



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



In the matter of:)
)
) ISCR Case No. 14-04430
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

08/28/2015

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On October 27, 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 effective within the DOD for SORs issued after September 1, 2006.

On January 21, 2015, Applicant answered the SOR, and he elected to have his case decided on the written record in lieu of a hearing.¹ He did not submit any

¹ The notarized date on the Answer to the SOR is January 21, 2014. However this predates the date of the SOR and is an obvious typographical error.

documents. On January 27, 2015, Department Counsel submitted the Government's file of relevant material (FORM). Applicant received it on May 28, 2015. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He did not provide a response to the FORM or object to any of the documents submitted by the Government, and they are admitted as Items 1 through 7. The case was assigned to me on July 31, 2015.

Findings of Fact

Applicant denied SOR allegation ¶ 1.a and admitted the remaining allegations. I have incorporated his admissions into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 51 years old. He served in the military from 1982 to 2002, when he honorably retired. He married in 1983 and divorced in 1986. He remarried in 1987 and has an adult stepchild. He earned a bachelor's degree in 2010. He has been employed by a federal contractor since 2003.

In 1998 Applicant and his wife purchased a home (H-1) and financed it with a first and second mortgage. The first mortgage was later sold to a new mortgage company. This was Applicant's primary residence until 2007, when he purchased another house (H-2). Applicant eventually was unable to pay the mortgages on both houses. The taxes on H-1 increased because it no longer qualified for a homestead exemption once it was no longer his primary residence. Despite Applicant's efforts the mortgage lender was unresponsive to his attempts to address his financial difficulties. He received papers in early 2010 that the house (H-1) would be foreclosed. The mortgage lender foreclosed and obtained a Summary Final Judgment in February 2010 in the amount of \$122,058 (SOR ¶ 1.a).² Applicant's answer to the SOR states: "The debt was redeemed by collateral. Home has been sold to cover debt as also reflect[ed] in credit report."³ The credit report reflects a zero balance past due to the mortgage company. This debt is resolved.

The debt in SOR ¶ 1.b (\$37,529) is the second mortgage on H-1. In his answer to the SOR, Applicant stated: "True according to credit report. This was also in reference to SOR [1].a." Applicant did not provide any information as to the status of this debt or explain what he meant in his answer. The debt is listed on a credit report from March 2014.⁴

The debts in SOR ¶¶ 1.c (\$12,518) and 1.d (\$5,659) are credit card accounts. In his answer to the SOR, Applicant stated for each debt: "This has been paid on consistently each month for the last year plus months to [creditor] in the amount of

² Item 7, pages 4-7 is the Summary Final Judgment in Foreclosure from the Circuit Court.

³ Item 3.

⁴ Item 6 is a credit report noting the delinquent debt.

\$250. Final payment will be 11-2015.” He indicated on his security clearance application (SCA) that he was making payments through automatic withdrawals, and the debts were “in good standing.” Applicant did not provide any documentary proof of payments or the current status regarding these debts. These debts are listed on a credit report from March 2014 noting both accounts are in collection and also the debt in SOR ¶ 1.c is in dispute.⁵

Applicant attributes his financial problems to the real estate market and economic downturn at the time. He also attributes it to a change in policy regarding tuition assistance by his employer. In 2009 this change resulted in Applicant having an unexpected \$600 deduction from his pay per month to cover taxes associated with educational benefits provided by his employer.⁶

Applicant listed on his SCA that he traveled for vacation on cruises to various foreign ports in 2010, 2012, and 2013.⁷

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 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 avoided drawing inferences grounded on mere speculation or conjecture.

⁵ Item 6

⁶ Item 5.

⁷ Item 4.

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 as to obtaining 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 that an applicant may deliberately or inadvertently fail to 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 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) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

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. I have considered the following under AG ¶ 19:

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

Applicant had four delinquent debts that he was unwilling or unable to pay. Three of the debts are unresolved. I find the above disqualifying conditions have been raised.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under 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;
- (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;
- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's mortgage on H-1 was resolved through foreclosure and the credit report shows a zero balance owed. The debt in SOR ¶ 1.a is resolved. Applicant failed to provide evidence to conclude that the remaining debts alleged have been resolved or paid. These debts are recent. His finances cast doubt on his current reliability, trustworthiness and good judgment. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to when he purchased a second house; lost his homestead exemption; had his employer unexpectedly change its tuition assistance program; and a downturn in the economy and housing market. All of these conditions were beyond Applicant's control, except the homestead exemption, which he should have been aware of when purchasing a second home. For the full application of AG ¶ 20(b), there must be evidence that Applicant acted responsibly under the circumstances. Applicant did not provide evidence regarding the current status or resolution of any of the remaining alleged debts. AG ¶ 20(b) minimally applies.

There is no evidence to conclude Applicant has received financial counseling. There is no documentary evidence to conclude Applicant is making good-faith efforts to repay or otherwise resolve the debts. I cannot find there are clear indications that his financial problems are being resolved or are under control. AG ¶¶ 20(c) and 20(d) do not apply.

It is unclear if Applicant is actually disputing the debts in SOR ¶¶ 1.a through 1.b. The credit report notes that the debt in SOR ¶ 1.c is being disputed, but no additional evidence regarding the basis or resolution of the dispute was provided. If Applicant is disputing the other debts, he has not provided an identifiable basis for the disputes. He failed to address the current status of these debts. He failed to provide evidence of actions he has taken to resolve the issue. AG ¶ 20(e) does not 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 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.

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

Applicant is 51 years old. He purchased a second house during a period of economic downturn. He had difficulty maintaining the mortgages. The primary mortgage debt is resolved. The second mortgage debt is not resolved. The other two consumer debts Applicant claimed he was paying, but failed to provide documented proof of his actions. There is insufficient evidence to conclude Applicant has met his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude he failed to mitigate the security concerns arising under Guideline F, financial considerations.

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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.c:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge