



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



In the matter of:)
)
) ISCR Case No. 14-05967
)
Applicant for Security Clearance)

Appearances

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

05/14/2015

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline E, personal conduct, and Guideline F, financial considerations. Applicant’s eligibility for a security clearance is granted.

Statement of the Case

On December 24, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E, personal conduct, and 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 (AG) effective within the DOD on September 1, 2006.

On January 19, 2015, Applicant answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on March 30, 2015. The

Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 3, 2015. I convened the hearing as scheduled on April 29, 2015. The Government offered exhibits (GE) 1 through 7, which were admitted into evidence without objection. Applicant testified and offered Applicant Exhibits (AE) A through H, which were admitted into evidence without objection. The record was held open until May 13, 2015, to allow Applicant to submit additional documents, which he did. They were marked as AE I through K, and they were admitted into evidence without objection.¹ DOHA received the hearing transcript (Tr.) on May 8, 2015.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.b, 2.a and 2.b. He denied the other allegations. I have incorporated her admissions into the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 41 years old. He attended college for one year and does not have a degree. He married in 1995 and has three children, ages 18, 17, and 11. He has not served in the military. He has been employed by the same employer since 2008.²

In approximately 2000, Applicant became involved with two people who were part of a real estate group. The plan was to purchase houses, repair them, and then rent them using the income to pay the mortgage and secure a profit. Applicant used his own money to put \$20,000 on each house he purchased. After he made the deposit and closed on the house the real estate group would reimburse him the \$20,000 down payment. Applicant secured a home equity loan for \$78,000 to use for the down payments and repairs to the houses. Over a six-month period he purchased seven houses. On five of the houses he was reimbursed the \$20,000 down payment. Another investor attempted to sell their property and learned she could not. Applicant contacted an attorney and asked him to look into the matter. He learned that the houses were uninhabitable. Applicant had never actually seen the houses. It was learned that the two people from the real estate group were purchasing houses for \$1,000 and reselling them to their investors for up to \$100,000. The two people from the real estate group, the mortgage company, a real estate agent, and a home inspector were investigated by the FBI. Applicant testified against them before a Grand Jury. Applicant used \$40,000 from his home equity loan for down payments on two houses and the remaining \$38,000 for repairs on homes to make them habitable. Applicant was unable to make the payments on the home equity loan (SOR ¶ 1.a-\$77,056). He was sued by the creditor in 2010. In April 2014, it agreed to settle the case. The creditor reduced the balance owed to \$40,000. Applicant is required to make monthly payments of \$400 until the balance is paid. He has been making payments since early 2014. In addition, on May 1, 2015, and each subsequent year on this day, Applicant is to pay the creditor

¹ Hearing exhibit I is Department Counsel's and Applicant's email memorandum and correspondence.

² Tr. 15-19.

\$2,000. No additional interest or penalties will accrue during this time. He provided supporting documentation that he is current on his payments.³

The debt in SOR ¶ 1.b (\$5,568) is for delinquent home owners association (HOA) fees. Applicant has been delinquent paying these fees for five years and a lien was placed on his house. He stated he could not afford to make the payments until recently. He also testified that he purchased a truck in 2011 for \$37,000. He needed a reliable vehicle for work. He stated he received a vehicle allowance from work. He completed the payments in 2014. In 2013, he purchased a used vehicle for his wife. In January 2015, Applicant contacted the HOA creditor and arranged a payment plan. He made an \$800 initial payment and is required to pay \$400 a month. He stated he could not afford to make the payments before then. He provided a document showing he is current on his payment plan.⁴

The debts in SOR ¶¶ 1.c (\$13,138) and 1.d (\$2,510) are credit card debts. A credit bureau report (CBR) dated April 19, 2014, corroborates the delinquent debts.⁵ Applicant stated he used the credit cards to make repairs to the houses he purchased as part of his real estate investment. He stated that these debts were part of the investment fraud scheme and as part of the settlement they were removed from his credit reports. Applicant stated that his attorney and the mortgage creditor for the houses worked out a resolution that because these debts were incurred due to the fraud scheme, their reporting status were either changed to “paid in full” or deleted from the credit report. The debts are not included on subsequent credit reports. Applicant provided a letter from the attorney who represented him in the case verifying the settlement terms.⁶

