



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



In the matter of:)
)
) ISCR Case No. 14-03860
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esquire
For Applicant: *Pro se*

08/31/2015

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline F. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On August 29, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). The action was taken under Executive Order 10865, *Safeguarding Classified Information 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 within the DOD on September 1, 2006.

In an October 4, 2014, response, Applicant acknowledged the sole delinquent debt at issue and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On February 27, 2015, the DOD amended the SOR to add another allegation, which Applicant admitted on March 11, 2015. I was assigned the case on March 20, 2015. DOHA issued a notice of hearing on May 12, 2015, setting the hearing for June 1, 2015. The hearing was convened as scheduled.

The Government offered five documents, which were accepted without objection as exhibits (Exs.) 1-5. Applicant offered testimony and 10 documents, which were accepted as Exs. A-J. On June 6, 2015, four additional documents were received and accepted as Exs. K-N. The transcript (Tr.) was received on June 11, 2015, and the record was closed.

Findings of Fact

Applicant is a 44-year-old senior software consultant who has worked for the same defense contractor since 2012. He has an associate's degree in computer information systems. He has not received financial counseling. (Tr. 72) Applicant was married for close to 20 years, but divorced in 2009. The couple have two adult children. Applicant currently lives with his girlfriend and her three minor children. At work, Applicant is considered a key component of his team's current efforts.

Applicant and his ex-wife lived in the same house from 2003 until late 2008, when they separated. The two debts at issue in the SOR are related to that home. It was initially purchased for about \$98,000. It was refinanced in 2004 for \$118,000. Applicant applied the extra funds toward his debts. (Tr. 22) Applicant obtained a home equity line of credit (HELOC) in 2006, the proceeds from which were used to make home improvements and satisfy the loan on a marital vehicle. Applicant moved out of the house in 2008, while his estranged wife remained in residence. By March 2009, he had stopped making payments on both the mortgage and the HELOC. He ceased making payments because maintaining the house for his ex-wife and contributing to the costs associated with his girlfriend's apartment became financially onerous.

Applicant eventually put the house on the market for sale in December 2009, shortly after his application for a loan modification was declined. The delay in bringing the house to sale was caused, in part, from his estranged wife's lack of cooperation in settling issues related to their divorce. Their divorce decree stipulated that the home be sold and the proceeds be split between the two. A short sale buyer was found in mid-2010, but the bank's processes took too long and the buyer withdrew. Multiple sheriff's auctions were announced, then postponed, until Applicant was deployed in mid-2011, at which point certain home protections were invoked that were applicable to active duty service members. During this time, his request for a deed in lieu was abandoned by his lender because he could not first satisfy or resolve multiple outstanding liens on the property. (Ex. G) Applicant returned from deployment in January 2012. Two years passed. In July 2014, he was advised by an attorney to let the house go to foreclosure. (Tr. 34-35) Applicant believes the home is now poised for a sheriff's sale. (Tr. 45)

As noted, Applicant has not made any payments on the home loan since March 2009. He also has not made any of the low monthly (\$104) payments on the HELOC since that time. (Tr. 27) He refrained from making payments on the HELOC because he was waiting for the two loans to be joined as part of the foreclosure process. (Tr. 27) The HELOC was ultimately charged off in March 2015. As of the date of his February

2015 credit report, the house mortgage was past due in the amount of \$62,306. (Tr. 67) As of that same date, the HELOC has a past-due balance just over \$33,000. (TR. 67)

Applicant testified that he is prepared and able to satisfy a deficiency, if any, owed on the home mortgage after the house is auctioned. He noted he has an emergency fund of about \$1,900 to devote to that effort. There is no evidence as to the current value of the home.

Shortly after the hearing, Applicant wrote that he had negotiated a repayment plan for the HELOC. Under that plan, \$200 a month will be withdrawn from his account every month and applied to that debt. He provided a screenshot of a June 6, 2015, transaction from his bank to the creditor for \$212. (Ex. K)

From 2007 until the present, Applicant has worked for multiple employers without a significant break in employment. During that time, his salary has risen from the low \$70,000's to about \$125,000 a year. In the interim, he took a 50% reduction in pay for three months in 2009 while on National Guard training. He also took an unpaid leave of absence from his regular job while he was paid for his active duty deployment from May 2011 through January 2012. (Tr. 20) Today, he and his girlfriend share living expenses. After paying his regular obligations and extraneous bills, he has a net monthly remainder of about \$924. He has been timely on his car payments and rent.

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 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, 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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

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 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. Section 7 of Executive Order 10865 provides that 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).

Analysis

Guideline F, Financial Considerations

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence showing Applicant was delinquent on two home-related loans. The facts show that, until after the hearing, no payments had been made since early 2009. As of February 2015, the two loans represent over \$95,000 in past-due debt. Such facts are sufficient to invoke financial considerations disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts, and

AG ¶ 19(c): a history of not meeting financial obligations.

Four conditions could mitigate these finance-related security concerns:

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, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

AG ¶ 20(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

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

Applicant stopped making payments on his home-related loans in early 2009, around the time he and his former wife were estranged. Her resistance to selling the house, as directed by their divorce decree, compromised his ability to move forward. Although the facts are limited with regard to his other efforts at that time, there is sufficient evidence to give rise to the first part of AG ¶ 20(b).

Applicant testified that a short sale buyer was once interested in the property at issue. Applicant also stressed that he was deployed from May 2011 to January 2012, during which time his request for a deed in lieu was rejected because he could not satisfy the multiple liens on the property. He has not received financial counseling, but he apparently discussed the property with a lawyer. Regardless, the fact that no payments have been made on these delinquent debts in nearly six-and-a-half years is worrisome. This is particularly true since it appears Applicant's ex-wife enjoyed living in the property for some of that time. Moreover, no documented efforts have been shown to address the debts from 2012 until after the hearing, when a repayment plan was described and a screenshot of a transaction to be posted in the future was shown. Whether this plan will be successfully and timely carried out is presently unknown. Consequently, I find that none of the other mitigating conditions apply.

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(a). 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 incorporated my comments under the guideline at issue in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a mature and credible man with a stable job history and military service to his credit. Separation, divorce, and a lack of cooperation from his estranged

wife led to both the acquisition of property-related delinquent debt and an early protraction of efforts to sell their home. In 2009, however, Applicant simply quit making payments on his two home loans. Only a potential for a short sale and an unsuccessful request for a deed in lieu were attempted thereafter, and no efforts were documented showing an attempt to address these debts since early 2012 except one payment made after the hearing. One payment, however, does not establish a track record of regular and timely payments.

This process expects that an applicant adopt a reasonable strategy or plan to address his debts. It then requires documentary evidence that such a plan has been successfully implemented. At most, Applicant has described a repayment plan poised to continue in the future, albeit only with regard to one of the two debts at issue. Consequently, there is no demonstrated track record of progress on the total debt noted in the SOR. Until he has established a track record reflecting some degree of progress on his delinquent debts, financial considerations security concerns remain unmitigated.

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:	AGAINST APPLICANT
Subparagraphs 1.a-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 national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge