



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



In the matter of:)	
)	
)	ISCR Case No. 16-01487
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tara Karoian, Esq. Department Counsel
For Applicant: Ryan C. Nerney, Esq. The Edmunds Law Firm

October 2, 2017

Decision

Lokey Anderson, Darlene D., Administrative Judge:

On January 13, 2010, Applicant submitted a security clearance application (SF-86). On December 19, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations and Guideline E, Personal Conduct. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, effective within the DoD after September 1, 2006.

Applicant answered the SOR on February 22, and February 24, 2017, and requested a hearing before an administrative judge. The case was assigned to me on May 23, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 23, 2017, scheduling the hearing for June 21, 2017. The hearing was convened as scheduled. The Government offered ten exhibits, referred to as Government Exhibits 1 through 10, which were admitted without objection. Applicant called three witness and presented twenty-five exhibits, referred to as Applicant's

Exhibits A through Y, which were admitted without objection. He also testified on his own behalf. The record remained open until close of business on July 5, 2017, to allow the Applicant to submit additional supporting documentation. Applicant submitted one Post-Hearing Exhibit Z, which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on June 29, 2017.

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines*, implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as implemented by SEAD 4. I considered the previous adjudicative guidelines, effective September 1, 2006, as well as the new AG, effective June 8, 2017, in adjudicating Applicant's national security eligibility. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new AG.

Findings of Fact

Applicant is 52 years old. He was married for 28 and a half years with two adult sons. He is now divorced. He has a high school diploma, multiple certifications and some college. He is employed with a defense contractor as a Plant Protection Officer. He is seeking to retain a security clearance in connection with his employment.

Guideline F - Financial Considerations

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness, and ability to protect classified information.

The SOR identified one delinquent mortgage account that was past due in the approximate amount of \$49,690. The account was in foreclosure status with a total loan balance of \$320,387. Credit Reports of Applicant dated January 20, 2010; April 11, 2015; August 10, 2016; and March 30, 2017, confirm the indebtedness listed in the SOR. (Government Exhibits 7, 8, 9 and 10.) Applicant also misused his company credit card and was late in making his payment. Applicant admitted each of the allegations set forth in the SOR. Department Counsel moved to amend the SOR to delete allegation 1.b. Accordingly, this allegation was deleted.

Applicant has been working for his current employer for the past 31 years, since November 1986. He has held a security clearance at some level most of that time. He currently holds a Top Secret security clearance.

In 2006, Applicant and his wife purchased a house for their primary residence. They purchased the house for about \$325,000, and both he and his wife were on the deed. Applicant obtained a 30-year fixed-mortgage loan, and the payments were roughly \$1,000 to \$1,200 monthly. (Tr. p. 127.) He made the payment with no distress from 2006 to late 2009. About that time, Applicant and his wife noticed that they were bringing in less income. They lost the overtime they had been dependent on, and his wife got sick. Their income was actually cut in half of what it used to be. Applicant contacted the mortgage lender to see if they could get a loan modification. This attempt was unsuccessful, so Applicant sought the help of an attorney. The attorney advised them to stop making the payments on the mortgage in order to be considered for a loan modification. For 2010 and 2011 Applicant did not pay the mortgage. He used the money to pay other debts that he and his wife had. The lawyer failed to answer the Applicant's telephone calls and then vanished. Applicant continued to try to obtain the loan modification, but the bank was still uncooperative.

In 2010, Applicant's house went into foreclosure, and it was sold in 2012. (Tr. p. 133.) Applicant claims that his mortgage loan on the house was resolved through the foreclosure. Applicant provided a copy of the IRS 1099-A that he purports proves that he owes nothing more toward the mortgage account. (Tr. p. 135, and Applicant's Exhibit E.) Applicant also claims that the difference between how much the house sold for and what the fair market value was for the house, was the amount of taxes he had to pay. (Applicant's Exhibit D.) Applicant states that he has paid all of the taxes and fees associated with the sale. In 2012, Applicant received a check and paid off his Federal and state taxes related to the foreclosure. (Tr. p. 134.) Furthermore, this debt is not reflected on Applicant's most recent credit report. (Tr. p. 137.) In the event that Applicant does owe money from the foreclosure, he will set up a payment plan to resolve it. (Tr. p. 137.)