Applicant disputes the two remaining debts in ¶¶ 1.e (\$306) and 1.f (\$178) of the SOR for medical services. CBR dated April 19, 2014, reflects both debts.⁷ CBR dated October 21, 2014, reflects the debt in ¶ 1.e. Applicant explained he had medical insurance, disputed the debts, and they are no longer on his most recent credit report.⁸

In 2008, Applicant was employed at a store. He had been employed there for eight years. He stole a gift card that the store gave to one of its contractors that was worth approximately \$1,200 and used it to purchase items for his house. He was caught, arrested and charged with grand theft third degree, a felony. He was fired and was out of work for seven to eight months. In March 2009, he pled nolo contendere, and

³ Tr. 21-29; AE A, I..

⁴ Tr. 29-34; AE B, K.

⁵ GE 3.

⁶ Tr. 34-40; AE J.

⁷ GE 3, 4; AE D, E, F.

⁸ Tr. 40-42; AE C, D, E.

the adjudication of his charge was withheld. He completed community service, paid court costs and restitution, and was placed on two years' probation. Applicant stated he was having financial problems at the time, and his house was being foreclosed. His financial problems were partially the result of being a victim of the real estate fraud. He admitted he made a poor decision. He stated he never did anything like that before or since, and he has been working hard since then to pay his debts. He stated it was an impulsive decision when he stole the gift card. Applicant stated he was released from probation early and completed the terms of his sentence. His children are unaware of his criminal conduct.⁹

Applicant's wife is employed. Together they are able to meet their monthly expenses and have money at the end of the month to meet any unexpected expenses. Applicant provided character letters. He is involved with his church and his community. He is considered reliable and diligent. He works well in a team environment and is respected for his dedication and work ethic.¹⁰

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 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 not drawn 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or

⁹ Tr. 43-56, 63.

¹⁰ Tr. 56-60; AE G, H.

mitigate facts admitted by applicant or proven by Department Counsel and 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 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 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 all of the disqualifying conditions under AG ¶ 19, and the following three are potentially applicable:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations;

Applicant had delinquent debts that included a mortgage, credit cards, and medical debts that he was unable or unwilling to pay. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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;
- (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 attributed his financial problems to being a victim of real estate fraud. It took years to resolve. The circumstances regarding the fraud are unlikely to recur and are not recent. AG ¶ 20(a) applies. The fraud scheme was a condition beyond his control. He also was unemployed for seven to eight months in 2008 to 2009 after being fired for stealing from his employer. This was within his control. For the full application of AG ¶ 20(b) Applicant must have acted responsibly under the circumstances. Applicant has a payment plan to resolve his delinquent mortgage and HOA debt. He attributed the credit card debts to the real estate fraud scheme. He showed the credit card debts are no longer on his current credit reports and were removed as part of the settlement. Applicant credibly testified that he had medical insurance, and the medical debts alleged were removed from his current credit reports. AG ¶ 20(b) partially applies. AG ¶¶ 20(c) and 20(d) apply to the mortgage debt and HOA debt that he is making payments toward. I find Applicant's finances are under control. Applicant disputed the credit card debts and provided supporting information that they were included as part of the fraud settlement. AG ¶ 20(e) applies.

Guideline E, Personal Conduct

AG ¶ 15 sets out the security concern relating to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

I have considered the disqualifying conditions under personal conduct AG ¶ 16 and the following is potentially applicable:

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing.

Applicant stole approximately \$1,200 through a gift card from his employer. The above disqualifying condition applies.

I have also considered all of the mitigating conditions for personal conduct under AG ¶ 17, and the following are potentially applicable:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Applicant pled nolo contendere to felony grand theft for stealing and using a gift card belonging to his employer. The offense is not minor. He completed his sentence in 2009 and is no longer on probation. Applicant was having financial problems at the time. He was a victim of a fraud scheme that had an impact on his finances. He is remorseful. He acknowledged his inappropriate conduct and has no other criminal history. He is active in his church and community. His conduct is unlikely to recur and happened under unique circumstances. The above mitigating conditions 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 facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is 41 years old. He experienced financial problems after he was a victim of real estate fraud. He made a poor decision and stole a gift card from his employer. He has resolved his financial problems and is remorseful for his criminal conduct. He was never in trouble before or since this incident. He is involved with his church and community. Overall the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the financial considerations guideline and personal conduct guideline.

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.f:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a-2.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 a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge