



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



In the matter of:)
)
 REDACTED) ISCR Case No. 12-04008
)
 Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: Eric A. Eisen, Esq.

03/12/2014

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant established his continued eligibility for access to classified information. His recent financial trouble is directly attributable to matters beyond his control and he acted responsibly in resolving the debts resulting from such outside matters. His long track record of fiscal responsibility and security conscientiousness, as well as his good-faith efforts to resolve his debts, mitigate the security concerns arising from his recent financial trouble. Clearance is granted.

Statement of the Case

On November 26, 2013, the Department of Defense (DoD), in accordance with DoD Directive 5220.6, as amended (Directive), issued Applicant a Statement of Reasons (SOR), alleging security concerns under Guideline F (Financial Considerations). On December 22, 2013, Applicant answered the SOR and requested a hearing to establish his continued eligibility for access to classified information.

On January 10, 2014, I was assigned Applicant's case. After coordinating with the parties, I scheduled the hearing for February 11, 2014. At hearing, Department Counsel offered exhibits (Gx.) 1 – 5, which were admitted into evidence without

objection. Applicant testified and offered exhibits (Ax.) A – I, which were also admitted without objection.¹ The hearing transcript (Tr.) was received on February 19, 2014.

Findings of Fact

Applicant, 43, is divorced and has two children. He was born and raised in a tough, inner city neighborhood. He shared a small apartment with his parents and siblings. His parents emphasized education as a means and a way for Applicant and his siblings to overcome their “humble beginnings.” Applicant worked hard in school and was accepted into a prestigious public high school. After graduating high school, he went onto college where he met his future wife. Applicant’s studies were derailed when his wife got pregnant. He was unable to manage his coursework and work two full-time jobs, and dropped out of college after his sophomore year.

Applicant, looking to serve his country and provide a better life for his young family, enlisted in the U.S. military in 1990. He served on active duty until 1996, when a service-connected injury forced him to separate from the military. His military service included a deployment overseas in support of a U.N.-backed peace keeping operation in a highly dangerous and volatile region of Africa. He was promoted below the zone on three separate occasions, and was honorably discharged in the grade of E-5.

Applicant secured employment as a federal contractor after leaving the military. He subsequently underwent a background investigation and was granted a security clearance. He has continuously worked as a federal contractor with access to classified information since 1996. He has undergone periodic background reinvestigations and been granted access to classified information, to include access to Sensitive Compartmented Information (SCI). He has never compromised or mishandled sensitive and classified information.²

Applicant purchased a townhouse, his family’s first home, in 1998. He paid the mortgage without issue and, in 2005, sold the townhouse in order to purchase a single-family home. He purchased the single-family home for approximately \$470,000. He purchased the new home with a \$130,000 down payment and financed the rest of the purchase price through a conventional 30-year mortgage loan. He secured a second mortgage loan to make needed repairs and improvements to the home.

In 2007, Applicant’s 17 year marriage fell apart and his wife moved out of the home. He voluntarily took on the obligation of paying the expenses for their family home, his wife’s new residence, and the support of their two children. He dipped into his

¹ Ax. H is a press release regarding an executive memorandum prohibiting executive agencies from taking adverse employment action against employees and prospective employees facing financial difficulty through no fault of their own. The memorandum specifically excludes security clearance determinations from its coverage. After considering the exhibit and the fact that this case involves a security clearance determination for a federal contractor, I find that it is irrelevant and have afforded it no weight in reaching my ultimate conclusion.

² Tr. at 18-23, 67-69; Gx. 1.

savings and retirement accounts to pay the mortgage and his other expenses. He eventually decided to rent his home to offset his increased cost. He moved into the basement and secured a tenant for the upper floors. After a few months, the tenant stopped paying the rent and left the home without notice. Applicant's former tenant left almost all their personal property in the home. Several months later, Applicant, who had never been a landlord before and was looking to put his house on the market, disposed of his former tenant's personal property by donating it to charity. He was later found liable for the purported value of the property and a judgment in the amount of \$8,000 was issued against him. Although Applicant disagreed with the judgment, he located his former tenant and submitted documentation showing he satisfied the judgment.³ This judgment is alleged in ¶ 1.a of the SOR.

In 2008, Applicant and his wife divorced. They agreed to sell their former marital home and split the proceeds. Applicant tried to sell the property, but the collapse of the local housing market left him unable to secure a buyer willing to pay the asking price that his former wife was demanding to release her claim to the property. Applicant secured a second job to pay the mortgage and his other expenses, but the high cost of his divorce and other increased expenses put a significant strain on his finances.

In 2009, Applicant hired an attorney to negotiate with his lenders to resolve his mortgages. He negotiated a settlement for the second mortgage and satisfied the loan. His efforts to negotiate with the lender holding the first mortgage were frustrated by his former wife's demand to sell their former home at a price point well beyond what the market would bear at the time.

In 2010, Applicant, on the advice of his counsel, stopped paying his first mortgage to qualify for a loan modification program for distressed homeowners. However, Applicant's efforts to modify the loan continued to be frustrated by his former wife's lack of cooperation.

In 2011, Applicant's former wife agreed to give him power of attorney to resolve the issues involving their former home in return for \$20,000 to be paid in \$750 monthly installments. Applicant agreed and paid per the agreement. He was then able to freely negotiate with the lender. He sent the lender \$3,500 to pay the past-due balance on the mortgage and as a good-faith gesture toward resolution of the mortgage debt.

In December 2012, while Applicant was still negotiating with the bank to resolve his mortgage debt, the bank's foreclosure department proceeded with the foreclosure. Six months later, Applicant accepted the bank's cash offer for the keys to his former home. He left the home in good condition and financially assisted his daughter to move into her own apartment.

Applicant submitted a 1099-A, showing a balance due of about \$335,000 for the property. His former lender has not made any demands for payment of this purported

³ Tr. at 26-45; Ax. B, Ax. C (satisfaction of judgment).

debt. The bank recently listed the property for sale for approximately \$425,000, or about \$100,000 more than he supposedly owes on the property. Due to a rebound in the local housing market, the listed sales price is far below market value and the property is expected to sell quickly. Applicant's real estate counsel submitted a document stating that once the property is sold, he anticipates that Applicant will not owe anything for his former home.⁴ The mortgage debt and foreclosure are alleged in ¶ 1.c of the SOR.

Applicant's finances are currently stable. He submitted documentation showing that he satisfied a relatively minor cable bill listed in ¶ 1.b of the SOR.⁵ He has not incurred any other delinquent debts. He financially assists his children voluntarily. Over the past several months, he has paid about \$15,000 for his college-age son's educational and other expenses. After paying his recurring monthly expenses, Applicant has approximately \$2,000 a month in disposable income that he either saves or uses to pay unexpected expenses. He does not owe a balance on his credit cards and pays his recurring monthly bills on time. He owns two used, late model cars that are fully paid for and does not plan to upgrade or trade them in for a newer model car because both cars run well and his children frequently borrow them. He has approximately \$90,000 in savings to satisfy any potential deficiency balanced owed on his former home.⁶

Applicant submitted character letters from current and former co-workers, as well as life-long friends. All write in the strongest terms possible that Applicant is loyal, reliable, and trustworthy. His current employer selected him to lead a project, which required Applicant to safeguard and maintain the company's most sensitive information. He often worked at night and without supervision to complete the project. He was selected as the project lead because of his employer's trust in his security conscientiousness and reliability. Applicant successfully completed the project and is currently pursuing his undergraduate degree while working full time.⁷

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are only eligible for access to classified information "only upon a finding that it is clearly consistent with the national interest" to authorize such access. Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry*, § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant's eligibility, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not

⁴ Tr. at 35-46, 52-56, 62-63; Gx. 1 at 37-38, Gx. 5; Ax. A, E, I.

⁵ Tr. at 45-46, Ax. D.

⁶ Tr. at 52-70, Gx. 5.

⁷ Tr. at 67-68; Ax. F – G.

inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a common sense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

The Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. An 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.” Directive ¶ E3.1.15. An applicant also bears the ultimate burden of persuasion to establish his or her eligibility.

