



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



In the matter of:

ISCR Case No. 16-03712

Applicant for Security Clearance

Appearances

For Government: Andrew Henderson, Esq., Department Counsel

For Applicant: *Pro se*

February 7, 2018

Decision

GOLDSTEIN, Jennifer, Administrative Judge:

Applicant is over \$58,000 delinquent on two home mortgages, which have been past due since early 2015, and remain unresolved. Resulting security concerns were not mitigated. Based upon a review of the pleadings, testimony, and exhibits, national security eligibility is denied.

History of Case

On March 23, 2016, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On January 5, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) alleging 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 effective within the DoD after September 1, 2006.

Applicant answered the SOR in writing on February 6, and February 17, 2017 (Answer), and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to another administrative judge on September 6, 2017. DOHA issued a Notice of Hearing on September 6, 2017, setting the hearing for September 14, 2017, per Applicant's request.¹ On September 11, 2017, the case was reassigned to me. The hearing proceeded as scheduled via video teleconference on that date. Department Counsel offered Government Exhibits (GE) 1 through 9 into evidence. GE1, GE 2, and GE 4 through 9 were admitted without objection. GE 3 was admitted over Applicant's objection as to its relevancy. (Tr. 14.) Applicant testified. DOHA received the hearing transcript (Tr.) on September 22, 2017. The record was left open for the submission of additional documentation. On September 15, 2017, September 28, 2017, and September 29, 2017, Applicant submitted exhibits, which I marked as (AE) A through H. Department Counsel had no objections to AE A through H, and they were admitted.

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines*, implemented new adjudicative guidelines that came into effect on June 8, 2017. All national security eligibility determinations issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as promulgated in Appendix A of SEAD 4. I considered the previous adjudicative guidelines, as well as the new AG, in adjudicating Applicant's national security eligibility. This decision is issued pursuant to, and cites, the new AG; but my decision would be the same under either set of guidelines.

Findings of Fact

Applicant is 44 years old. He served in the Air Force from 1992 to 2013. He retired as a master sergeant, E-7. He is married to his second wife. He has two adult children. (GE 1; Tr. 27-29, 48.) He admitted the delinquent debts alleged in SOR ¶¶ 1.a and 1.b. (Answer.) Applicant's admissions are incorporated in the findings below.

In approximately December of 2004, Applicant purchased a house (Home 1) for \$192,000. His first mortgage was financed with a creditor (Bank 1), and had an adjustable rate mortgage. That loan is the subject of SOR allegation 1.b, which was alleged to be delinquent in the amount of \$24,257 with a balance that had grown to \$250,252. In 2007, Applicant took a second mortgage on his home for approximately \$50,000, with a second creditor (Bank 2), which is the subject of SOR allegation 1.a. It is alleged to be delinquent in the amount of \$34,483. He used the second mortgage to do upgrades to the home, including installing new countertops, adding a carport, and building a patio. (Tr. 29-45.)

¹ Applicant requested his hearing be held at this time to accommodate his travel schedule. See July 26, 2017, through September 8, 2017, email correspondence chain, DOHA file.

Applicant lived in Home 1 from 2004 to 2010, when he got orders from the Air Force to another duty station. He was unable to sell Home 1 at that time because the market had declined and it was worth less than he owed on it. He leased it to renters for three years. However, in 2011, he was selected to return to the base near Home 1. He lived in the home after it was vacated by the renters, from approximately October 2012 to January 2014.² (GE 1.) He had two short-sale offers on the property between 2011 and 2014. Neither were approved. Applicant ceased payment to Bank 1 in December 2014 and to Bank 2 in early 2015, after the banks were unable to work with each other to accept terms of a short sale. (GE 1; GE 4; GE 5; GE 6; AE A; AE C; Tr. 29-45, 52.)

In 2014, Applicant purchased a new home (Home 2) in the same geographical area as Home 1. He financed it with a loan for \$288,000. He explained that he purchased Home 2, hoping that the short-sale offer that was pending on Home 1 would be approved. The renters that previously occupied Home 1 wanted to purchase it, and made Bank 1 that short-sale offer. (GE 2; GE 9; AE B; Tr. 37, 43-44.)

In February 2015, Applicant purchased a new \$56,000 vehicle. (GE 6; Tr. 52-53.) His wife also purchased a new luxury vehicle in the same time frame. (Tr. 51.)

Applicant attempted to submit a Deed in Lieu of Foreclosure in March 2016, but it was rejected by Bank 1. (GE 2; AE D.) He continues to receive monthly statements in the mail. As of July 2017, Applicant was delinquent on his loan with Bank 1 in the amount of \$47,237.90. He had not communicated with Bank 2 since December 2015, although he believes Bank 2 sold the debt to a collection company. Applicant continued to pay the home owners association fees on Home 1. At the close of the hearing, Applicant was still liable on both mortgages. (GE 1; GE 6; GE 8; Tr. 29-45.)

In his post-hearing documentation, Applicant submitted a modification application with Bank 1, dated September 28, 2017. There was no documentation establishing if that application had been approved, or documentation showing payments under the proposed modification. He also produced a listing agreement, showing his contract with a real estate agent to sell Home 1. (AE E; AE G.)

Applicant testified:

[T]he most recent credit report, if you would pull it like today, would show that I am trying to fix everything and then some that I am doing by basically paying all my bills and then some. I have no credit whatsoever outstanding whatsoever. I have two vehicles and the house in question and my primary residence. And that's all I have. I don't have anything else

² A copy of the lease reflects the home was rented from August 1, 2011, to August 1, 2014. (AE B.) Applicant's e-QIP reflected Applicant lived at this address from October 2012 to January 2014. (GE 1.) However, he testified that he only resided there for a few months. (Tr. 39-44.)

outstanding, and I'm trying to zero myself out in regards to fix my credit, if you will. (Tr. 20)

Applicant's records show a Chapter 7 bankruptcy petition was filed in October 1998. His debts were discharged in 2000.³ (GE 7.) Additionally, he had a vehicle repossessed in 2000. (GE 3.)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 says that an "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for national security eligibility seeks to enter 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard

³ These debts were not alleged in the SOR and will only be considered in connection with evaluating mitigating conditions and whole-person analysis.

classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F: Financial Considerations

The security concerns relating to the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 personal 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.

AG ¶ 19 describes conditions that could raise security concerns and may be disqualifying in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

As alleged in the SOR, Applicant is over \$58,000 delinquent on two home mortgages, which have been past due since early 2015. These facts establish prima facie support for the foregoing disqualifying conditions, and shift the burden to Applicant to mitigate those concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant’s admitted financial difficulties:

(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, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

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

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

Applicant's financial problems arose as a result of a strategic default on his mortgages owed to Bank 1 and Bank 2. While the decline of his home value and his transfer to another duty station were two factors beyond his control, and may have initially caused his financial problems, he did not present evidence that he acted responsibly under such circumstances. While he attempted to address these debts through a short sale of Home 1, and tried to negotiate a deed in lieu of foreclosure, he also purchased Home 2 and two new expensive vehicles about the same time he chose to default on his debts to Bank 1 and Bank 2. Applicant's default on his Home 1 mortgage loans was part of a larger pattern of financial irresponsibility, including his previous bankruptcy and vehicle repossession. He has done little to show that similar circumstances are unlikely to occur. Mitigation was not established under AG ¶¶ 20(a) or 20(b).

He offered no evidence of financial counseling, or budget information establishing either sufficient solvency going forward or an ability to responsibly manage his finances. Although he argued that his 2017 credit report indicates he is paying his debts, he failed to fully demonstrate that his financial problems are under control and that he has a budget to accommodate them. Accordingly, Applicant established limited mitigation of financial security concerns under the provisions of AG ¶¶ 20(c) or 20(d).

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature adult, who is accountable for his choices to incur substantial debt and not repay it. He has not demonstrated responsible action under the circumstances, and he has not made a good-faith effort to repay his mortgage debts. His finances are not yet under control. His financial issues are recent and ongoing, but also date back almost 20 years. A determination cannot be made that they are unlikely to recur. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. Financial concerns remain despite the presence of some mitigation. Overall, the evidence creates significant doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He failed to meet his burden to mitigate the security concerns arising under the guideline for financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraphs 1.a and 1.b: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. National security eligibility for access to classified information is denied.

Jennifer Goldstein
Administrative Judge