



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



In the matter of:)
)
) ISCR Case No. 16-03374
)
Applicant for Security Clearance)

Appearances

For Government: Pamela Benson, Esq., Department Counsel
For Applicant: *Pro se*

10/31/2017

Decision

GARCIA, Candace Le'i, Administrative Judge:

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

Statement of the Case

On February 23, 2017, 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 (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) implemented by the DOD on September 1, 2006.¹

¹ I decided this case using the AG implemented by DOD on June 8, 2017. However, I also considered this case under the previous AG implemented on September 1, 2006, and my conclusions are the same using either set of AG.

Applicant responded to the SOR on March 14, 2017, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on April 17, 2017. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on April 26, 2017. He did not respond to the Government's FORM. The case was assigned to me on October 1, 2017. The Government exhibits included in the FORM are admitted in evidence without objection.

Findings of Fact

Applicant did not admit or deny SOR allegations ¶¶ 1.a. and 1.b. He is a 43-year-old employee of a defense contractor. He obtained a high-school diploma in 1994 and bachelor's and master's degrees at a date not in the record. He previously worked for three defense contractors from March 2005 to April 2013, with a period of unemployment from January to October 2009. He has worked for his current employer since April 2013. He was first granted a DOD security clearance in March 2006. He is not legally married, but his cohabitant is his common-law spouse, and they have three minor children.²

The SOR alleges two delinquent mortgage-related debts for a home Applicant purchased in March 2005, comprised of a second mortgage account placed for collection and a charged-off home equity line of credit. Applicant discussed the debts in his January 2016 security clearance application, May 2016 subject interview, and March 2017 response to the SOR.³

Applicant attributes his delinquent mortgage-related debts to losing his job in January 2009 and his subsequent nine-month period of unemployment. He exhausted his savings to try to maintain his mortgage payments and he stopped paying his mortgage in May 2009. In October 2009, when he obtained another job, he tried to negotiate with his creditors to refinance his home and make a payment plan. His creditors told him not to make any payments until they could determine an amount that included late fees. He continued to make improvements on his home because he thought he could keep it. Despite his submission of requested documentation concerning proof of income, the creditors foreclosed on his home in March 2012.⁴

Credit reports from February 2011 and January 2016 report SOR ¶ 1.b as charged-off, with a high credit of \$58,702, and a zero balance. The January 2016 credit report lists SOR ¶ 1.a. Credit reports from March 2017 from the three major credit bureaus, provided by Applicant with his response to the SOR, do not report SOR ¶¶ 1.a and 1.b; they report a clean credit file for Applicant. In addition, they report that

² Items 1, 2, 5.

³ Items 1, 2, 5.

⁴ Items 1, 2, 5.

Applicant opened a mortgage account in June 2016, was current on his payments of \$1,677 monthly, and his balance as of March 2017 was \$280,000.⁵

Applicant indicated that he has continued to live within his means and he has increased his emergency savings to sustain one years' worth of his living expenses. He has also put more money into his retirement plan. He does not intend to find himself in a similar financial situation in the future.⁶

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 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 access to classified information will be resolved in favor of 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.

⁵ Items 1, 3, 4.

⁶ Items 1, 5.

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 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.

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

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

Applicant was unable to pay his debts. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as 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, or a death, divorce or separation), and the individual acted responsibly under the circumstances.

Conditions beyond Applicant’s control contributed to his financial problems. Credit reports from February 2011 and January 2016 report SOR ¶ 1.b with a zero balance. Credit reports from March 2017 do not report SOR ¶¶ 1.a and 1.b, and report a clean credit file for Applicant. A security clearance adjudication is an evaluation of an

individual's judgment, reliability, and trustworthiness. It is not a debt-collection procedure. ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). AG ¶ 20(a) applies and AG ¶ 20(b) partially applies.

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 this whole-person analysis.

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.b:	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's eligibility for a security clearance. Eligibility for access to classified information is granted.

Candace Le'i Garcia
Administrative Judge