



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



In the matter of:)	
)	
)	ISCR Case No. 15-01782
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

03/24/2016

Decision

WHITE, David M., Administrative Judge:

Applicant paid off his secured real estate loans, including the judgment debt of concern, after his county government bought his home in an eminent domain proceeding. Resulting security concerns were mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SF-86) on November 14, 2012.¹ On September 25, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations).² 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*

¹Item 2.

²Item 1.

Industrial Personnel Security Clearance Review Program (January 2, 1992), as amended (Directive); and the adjudicative guidelines that came into effect in the Department of Defense on September 1, 2006.

Applicant submitted a written response to the SOR on November 2, 2015, and requested that his case be decided by an administrative judge on the written record without a hearing.³ Department Counsel submitted the Government's written case on December 14, 2015. A complete copy of the File of Relevant Material (FORM)⁴ was received by Applicant on December 17, 2015, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant submitted no additional material in response to the FORM, made no objection to the admissibility of any of the Items contained therein, and did not request an extension of time. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on March 1, 2016.

Findings of Fact

Applicant is 41 years old. He has worked for a defense contractor since May 2000. He has held a security clearance since 2002, but has not served in the military. He is a high school graduate, is married, and has two children ages 15 and 13.⁵

In his response to the SOR, Applicant denied the allegation in SOR ¶ 1.a because he had paid the judgment debt in full in January 2011. The account in question was a \$20,000 home equity line of credit (HELOC) that Applicant opened in 2005, when he and his wife bought their home with a \$432,000 first mortgage loan from the same major bank.⁶

In early 2010, Applicant negotiated for a HELOC modification with his lender, and was told by telephone that his lower interest rate and monthly payments had been approved. He made seven months of reduced payments under this new plan, then received a notice of foreclosure due to non-payment. When he inquired, he was informed that his reduced rates had not actually been approved, and that the seven months of payments at that rate had been placed in a separate account and not applied toward his HELOC. He was advised that in order to bring the loan current, he would have to pay the difference for the seven months he made reduced payments, and pay a \$2,000 penalty. In October 2010, the bank obtained the judgment for \$28,585 that is alleged in the SOR and reported on the three record credit reports.⁷

³Item 1.

⁴Department Counsel submitted six Items in support of the SOR allegations.

⁵Items 2 and 3.

⁶Item 3 at 1, 3; Item 5 at 8, 10; Item 6 at 18.

⁷Item 3 at 3; Item 4 at 5; Item 5 at 1; Item 6 at 4.

In November 2010, Applicant's county government completed eminent domain proceedings and purchased his home and the surrounding 30 acres of land for a planned light rail construction project. As part of the purchase agreement, Applicant was given a five-year lease that is renewable, on a year-to-year basis after November 2015, until the light rail project is built. The lease authorizes Applicant to live on the property rent free but requires him to properly maintain it, which he has done. Applicant used the proceeds of this purchase to pay off his first mortgage loan and the HELOC judgment. The record credit reports still show that the October 2010 judgment was entered against him, but also reflect that he paid the underlying debt in full and the account has a zero balance.⁸

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 (DCs) and mitigating conditions (MCs), 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, these guidelines are applied 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(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, "[t]he 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." Section 7 of Executive Order 10865 provides: "[a]ny 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."

⁸Item 3 at 1; Item 4 at 1, 2; Item 4 at 8, 10; Item 5 at 17, 18.

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline F, Financial Considerations

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

Department Counsel asserted that the record evidence raised security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

Applicant's explanation that the judgment debt that his lender obtained against him was paid after his county government bought his house is corroborated by the three record credit reports. This debt formed the sole allegation supporting possible financial security concerns, and it was resolved by January 2011, shortly after the judgment was filed. There is no substantial evidence to support the allegation that the 2010 judgment remains unpaid, so neither of these DCs was established. No other Guideline F DC was established either. Accordingly, no discussion of mitigating conditions is necessary.

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 pertinent facts and circumstances surrounding this case. Applicant's explanation for his conduct leading up to the HELOC judgment is reasonable, and reflects no serious doubt on his trustworthiness or reliability. The confusion surrounding the renegotiation of his HELOC payment rates was a one-time event, and took place while the county's eminent domain proceedings to purchase the property were imminent. He promptly paid off all loans secured by the property, including the judgment in question, more than four years before the SOR was issued. The potential for pressure, coercion, and duress from his financial situation is nonexistent, and recurrence of similar circumstances is unlikely. Overall, the record evidence leaves me with no doubt as to Applicant's present eligibility and suitability for a security clearance. He fully met his burden to mitigate the security concerns arising from the alleged financial considerations.

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

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.

DAVID M. WHITE
Administrative Judge