The Government also alleged that Applicant was issued a verbal reprimand for misusing his company credit card. Applicant explained that he actually received an e-mail from his boss notifying him that his company credit card was late. Applicant explained that in 1997 he was given a company credit card. He states that in the beginning, it was commonly understood that the company credit card could be used not just for business expenses, but also for small personal matters while on travel, such as gas and food, as long the bill was paid on time. Thus, it was not against the rules and regulations to use the company credit card for personal use. At some later date, Applicant was notified by management that he along with others in the company had to turn in their credit cards, as they were no longer traveling for business, and some people were abusing the card, and simply not paying the bills on time. (Tr. p. 141) Applicant had not used the company credit card for company business that month. Upon receiving the notice from his boss, he paid the debt and returned the card. No further action occurred.

Guideline E – Personal Conduct

In October 2013, Applicant received a written reprimand from his employer after he crashed a company car. At that time, Applicant was a Captain and was issued a

company truck. Applicant explained that in mid-2013, he began losing weight without trying to do so. He went to the doctor and was diagnosed with diabetes. As they were trying to determine the proper dosage of medication, that day Applicant was at work driving back to the plant in his company vehicle when he blacked out and hit a fence. Tr. (Tr. pp. 148-149.) It was later determined by the doctor through Applicant's blood work-up that the Applicant's dosage of diabetes medication was too high. A letter from the doctor indicates that this was a single, isolated episode and Applicant is no longer on medication. (Applicant's Post-Hearing Exhibit Z.) Applicant's employer responded by requiring Applicant to undergo a blood work-up, a urinalysis, and a breathalyzer. All results were negative for any illegal drugs or alcohol. Applicant was given a mandatory two weeks off work following this incident. No further action was occurred.

In February 2014, Applicant was at a staff meeting where he was notified that he had violated company rules, by not following the exact protocol concerning a Fail to Close situation, and that he had committed an security infraction. A Fail to Close was described as a situation when someone leaves for the evening and they forget to turn on their alarm system. In February 2014, Applicant was the Duty Captain in charge. Applicant had the belief that company protocol required the Desk Officer to notify the Alarm Response Officer of a Fail to Close, and then that information is conveyed to the Duty Captain. Applicant also thought that company protocol did not require the Duty Captain to physically respond to the alarm, but that he could disperse someone on his team to handle the matter in his stead. On the evening in question, there was a Fail to Close alarm. This means that there was a breach of security rules and the Duty Captain must respond. Applicant did not physically go to the location. He states that he issued a citation that he posted within 24 hours of the violation. He did not post the citation on the evening it occurred. Applicant was called in by management and told that the tracking system on his company issued truck showed that the truck never moved. Applicant claims that he dispatched his Alarm Officer to the location that was having the Fail to Close and kept in contact with him by radio the whole time. The Alarm Officer responded to the Fail to Close, and the next night the placed the citation on the door. Applicant signed the citation ticket. Applicant states that the never got the opportunity to explain to his Chief the particulars of the situation. There was obviously some confusion as to the company's exact protocol in this situation. (Applicant's Exhibit Y.)

The company incident report shows a different rendition of the facts. The report indicates that Applicant later coerced two of the original responding Facilities Protections Officer into changing their statements to say that the Applicant had in fact responded. (Government Exhibit 5.) It further states that Applicant later admitted to lying and that he asked the two officers to change their official reports. Applicant adamantly denies that this occurred. He testified that no report can ever be changed once it is in the system, only an addendum can be added. In this case, the only thing that was added to the report was the ticket number to verify that the citation had been issued. Applicant states that he has learned from this experience, and that in the future his entire team will respond, instead of delegating the responsibility to one of his team members, and he will make sure that he personally makes the physical inspection. Applicant states that he never misled the Chief about the particulars of this incident, but

was never allowed the opportunity to explain it. It is Applicant's understanding that at his company three infractions equal one security violation. (Tr. p. 71.)

Applicant's current salary is about \$4,000 monthly. He states that this easily satisfies all of his monthly financial obligations. He has no delinquent debts. He is financially sound and believes that if an emergency arose he could sufficiently take care of it without difficulty. (Tr. p. 144.) During the period when he and his wife separated, he took custody of his sons and his wife had to pay him \$700 monthly in child support. (Tr. p. 146.)

