



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



In the matter of:)	
)	
)	ISCR Case No. 14-03257
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

March 9, 2015

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 35-year-old employee of a defense contractor. He is alleged to be indebted on a delinquent home equity line of credit (HELOC) in the approximate amount of \$57,614. This debt became delinquent as a result of circumstances beyond his control, and he is acting responsibly under the circumstances. Eligibility for access to classified information is granted.

Statement of the Case

On October 2, 2014, the Department of Defense 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; 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 September 1, 2006.

Applicant answered the SOR on October 22, 2014 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on December 2, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 11, 2014, scheduling the hearing for January 7, 2015. The hearing was convened as scheduled. The Government offered hearing exhibit (HE) I and Exhibits (GE) 1 through 3, which were admitted without objection. Applicant testified on his own behalf. The record was left open for Applicant to submit additional exhibits. On February 5, 2015, and February 17, 2015, Applicant presented additional exhibits marked AE A through AE O. Department Counsel had no objection to AE A through AE O, and they were admitted into the record. DOHA received the transcript of the hearing (Tr.) on January 20, 2015.

Findings of Fact

Applicant is a 35-year-old employee of a defense contractor. He has worked for his employer for the past three years. He enlisted in the Navy at the age of 18, and served eight years. He achieved the rank of petty officer first class, E6. He worked for two different government contractors from 2006 to 2011. He estimated he has held a security clearance for at least ten years, without incident. He earned a bachelor's degree in 2006 and a master's degree in 2008. He is not married and has no children. (GE 1; Tr. 15-17, 22-28.)

As stated in the SOR, Applicant is indebted on a delinquent home equity line-of-credit (HELOC) in the approximate amount of \$57,614. Applicant admitted the debt listed in the SOR, with explanations. His debt is found in the credit reports entered into evidence. (Answer; GE 1; GE 2; GE 3.)

Applicant attributes his delinquent debt to a unique set of circumstances that left him unable to repay the HELOC loan. In April 2002 Applicant met and became romantically involved with his former partner [P]. The two began cohabitation shortly thereafter. In December 2003 they purchased a home together, titled in both of their names. They financed the property with a mortgage for \$201,000, in both names. In February 2005, they obtained a \$50,000 HELOC to rehabilitate the home. The HELOC was in both of their names. They both paid the mortgage and HELOC until July 2008, when they temporarily separated. Applicant continued paying the mortgage and HELOC on the property without financial assistance from P. (AE B, Tr. 29-34, 51-53.)

In August 2009, their relationship ended in a tumultuous break-up. Applicant moved out of the home and hired a property management company to rent the home to tenants. P had previously vacated the home. In March 2010 the house rented for \$1,500 per month, which did not cover the combined amount of the mortgage of \$1,350 per month and the HELOC payment of \$350 per month. Applicant paid approximately \$530 per month of his money toward the two loans. In July through October 2010, P contacted the property manager and threatened her. In October 2011 P visited the house and tried to evict the tenants. The Sheriff was called and P was removed from the property. P then notified the property manager that he was due half of the rent. The

property manager began remitting half of the rent to P, leaving Applicant an even larger shortfall, which he could not afford. (AE A; AE B; AE D; AE L; Tr. 34-44.)

In November 2011 Applicant decided that he had no choice but to stop paying on the mortgage and the HELOC. He could not sell the property because P refused to agree to a sale, and his mortgage was more than the value of the house. Applicant created an escrow account with the property manager to collect and store the rent paid by the tenants, for the tenants moving costs and to pay on any remaining debt at the end of the foreclosure process. P discovered the escrow account, and took half of the money saved. The house was foreclosed upon in January 2012. The primary mortgage was satisfied in full through the foreclosure sale. It is unclear if any money was paid on the HELOC at the time of the foreclosure. (AE B; AE K; Tr. 40-44.)

P filed Chapter 7 bankruptcy in February 2012. P included both the mortgage and the HELOC in his bankruptcy. Applicant was informed by the lender that when P discharged his bankruptcy, the HELOC was included and was considered closed. Applicant's credit reports reflect this debt as a charged-off account. (GE 3; AE B; Tr. 34-36.)

Applicant talked to the HELOC lender in 2012 and requested to set up a payment plan, because the debt was still listed on his credit report. Applicant was unable to pay the requested settlement amount at that time. However, he is currently making payments to the same creditor who holds the HELOC, on a credit card debt that once totaled over \$40,000. Applicant provided documentation to show he created a debt management plan and has been repaying the credit card debt consistently for several years. Applicant participated in budget and debt counseling that helped him create the debt management plan. His credit score is considered "good" by a credit reporting agency. His credit report reflects no other delinquencies. Applicant intends to address the HELOC debt and hopes to reach a settlement for a significantly reduced payment with the lender, but his discretionary income is currently used for the repayment of the credit card debt. (AE C; AE E; AE L; Tr. 46-50.)

Applicant was awarded numerous commendations during his Navy career, including: the Navy and Marine Corps Achievement Medal; the Navy Unit Commendation; Meritorious Unit Commendation; Navy "E" Ribbon; Navy and Marine Corps Good Conduct Medal; and the National Defense Service Medal. His evaluation reports from his naval service reflect that he "impressed every person that he comes in contact with" and that he typically performed above standards. He was considered a valuable asset to his division. Applicant is also considered to be a valued employee by the government contractor for which he works. In 2012, 2013, and 2014, he received merit-based increases in pay. He also received compensation awards ranging between \$1,000 and \$3,000 for his work performance in 2011, 2012, and 2013. His performance reviews show he is recognized as a future leader of his organization (AE F; AE G; AE H; AE I; AE J; AE M; AE N; Tr. 26-27.)

Policies

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 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 AG ¶ 2 describing 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.

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 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. 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 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, as follows:

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.

AG ¶ 19 describes two conditions that could raise security concerns and may be disqualifying in this case:

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

Applicant is indebted on a delinquent home equity line of credit (HELOC) in the approximate amount of \$57,614. This debt has been delinquent since November 2011. The evidence raises both security concerns, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes three conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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;
- (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; and
- (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.

Applicant's inability to pay his HELOC loan was the direct result of P's malfeasance, a circumstance beyond Applicant's control. Applicant did everything he

could, including establishing an escrow account toward the repayment of the mortgage and HELOC loans upon foreclosure, when he found himself unable to keep up with those loans. That escrow account was invaded by P. Applicant's HELOC debt occurred under unusual circumstances that are unlikely to recur and does not cast doubt on his current judgment. He has acted responsibly under the circumstances. He completed financial counseling, and established a plan to repay his credit card debt first, before addressing the HELOC delinquency. Given his history of honorable service to the United States and his documented history of repaying his credit card debt with the same creditor, he can be relied upon address the HELOC debt when sufficient funds are available. AG ¶¶ 20(a), 20(b), and 20(c) 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):

- (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 pertinent facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant served in the Navy for eight years and received an honorable discharge. He received a number of awards and other positive recognition for his work in the military and as a government contractor. He is a valued employee. Applicant was approximately 25 years old when he and his partner purchased the home in question. He has matured since then and has learned a difficult lesson. He has established good credit, despite the delinquent HELOC. He pays all of his other bills on time, as evidenced by his credit reports. The delinquent HELOC was an aberrational event in his life and he is unlikely to be in this situation again. He can be trusted to resolve the HELOC after he has finished paying the credit card, and has additional disposable income.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, 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
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.

Jennifer I. Goldstein
Administrative Judge