



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 14-05988
)
Applicant for Security Clearance)

Appearances

For Government: Andrew Henderson, Esquire, Department Counsel
For Applicant: *Pro se*

May 4, 2016

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on April 2, 2014. (Government Exhibit 1.) On February 27, 2015, 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 March 23, 2015 (Answer), and requested a hearing before an administrative judge.¹ Department Counsel was prepared to proceed on July 6, 2015. This case was assigned to another administrative judge on July 16, 2015. The case was reassigned to me on August 27, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 15, 2015. I

¹Applicant was represented by counsel at that time. Applicant subsequently decided to represent himself because of a communication issue with his attorney. (Transcript 5-6, 62-66.)

convened the hearing as scheduled on October 20, 2015. The Government offered Government Exhibits 1 through 3, which were admitted without objection. Applicant testified on his own behalf. Applicant asked that the record remain open for the receipt of documents. Applicant submitted Applicant Exhibits A through L on November 10, 2015.² He submitted Applicant Exhibit M on November 16, 2015. All of Applicant's exhibits were admitted without objection. DOHA received the transcript of the hearing (Tr.) on November 4, 2015. The record closed on November 16, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is 41, and married with one child. He honorably served in the United States Air Force. (Tr. 17-18.) He has a Master's degree, is employed by a defense contractor, 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 denied allegation 1.a in the SOR. He admitted the remaining four allegations (1.b through 1.e). He also submitted additional information to support his request for a security clearance.

Applicant married his wife in 2001. They temporarily separated in 2009, and reconciled several months later. During the period of separation they had financial issues, even though both were employed. In August 2010, in order to both assist their marriage and his job prospects, Applicant and his wife moved to a foreign country for over a year. Due to visa requirements, Applicant's wife could not work during that year, and he also took a reduction in salary. This caused many of his financial problems. In addition, his wife gave birth to their first child prematurely in early 2015, which caused unexpected medical expenses. (Applicant Exhibits A, F, and G; Tr. 30-32, 60.)

The SOR lists two foreclosures as being of security significance (SOR 1.a and 1.e). It also lists three delinquent debts, totaling approximately \$50,210 (SOR 1.b through 1.d). The existence and amount of the debts is supported by credit reports dated April 15, 2014; and July 1, 2015. (Government Exhibits 2 and 3.)

Applicant began working to settle other debts in 2013, two years before issuance of the SOR. In 2013 he paid off approximately \$27,000 in debt, and in 2014 he paid off approximately \$18,000 in debt, not all of which was delinquent. (Government Exhibit 1 at Section 26; Applicant Exhibits A and B; Tr. 42-46, 48-50.)

²There is no Applicant Exhibit H.

The current status of the debts is as follows:

1.a. Applicant denied that he had a property foreclosed upon in 2012. This property was located in State One, and had been purchased by Applicant and his wife in 2003 when he was working in that state. Because of the economic downturn in 2009, rental issues, and his move to a foreign country, Applicant found it impossible to keep up payments on the property. According to Applicant, he submitted a deed in lieu of foreclosure to the mortgage company in approximately 2011 and, "The property was ultimately sold, for more than was owed on the mortgage." He received the appropriate cancellation of debt Form 1099-C for this property from the lender. However, he has not received the approximately \$12,000 he is owed by the mortgage company. (Applicant Exhibits A, and L; Tr. 22-30, 34-36, 50.) This debt is resolved.

1.b. Applicant admitted that he owed \$14,172 for a repossessed automobile. He has reached a payment arrangement with this creditor and has paid in full the negotiated amount. (Applicant Exhibit M; Tr. 41-42, 52.) This debt is resolved.

1.c. Applicant admitted that he owed a credit union \$16,245 for a personal line of credit. He reached a payment arrangement with the collection agent for the credit union, and has made payments in accordance with this arrangement, as shown by documentation from his bank. (Applicant Exhibits A and M; Tr. 38, 52, 62.) This debt is being resolved.

1.d. Applicant admitted that he owed \$19,793 for the second mortgage on the property discussed under 1.e, below. He reached a payment arrangement with the collection agent for the mortgage company, and submitted documentary evidence that he sent certified funds to this creditor in accordance with their instructions. (Applicant Exhibits A, I, and M; Tr. 52.) This debt is resolved.

1.e. Applicant admitted that he had a second property foreclosed upon in 2011, though the sale actually occurred in 2012. This property was in State Two, and was purchased by Applicant when working in that state. When Applicant moved from State Two to overseas he attempted to rent the property. The renter refused to pay the rent, and Applicant had to have her evicted. Applicant attempted to negotiate with the mortgage holder (a bank) for a deed in lieu of foreclosure. He went to the extent of paying \$20,000 to the bank's representative to continue that process. Applicant presented evidence of that payment. He also attempted to arrange a short sale, which was not approved by the bank. The bank finally foreclosed. Applicant has received the appropriate cancellation of debt Form 1099-C concerning this property. The bank's foreclosure practices were subject to an Independent Foreclosure Review. As part of that review Applicant was found "eligible to receive a payment as a result of an agreement between federal banking regulators and . . . Bank in connection with an enforcement action related to deficient mortgage service and foreclosure processes." (Applicant Exhibits A, C, D, and E; Tr. 30-34.) This debt is resolved.

Applicant's current financial situation is stable. His wife is again working. He is able to pay his monthly debts, and resolving his remaining past-due debt. (Applicant Exhibit A; Tr. 41-44, 59.)

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.

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, based on documentary and testimonial evidence, had three delinquent accounts that he formerly could not resolve. There is also evidence of one foreclosure, and one deed in lieu of foreclosure, on his record. 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. Applicant’s financial problems began when he and his wife separated, reconciled, and then they lived overseas for over a year while he worked. When they returned to the United States, Applicant received a promotion and his wife began working again, except during the time she had their child and for a period afterwards. Once he was financially able to resolve the debts, he paid two of them off, and has a payment arrangement with regard to the last. In addition, the record shows that he worked for two years before issuance of the SOR to resolve other debts, which are not

alleged in the SOR. Based on the particular facts of this case, I find that he has “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” as required by AG ¶ 20(d).

Applicant has not received financial counseling. However, as shown 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).

Applicant has acted in a way that shows good judgment, beginning work long before issuance of the SOR to resolve his financial situation. As the DOHA Appeal Board has said, “An applicant is not required to show that [he] has completely paid off [his] indebtedness, only that [he] has established a reasonable plan to resolve [his] debts and has taken significant actions to implement that plan.”³ In addition, “There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.”⁴ Applicant has done that. All of the cited mitigating conditions apply to the facts of this case. 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,

³ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)).

⁴ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008) (internal citations omitted).

they have been 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

Subparagraphs 1.a. through 1.e.: 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