Applicant has been a long-time volunteer for the County Sheriff's Department for the past 27 years, where he has worn various hats. He regularly works with the Search and Rescue team as a Captain, he serves as a Reserve Sergeant when needed, and is a member of the Sheriff Explorer program. Applicant has conducted training and provided other services in the Sheriff's office as needed. (Tr. p. 123.)

Three witness testified on Applicant's behalf. Each of the individuals have either worked with the Applicant, or have known him in his volunteer capacity for the Sheriff's department. Applicant is held in high regards. He is a great multi-tasker. He is said to be loyal and responsible, honest and trustworthy and a person of great integrity. None of them have any reservations about him hold a security clearance and properly protecting the national interests. (Tr. pp. 30-100.)

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 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, administrative judges apply the guidelines 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), 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 national security eligibility and 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.

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 applies 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.

Section 7 of EO 10865 provides that adverse 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 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 or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Three are potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant was delinquent and excessively indebted to the mortgage lender listed in the SOR. He was unable to pay his mortgage because he was not earning the amount of income he once was. His wife also got sick. The evidence is sufficient to raise the above disqualifying conditions.

AG ¶ 20 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 including:

- (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, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances.

Applicant purchased a house he could afford in 2006. By 2009, his income has drastically decreased and he could no longer afford the payments. His wife also fell ill. These were circumstances he could not predict, nor did he have much control over them. Since then, Applicant tried to obtain a loan modification without success. He also obtained legal advice that was not helpful. The house was foreclosed upon. He has satisfied all of the taxes related to the matter, and is prepared to pay whatever is necessary if it is determined that he owes anything more. His most recent credit report does not show the debt as owing. He paid off his company credit card and understands that he can no longer use it for personal purchases. He establishes that he acted reasonably and responsibly with respect to his debt. Applicant's finances are stable and he has no delinquent debts. Furthermore, Applicant has demonstrated that future financial problems are unlikely. There are clear indications that his financial problems are resolved and are under control.

Guideline E, Personal Conduct

The security concern for the personal conduct guideline is set out in AG ¶ 15:

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

(3) a pattern of dishonesty or rule violations.

Applicant was involved in a number of incidents that demonstrate poor judgment and questionable behavior. His financial problems were evidenced by his foreclosure, followed by his misuse of the company credit card, followed by a written reprimand for the company car accident, and finally his security infraction for his Failure to Respond to a late to close alarm event and post a citation of the door of the secured area at his place of employment shows poor judgment and irresponsibility. All of this behavior collectively indicates questionable judgment, unreliability, and untrustworthiness.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(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;

(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; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

After considering the mitigating conditions outlined above in AG ¶ 17, all of the mitigating conditions are applicable. Applicant tried to make prompt, good-faith efforts to correct misinformation regarding the failure to respond to alarm situation. The misuse of the company credit card was also resolved immediately. The car accident occurred because he was sick and his medication had not been properly adjusted for his varying weight. He was tested by his company and had no illegal drugs or alcohol in his body at the time of the accident. Since the foreclosure, his financial situation has improved. He and his wife are divorced and he has no delinquent debt. Applicant has shown that similar lapses in judgment are unlikely to recur. He has provided sufficient evidence to meet his burden of proof with respect to his personal conduct.

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(d):

(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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline F and Guideline E in my whole-person analysis. Applicant is a long-time, senior employee of a defense contractor who has over many years encountered several difficult situations and has not always done the right thing. However, in each situation, he has continued to have the support of his coworkers and management. After a divorce and a foreclosure, he has stabilized his financial affairs and has no delinquent debt. He has paid all of the taxes and fees required. In the event that he is found to owe additional monies, he is prepared to pay it. He has also provided documentation to show proof of tax payments. The situations behind the various security infractions has been remedied. Applicant clearly understands the need to ensure that only individuals whom the Government can trust should be provided access to classified information. Applicant has demonstrated that he is responsible, honest, and trustworthy.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Financial Considerations and Personal Conduct security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Deleted by the Government
Subparagraph 1.c:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	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 national security eligibility and a security clearance. Eligibility for access to classified information is granted.

Darlene Lokey Anderson
Administrative Judge