



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



In the matter of:)	
)	
-----)	ISCR Case No. 14-04773
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

November 12, 2015

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on October 4, 2013. (Government Exhibit 1.) On November 21, 2014, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial Considerations) concerning Applicant. 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 Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on January 15, 2015 (Answer), and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on April 6, 2015. This case was assigned to me on April 13, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 11, 2015. I convened the hearing as scheduled on June 15, 2015. The Government offered Government Exhibits 1 through 5, which were admitted without objection. Applicant testified on his own behalf, and he submitted Applicant Exhibits A through L, which were also admitted without objection. DOHA received the transcript of the hearing (Tr.) on

June 23, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is 61 and divorced. He is employed by a defense contractor as a consultant and seeks to retain a security clearance in connection with his employment.

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant admitted in part and denied in part the sole allegation in the SOR under this Paragraph. He also submitted additional information to support his request for a security clearance.

Applicant retired from the United States Navy in 2004 after 20 years of honorable service. He started work for his current employer almost immediately. He has had a security clearance for approximately 30 years, without a problem. (Government Exhibit 1 at Sections 13A and 15; Tr. 26-28; 43-44.)

The single allegation in the SOR (1.a) alleges that Applicant owes \$193,609 to a mortgage company on a foreclosed condominium. Applicant and his now ex-wife were married in 1985, separated in 2011, and are now divorced. His ex-wife had a job in the real estate industry. In 2006 they decided to buy the condominium at issue, as a rental property and potential second home, with an adjustable rate mortgage (ARM). They were able to afford this condominium, and a house that was their primary residence, when both were working. When the housing market began to collapse in 2007-8 they were affected more than most because his wife lost much of her income. Therefore, the Applicant had to pay for both properties with only his income. Eventually, the payments became too much. (Tr. 28-30.)

Applicant and his wife were able to conduct a short sale on their primary residence. However, the mortgage company was not willing to cooperate with their attempts to complete a short sale on their second home. Applicant states, "At that point I felt like I was drowning." The mortgage company foreclosed on this house in September 2008. (Applicant Exhibit I; Tr. 30-32.)

As stated, Applicant and his wife separated in 2011. The mortgage company forwarded subsequent written communications to her address only. Applicant did not receive Applicant Exhibits A, B, and C until the day before his hearing. Applicant Exhibit A is a mortgage statement dated February 1, 2014, showing no principal owing. Applicant Exhibits B and C are Form 1099s indicating that the mortgage company had cancelled the remaining debt after the foreclosure sale. These forms are dated January

6, 2014. (Tr. 36-39.) Applicant does not owe anything to the mortgage company. This debt is resolved.¹

Applicant's current financial situation is stable, as shown by the most recent credit reports in the file. He is able to pay his monthly debts. Applicant stated that as a result of his financial issues in the 2007-2008 time frame he is more aware of his finances. Applicant has paid off his student loans, which he used to acquire a Master's in Business Administration. He has taken financial counseling courses. Applicant has recently been pre-approved by a credit union for a mortgage loan in the amount of \$290,000. (Government Exhibits 4 and 5; Applicant Exhibits D, E, and F; Tr. 35-36, 40-41, 44.)

Mitigation

Applicant submitted documentation showing that he is a respected employee and person. Applicant Exhibits G and H are annual performance assessments. They show his "Overall Competency Assessment Rating" to be "Exceeds." (Tr. 22-23.)

Applicant's supervisor has known Applicant since 2004. They have worked side by side for the last four years. He provided a letter that states, "[Applicant's] personal conduct, values and characteristics meet the highest standards." (Applicant Exhibit J; Tr. 39.)

A friend of Applicant's for 25 years submitted a letter. He is a retired senior Federal law enforcement official, who held a security clearance. The writer was fully aware of the financial situation that overcame Applicant and his wife. He fully supports Applicant's request for continued access to classified information. (Applicant Exhibit K; Tr. 39-40.)

Finally, a married couple who have known Applicant over 25 years also provided a letter. In recommending Applicant for a position of trust they state, "We are both in positions which require constant vigilance for security and professionalism. We have full faith and confidence in [Applicant's] ability to maintain a high level of integrity as expected for someone with his experience and background." (Applicant Exhibit L.)

Policies

Security clearance decisions are not made in a vacuum. When evaluating an applicant's suitability for a security clearance, the 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, which are to be used as appropriate in evaluating an applicant's eligibility for access to classified information.

¹It is noted that the two most recent credit reports in the record, from April and June 2015 respectively, do not show any debt to this creditor. (Government Exhibits 4 and 5.)

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 over-arching 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, "Any 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.

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, 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 access to classified information. Security clearance decisions include, by necessity, consideration of the possible risk that 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 information.

Finally, as emphasized in Section 7 of Executive Order 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

Paragraph 1 (Guideline F, Financial Considerations)

The security concern relating to the guideline 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(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Applicant, by his own admission, and supported by the documentary evidence, had a mortgage that he could not resolve. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), disqualifying conditions may be mitigated where "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." In addition, AG ¶ 20(b) states that disqualifying conditions may be mitigated where "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."

The evidence shows that both of the above mitigating conditions apply to Applicant. The housing crisis affected Applicant's ability to pay this mortgage, which resulted in the mortgage company foreclosing and selling the property. In 2014 the mortgage company decided to forgive the debt and provided Applicant's ex-wife with a Form 1099. She finally provided the form to Applicant the night before his hearing. The form shows that there is no debt owed to the creditor. Based on the particular facts of this case, I find that Applicant has "initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," as required by AG ¶ 20(d).

Applicant has received financial counseling. In addition, as found above, his current financial situation is stable. I find that "there are clear indications that the problem is being resolved or is under control," as required by AG ¶ 20(c). Paragraph 1 is found for Applicant.

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 the relevant circumstances. 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. The administrative judge must 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. The discussion under Guideline F, above, applies here as well. While Applicant has had financial problems in the past, they are resolved, and he has the knowledge and ability to avoid such problems in the future.

Under AG ¶ 2(a)(2), I have considered the facts of Applicant's debt history. Based on the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is a low likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his financial situation. Accordingly, the evidence supports granting his request for a security clearance.

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: FOR APPLICANT

Subparagraph 1.a: 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 eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge