in 2011, and her liability for the debts was discharged.

These were isolated financial circumstances that are not likely to recur. The downturn in the housing market, the separation from his girlfriend, and the bankruptcy discharge of her debts were conditions beyond Applicant's control. Applicant acted responsibly and in good-faith to resolve the debts. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. All that is required is that Applicant act responsibly given his circumstances. He must have a reasonable plan to resolve financial problems, and he must take significant actions to implement that plan. Applicant's plan must show a systematic method of handling debts.

Applicant contacted the creditors and tried to develop a way, such as a short sale, to resolve the debts. The property has now been foreclosed and sold. Applicant's credit report does not list any debt owed for this property. Applicant presented documents to show his attempt to correspond with the creditors to establish maintenance of contact, copies of debt disputes, evidence of attempts to negotiate payment plans, and other evidence of attempts to show progress or resolution of the debts. He did not hide the fact he was facing a foreclosure but kept his employer apprised of the foreclosure action. There is evidence indicating that his debt problems have been resolved, so his finances are under control. There is sufficient evidence to establish that Applicant was unable to make greater progress resolving his debts. He established his good-faith effort to pay his debts.

Applicant's reasonable and responsible actions towards his finances is a strong indication that he will protect and safeguard classified or sensitive information. He presented information to show a good-faith effort to resolve his debts. Applicant presented sufficient information to mitigate financial security concerns.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information 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 access to classified information must be an overall common-sense 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 considered Applicant's years of service in the defense industry, particularly his service as a civilian in a combat zone. I considered that he successfully had eligibility for access to classified information since 2009.

In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, he supplemented the record with relevant and material facts regarding his financial circumstances, adequately articulate his positions, and provided facts to mitigate the financial security concerns. In short, the file contains sufficient evidence to establish that he made every effort to pay, settled, compromised, disputed, or otherwise resolved his delinquent accounts. The record shows corroborating or substantiating documents and details to explain his finances. Applicant's appropriate management of his finances, and his actions to resolve financial issues, are firm indications that he will adequately safeguard classified information. Overall, the record evidence leaves me without questions and doubts concerning Applicant's judgment, reliability, and trustworthiness. He established his suitability for access to classified information. For all these reasons, I conclude Applicant mitigated the security concerns arising from his financial situation.

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 interest to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

THOMAS M. CREAN
Administrative Judge