



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



In the matter of:)
)
) ISCR Case No. 14-06145
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Jr., Esq., Department Counsel
For Applicant: *Pro se*

02/23/2016

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On February 7, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing 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 (AG) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on March 13, 2015, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on October 15, 2015. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant

received the FORM on October 29, 2015. He responded with an e-mail and documents that I have marked Applicant's Exhibits (Ex) A and B. The case was assigned to me on November 5, 2015. The Government exhibits included in the FORM and AE A and B are admitted in evidence without objection.

Findings of Fact

Applicant is a 59-year-old employee of a defense contractor. He has worked for his current employer since 1985. He attended college for a period, but he did not earn a degree. He is married with three adult stepchildren.¹

The SOR alleges a mortgage loan of \$1,214,285 that was \$45,318 past due, and a past-due second mortgage loan of about \$185,000.

Applicant lives in an expensive area of the country. He has lived in his current home since 2001. He refinanced the mortgage loan several times. A credit report from February 2014 lists the mortgage loan as \$10,943 past due, with a balance of \$1,214,285. An October 2014 credit report lists the mortgage loan as \$45,318 past due, with a balance of \$1,214,285. Applicant made payments toward the loan. A January 2015 mortgage statement shows a payment, with no overdue payments. He was paying only the interest, and the interest-bearing principal-balance was \$1,214,285. An October 2015 credit report lists the mortgage loan as \$29,537 past due, with a balance of \$1,214,285. The status was listed as "[n]ot more than four payments past due."²

Applicant and the creditor entered a mortgage-loan modification agreement in September 2015. Applicant agreed to a qualifying payment of \$18,166, and his monthly mortgage-loan payment was reduced to \$3,442.³

Applicant established that his second mortgage loan was paid in full in April 2015. The deed of trust on the property was released to Applicant and his wife in May 2015. It is unclear if the second mortgage loan was paid in full by Applicant, or if he secured another second mortgage loan.⁴

Applicant had non-mortgage financial issues, but he resolved all of them. He reported \$340,000 in his retirement account in July 2014. His most recent credit reports show the first mortgage loan, but there are no other accounts with balances. It will be difficult, but possible, for Applicant to pay his mortgage loans on his family's income, which includes overtime pay.⁵

¹ Items 4, 9.

² Items 2, 5-8.

³ AE C.

⁴ AE A, B.

⁵ Items 4-9.

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 to be 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, administrative judges apply the guidelines 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."

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." The applicant 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. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern 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. The following are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant was unable or unwilling to pay his mortgage loans. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

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

Applicant's primary mortgage loan was modified in September 2015. His secondary mortgage loan was paid in full in April 2015. It is unclear if the loan was paid by Applicant, or if he secured another second mortgage loan. He had \$340,000 in his retirement account in July 2014. His most recent credit reports show the first mortgage loan, but there are no other accounts with balances. It will be difficult, but possible, for Applicant to pay his mortgage loans. The funds in his retirement account may provide a buffer against additional financial problems. Financial considerations concerns are mitigated by AG ¶¶ 19(a), 19(c), and 19(d).

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):

(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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in this whole-person analysis. I also considered Applicant's long and stable work history.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations security concerns.

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.b:	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.

Edward W. Loughran
Administrative Judge