



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



In the matter of:)
)
) ISCR Case No. 14-04389
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

10/08/2015

Decision

LYNCH, Noreen A, Administrative Judge:

On October 28, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) listing security concerns arising 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 (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented in September 2006.

Applicant timely answered the SOR and requested a review based on the written record in lieu of a hearing. The case was assigned to me on October 1, 2015. Department Counsel submitted a File of Relevant Material (FORM), dated July 14, 2015.¹ Applicant received the FORM on August 27, 2015. Applicant submitted information in response to the FORM, which was marked and admitted into the record as AX A. Based on a review of the case file, eligibility for access to classified information is granted.

¹The Government submitted seven items for the record.

Findings of Fact

In his answer to the SOR, Applicant denied the factual allegations under Guideline F (Financial Considerations) with explanations. (Item 2)

Applicant is a 62-year-old employee of a defense contractor. He is a high school graduate, married with two grown sons. (Item 3) He served in the United States Navy on active duty from 1973 until 1995, retiring with an honorable discharge. From 1995 until 2005, he served in the Navy Reserve. (Item 7) He has worked for his employer since 2011. He completed a security clearance application in 2013. He has had a security clearance since his time in the military.

The SOR alleges three delinquent debts totaling \$136,000. (Item 1) The majority of the debt is from past-due mortgages on his home and rental property owned by Applicant. (Items 4-6)

Applicant attributes his delinquent debts to the loss of his wife's job in 2009. She was a nurse working full time. Since then she has worked for an agency, but averaging 16 hours a week. Applicant and his wife maintained by paying bills with savings. However, the one property that is listed in the SOR was rented, but suddenly the tenant failed to pay rent for about three months. Before a formal eviction, the tenant abandoned the home and left it in shambles. They repaired the house by themselves. Unfortunately, at the same time, Applicant's father-in-law died. Since he did not have any financial resources, Applicant paid for the funeral and burial. His savings were depleted. Applicant also used his retirement funds to stay current with their bills. (Item 2)

Applicant disclosed the negative financial information to the security officer at work and provided the letters. He also reported the incidents to the investigator during his 2013 interview. Applicant is not accumulating new debt, and he is paying his current bills in a timely fashion. His credit report (Item 6) notes many accounts as pays as agreed.

Applicant noted that the mortgage on his former home/rental property was taken over by a bank until the property was sold/foreclosed. He tried to get a short sale. He tried to obtain a refinancing from the bank. The bank provided him with a 1099-C Cancellation of Debt and the account is closed. (Item 2) Losing his property to foreclosure was one of the most disappointing and depressing experiences of his life. He realizes that his credit has been adversely affected by this issue. He is now trying to sell his primary residence. With the proceeds, Applicant wants to pay any outstanding debts.

As to the SOR allegation at 1.a for a past-due amount of \$7,373 on his home mortgage The mortgage payment fell behind when his wife lost her job. He provided documentation that the account has been current since August 2014. (AX A)

As to the SOR allegation at 1.b for a past-due amount of \$81,490 on his former home/rental property mortgage, Applicant's property was foreclosed upon in 2013. The mortgage account had a balance of approximately \$217,000. The property was sold for about \$197,000. (Item 2). Applicant received the 1099-C and included it in his income tax return for 2013. He sent this documentation as his response to the FORM.

Applicant stated that, as to the alleged debt at 1.c, the account was transferred and he provided definitive information that the account is a duplicate of allegation 1.b (Item 2). The Government agreed with this statement.

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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 avoided drawing inferences grounded on mere speculation or conjecture.

The United States Government must present evidence to establish controverted facts alleged in the SOR. 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. . . ." ² The burden of proof is something less than a preponderance of evidence. ³ The ultimate burden of persuasion is on the applicant. ⁴

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of 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.”⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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.” It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant incurred delinquent debt on two mortgages. Consequently, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

Applicant notes that the loss of his wife’s employment in 2009 and decreased income when she found employment resulted in a financial hardship. They also had tenants who left one property. The house was damaged and Applicant spent money repairing the property. He used savings as well and borrowed against retirement funds to pay his debts. However, the money ran out.

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

His father-in-law died at about the same time, and he had to pay for the funeral and burial. Applicant tried to work with his bank. Consequently, Financial Considerations Mitigating Condition (FC MC) 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) partially applies.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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) applies. Applicant experienced circumstances beyond his control. He did everything that he could to avoid a foreclosure. He used his savings and borrowed against his retirement. He received a debt cancellation for the one property. He sent it to the IRS. He is current with the debt at 1.a.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. He resolved the debt in 1.a. The debt in 1.b and 1.c are duplicates. Applicant tried to short sell or refinance his rental property. FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control) 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 an applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person

factors. Applicant is 62-years old. He served honorably in the military. He is married and has worked many years.

Applicant answered the FORM with the inclusion of his 1099-C for his 2013 tax year. He resolved the debt at 1.a. He is trying to sell his own home at this time. He used his savings to pay his delinquent debts. He and his wife are now both employed and in a position to have steady income. The circumstances beyond his control, when his wife lost employment in 2009, and the income was greatly reduced, did not stop him from acting responsibly. He used savings and retirement funds to pay his bills. I have no doubts about his judgment and reliability based on the record. His credit report shows a track record of financial responsibility before the 2010 incidents occurred.

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 a security clearance. Clearance is granted.

NOREEN A. LYNCH.
Administrative Judge