



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



In the matter of:)
)
) ISCR Case No. 17-02021
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

08/06/2018

Decision

LYNCH, Noreen A., Administrative Judge:

This case alleges security concerns raised under Guideline F (Financial Considerations). Applicant mitigated the financial security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On June 19, 2017, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F. The SOR further informed Applicant that, based on information available to the Government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant timely answered the SOR, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on February 14, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 29, 2018, scheduling the hearing for June 19, 2018. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 4, which were admitted. Applicant testified on his own behalf, and presented Exhibit (AE) A-B, a packet of

documents. I held the record open until July 16, 2018, for additional documentation. Applicant presented a packet of documents, which I marked Applicant's Exhibit (AE) C and admitted into the record without objection or comment. DOHA received the transcript of the hearing (Tr.) on June 27, 2018.

Findings of Fact

Applicant, age 43, is engaged. He has two daughters. He graduated from high school in 1993, and served in the United States Army from 1993 until 2004. He received an honorable discharge. Applicant has attended some college courses, but he has not obtained his degree. He has been employed with his current employer since 2004. As a contractor, Applicant served in Iraq. Applicant completed his security clearance application on May 29, 2016. He has held a security clearance for 25 years. (GE 1)

The SOR alleges that Applicant has delinquent debt in the amount of \$34,000, which includes a past-due mortgage amount of \$24,033 and in foreclosure status, a charged-off account, a medical account, and another charged-off account. Applicant admitted all the allegations, but explained three accounts were paid.

Applicant acknowledged his financial hardship. He stated that he has lived with his girlfriend for about 14 years. When she became ill and could not work due to a medical condition, Applicant lost the dual income. (GE 4) In 2014, Applicant was diagnosed with an illness and medical bills accumulated. His required move to another state for employment caused the mortgage issue.

As to SOR 1.a, mortgage loan with a balance of \$174,471 past due in the approximate amount of \$24,033, and in foreclosure status, Applicant owned a home in state T and lived there from 2009 to 2012. For employment, he was required to move to another state. Applicant received no financial assistance from his employer. He intended to return to that home, in the interim, he rented the home to a friend who paid the mortgage to the mortgage company directly. His friend lost his job and could not maintain the payments. (Tr. 20) When Applicant learned about his friend's inability to pay the mortgage, it was already in arrears. Applicant made payments on both his own rent in state M and the mortgage until 2014. (GE 4) Applicant submitted proof that he made a partial payment to the lender in 2015, which was returned. (AE C) Applicant contacted the bank and he was told to enroll in a program that would help him. Applicant completed the paperwork, but he did not qualify for the program. He sent small amounts of money to the bank, but the checks were returned because the amounts were not sufficient. (Tr. 21; AE A) Since the home was acquired through the VA, Applicant contacted them. He claims that it was too late because the mortgage company had already sold the house. (Tr. 21).

According to GE 2 the home foreclosed in about 2014. Applicant submitted a post-hearing submission that proved he asked for a hardship loan from his 401(k). He also submitted a form that showed he had sufficient money in his account at the time to pay the lender. (AE C) He was willing to pay any past-due amount. Another document from the mortgage lender shows a zero balance for an unpaid principal balance for a property

in Texas. (AX C) At the hearing Applicant stated that he would pay the past-due amount. It is unclear from the record if there is any deficiency balance. However, Applicant had sufficient money to pay any deficiency if there was one.

SOR 1.b, is an account that is in repayment status according to Applicant. The original balance was \$8,282, but Applicant states that the current balance is \$2,932. (AE) B.

As to SOR 1.c, a medical account in the amount of \$2,100 is a hospital bill. Applicant fell ill and was taken to the hospital and diagnosed with adult-onset diabetes. Applicant submitted documentation that he has no account in collection. (AE C)

SOR 1.d is a past-due account in the amount of \$165. Applicant provided proof that the account was paid in in 2016. (AE C) The account was for a dental visit.

Applicant earns about \$93,000 a year. His partner contributes about \$2,600 a month to household expenses. He has a savings account and no other delinquent bills. He is current on everyday household expenses. He has no car loans. (Tr. 48) He is current on child support payments.

Applicant submitted four character letters from various people who have known him. His previous supervisor has known him for 16 years and attests to his trustworthiness with classified information. A military colleague who has known him for 13 years states that he has never known Applicant to live above his means. He is loyal to the United States and has demonstrated over the years that he can protect classified information. Two personal friends who have known Applicant for about 35 years speak to his excellent character and sense of responsibility. (AE A)

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 (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, “Any 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. 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard 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 EO 10865, “Any 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Guideline F (Financial Considerations)

The concern under this guideline 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

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified

information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions, corroborated by his credit reports, establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts"), and AG ¶ 19(c) ("a history of not meeting financial obligations").

The security concerns raised in the SOR may be mitigated by any of the following potentially applicable factors:

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;

AG ¶ 20(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;

AG ¶ 20(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

AG ¶ 20(d): the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's debts are the result of loss of income from his partner, medical issues and a required move to another state for employment. AG ¶ 20(a) is established. Applicant's largest debt was the result of the home foreclosure when he had to move for work and when the renter could no longer pay the mortgage. The intent was to return to the home.

AG ¶ 20(b) is established. Applicant's medical issues and foreclosure were beyond his control. He acted responsibly to address the resulting debts. He provided documentation that he did everything possible to pay the past-due amount on the mortgage to stop a foreclosure. He did not ignore the issue.

AG ¶ 20(c) is not established. AG 20(d) is established. Applicant's current financial situation is under control. He has a track record of payments of many non SOR accounts. He resolved his SOR financial issues. Three are paid and one is in a repayment plan. He provided sufficient documentation to support mitigation. His good-faith efforts are clear. I believe he will continue. He has a track record of responsibility. Based on the record, it is

unclear if there is any deficiency balance, but Applicant stands willing and able to pay the amount.

Applicant met his burden to mitigate the financial concerns set out in the SOR. For these reasons, I find SOR ¶¶ 1.a through 1.d. for Applicant.

Whole-Person Concept

Under AG ¶ 2(c), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the applicable guidelines, each of which is to be evaluated in the context of the whole person. An 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.

I have incorporated my comments under Guideline F in my whole-person analysis, and I have considered the factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, including his years of service in the military, his excellent references, and his many years of holding a security clearance without incidence, I conclude that Applicant has mitigated the security concerns raised by his financial indebtedness. Accordingly, Applicant has carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a – 1.d:

For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest to continue Applicant's eligibility for access to classified information. Clearance is granted.

Noreen A. Lynch
Administrative Judge