In resolving the ultimate question regarding an applicant’s eligibility, an administrative judge must resolve “[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security.” AG ¶ 2(b). Moreover, “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.⁸

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. 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 an 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.⁹

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” E.O. 10865 § 7. Thus, a decision to deny a security clearance amounts to a finding that an applicant, at the time the decision was rendered, did not meet the strict guidelines established for determining eligibility for access to classified information.

Analysis

Guideline F, Financial Considerations

The potential security concern regarding an applicant with financial problems is explained at 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

⁸ See also, ISCR Case No. 07-16511 at 3 (App. Bd. Dec. 4, 2009) (“Once a concern arises regarding an Applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance.”).

⁹ See generally, ISCR Case No. 11-13626 (App. Bd. Nov. 7, 2013) (security clearance determinations require administrative judges to make predictive judgments).

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.

Applicant's recent financial trouble raises this concern and establishes the following disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts, and

AG ¶ 19(c): a history of not meeting financial obligations.

The guideline also lists a number of conditions that could mitigate the concern. The following mitigating conditions were raised by the evidence:

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;

AG ¶ 20(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;

AG ¶ 20(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; and

AG ¶ 20(d): the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant established the above listed mitigating conditions. His recent financial trouble is directly attributable to the dissolution of his 17-year marriage and the housing market collapse. He did not walk away from his financial obligations or idly stand by as his finances crumbled. Instead, he secured a part-time job, used his savings, and tried renting his home to pay the expenses associated with maintaining two households. He submitted documentary proof of working with his lender to resolve his mortgages. He satisfied the second mortgage before the SOR was issued and submitted documentation of having paid the two non-mortgage related SOR debts. In short, he acted responsibly in resolving the debts arising from the conditions outside of his control and in a manner that leaves me with complete confidence that he will continue to discharge his security obligations in a responsible fashion.

Applicant's potential mortgage-related liability appears, at first blush, to raise a security concern. However, this potential debt was not a result of frivolous or reckless spending and does not leave Applicant vulnerable to exploitation. Applicant initially attempted to resolve the mortgage by negotiating with the lender in good faith, but his efforts were frustrated by his former wife's intransigence and the housing market collapse that left him unable to sell or refinance his former home. After the foreclosure, he voluntarily left the home in good condition for its eventual sale by his lender. The property is now expected to sell for at least \$100,000 more than the balance Applicant purportedly owes and, even if it does not, he has the ability and willingness to satisfy any potential deficiency balance. Based on Applicant's past track record of debt repayment,¹⁰ current strong financial position, and nearly 20-year history of properly safeguarding and handling classified information, I am soundly convinced that he will resolve this potential debt and continue to responsibly manage his finances.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).¹¹ I hereby incorporate my above comments and highlight some additional whole-person factors. From an early age, Applicant demonstrated the judgment and exhibited the pertinent character traits the Government seeks in those it entrusts with this nation's secrets.¹² He overcame substantial obstacles placed in his path through hard work. When his girlfriend got pregnant, they married and he worked two full-time jobs to support his young family. He then enlisted in the U.S. military to provide for his family and serve his country. He honorably served on active duty for six years, including a deployment to a hostile, combat zone. After separating from the military due to a service-connected injury, he has continued to serve the nation as a contractor for nearly 20 years. His recent financial trouble does not negate this favorable record evidence regarding his judgment, reliability, and trustworthiness. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility for continued access to classified information.

¹⁰ For instance, Applicant paid the mortgage on his first home for seven years without issue, satisfied the second mortgage before the SOR was issued, and paid the two other SOR debts.

¹¹ The non-exhaustive list of adjudicative factors are: (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.

¹² ISCR Case No. 13-00311 at 3 (App. Bd. Jan. 24, 2014) ("In a Guideline F case, a Judge must evaluate an applicant's financial condition for what it may reveal about the applicant's self-control, judgment, and other pertinent qualities.").

Formal Findings

I make the following formal findings regarding the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): FOR APPLICANT

Subparagraphs 1.a – 1.c: For Applicant

Conclusion

In light of the record evidence and for the foregoing reasons, it is clearly consistent with the national interest to grant Applicant continued access to classified information. Applicant's request for a security clearance is granted.

Francisco Mendez
Administrative Judge