



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-04778¹

Appearances

For Government: Charles Hale, Esq., Department Counsel
For Applicant: *Pro se*

05/09/2016

Decision

LYNCH, Noreen A., Administrative Judge:

On December 23, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant listing security concerns arising under Guideline F (Financial Considerations). 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 (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on December 2, 2015. A notice of hearing was issued on February 29, 2016, scheduling the hearing for April 12, 2016. Government Exhibits (GX) 1-5 were admitted into evidence without objection. Applicant testified, and submitted Applicant Exhibits (AX) A-D at the hearing. I kept the record

¹The case was incorrectly labeled in the Statement of Reasons as an ADP case. Counsel for the Government identified the error.

open until April 26, 2016 to permit Applicant to submit additional documentation, which was timely received. AX E-L were entered into the record without objection. The transcript was received on April 21, 2016. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Findings of Fact

In his answer to the SOR, Applicant denied the SOR allegations under Guideline F, with the exception of 1.e, which he admitted. He provided explanations for each alleged debt.

Applicant is 41 years old. He received his undergraduate degree in 1996. Applicant is married and has two children. He has been with his current employer since 2012, where he serves as an information engineer. He is self employed, currently working as a 1099 independent contractor from 2012 to the present. He completed a security clearance application in 2014. (GX 1) Applicant has held a security clearance since 2008.

The SOR alleges eleven factual allegations, including a judgment, collection accounts, and failure to file and pay federal and state taxes for tax years 2011, 2012, and 2013.

Applicant cited to unemployment during various periods of time for his financial difficulties. (GX 1) He noted that the first period of unemployment began just after he was married 13 years ago. He was unemployed from 2003 until 2005. (Tr. 60) The last unemployment was severe because he had a home, which he purchased in 2007, and two children to support. He and his wife purchased the home based on a two-income family. He believes that his financial troubles began in 2011. (GX 2) He admitted that it caused not only financial difficulty but marital discord and stress, which included considering separation. (Tr. 28) His wife also lost her job at some point. Applicant lost his home to a short sale in 2011. (AX A) He testified at the hearing that all financial issues have been addressed and he has filed all his federal and state tax returns. He also testified that he was negligent in not filing his federal and state tax returns due to marriage difficulties. (Tr. 28) He did not want to file separately but wanted to file married filing jointly. He does not excuse the fact that he filed late due to marriage issues. He acknowledged his payments over the years of non-SOR smaller debts. (GX 1)

During his 2014 investigative interview, Applicant noted that he consolidated his student loans. He also acknowledged that for many of the collection accounts and the judgment, he was not aware of them. He detailed that he would research each account and begin a payment plan or pay or settle accounts. (GX 2) None of the debts were due to alcohol, gambling or drugs.

As to SOR allegation 1.a, Applicant failed to timely file and pay his federal taxes for tax years 2011, 2012, and 2013, He noted in his SF-86 that he needed more information about his 1099 status for the tax preparer. He filed his federal tax returns for the noted years in May 2014. (AX E) The IRS account transcripts reflect that an

installment agreement was established in July 2014 and that payments of \$500 or more are made monthly. (AX L). Applicant has paid varying amounts each month, some as much as \$1,000. The transcript shows the last payment of March 2016 in the amount of \$500. (AX E)

As to SOR allegation 1.b, Applicant failed to timely file and pay his state taxes for tax years 2011, 2012, and 2013. Applicant has filed the state taxes as a joint taxpayer and produced documentation from the state that confirms he has paid in full, except for the year 2013. He has an active current payment plan in effect. (AX F) The monthly payments are \$214. (AX L) The notice sent from the comptroller of the state did not list the number of payments made.

As to SOR allegation 1.c, Applicant has a collection account in the amount of \$3,803. He was in a repayment plan and provided documentation that the account was settled in full, and submitted a 2014 check in the amount of \$125 from his credit union. This check represented a monthly payment amount. (AX G) The submission also reflected that SOR allegation 1.i is a duplicate collection account in the amount of \$4,928 that was purchased by another lender. (AX G) The 2016 credit report (GX 5) notes that Applicant disputed the account and it was paid for less than full balance.

As to SOR allegations 1.d in the amount of \$789, 1.g for a judgment in the amount of \$2,249, and 1.j in the amount of \$1,689, Applicant maintains that these are duplicate accounts which led to a judgment. He produced evidence that the account was paid on February 18, 2015, and there is no longer a balance. (AX D) The check that accompanied the letter was written for \$505, dated February 2015. (AX J) The accounts were managed by a law firm.

As to SOR allegation 1.e in the amount of \$601, for an unpaid electric bill, Applicant submitted a letter, dated April 14, 2016, stating that the bill had been paid in full on that date. (AX I)

As to the SOR allegation 1.f for a collection account in the amount of \$127, the account was paid as of August 2014. (AX H) The SOR allegation 1.k has the same account number and the documentation refers to payment in full for the accounts that were sold to another company, showing a zero balance. (AX H)

As to the SOR allegation 1.h for a charged-off account in the amount of \$1,737, Applicant presented a January 2015 statement that reflected the current balance on the account is zero and that the account has been resolved. He listed monthly payments of \$156 beginning in 2014. (AX K)

Applicant emphasized that the debts are not the result of an inability to live within his means or poor self-control. He has no new delinquent debts. The latest credit report from April 2016 reflects that the majority of accounts are "paid as agreed." He states that all tax filings are current and he is paying the federal and state taxes per his 2014 installment agreements which are current. (Tr. 49) He was credible in his testimony that the 2014 investigative interview did put a fire under him to research the accounts that he

was not aware of. He had already filed his taxes before the SOR. He takes responsibility for his mistakes. (Tr. 77) He complied with the request to supplement the record in a timely manner with documentation concerning all the financial issues listed in the SOR.

Applicant's gross monthly income is about \$11,000 or \$12,000 a month. He is on call 24/7 and may also work weekends. His wife began working last year, and she earns about \$75,000 a year. He has savings in the amount of \$3,000. He is current with his other bills. He acknowledged that he has acquired Quicken Books to monitor the outgoing money, not just for tax purposes, but for monitoring all of his finances.

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." ² The burden of proof is something less than a preponderance of evidence. ³ The ultimate burden of persuasion is on the applicant. ⁴

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

the applicant may deliberately or inadvertently fail to protect 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.”⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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. It also states that An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The Government produced credible evidence that Applicant admitted that he acquired delinquent debt and did not timely file or pay his federal or state tax returns for tax years 2011, 2012 and 2013. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. AG ¶ 19(g) (failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of same) also applies in this case. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

The nature, frequency, and relative recency of Applicant’s financial difficulties make it difficult to conclude that it occurred “so long ago.” Applicant is in repayment

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

plans for his taxes and for other accounts. Consequently, Financial Considerations Mitigating Condition (FC MC) 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) does not fully apply.

FC MC AG ¶ 20(b) (the conditions that resulted in the behavior 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) applies. Applicant worked as an independent contractor for many years and was unemployed for periods of time. He lost his home due to loss of employment and his wife's loss of employment. He could have been more proactive but he tried to pay small debts. He began to address his tax filings with his wife and set in place payment arrangements with the IRS and the state. He has been doing so since 2014. The IRS account transcripts reflect his consistent and sometimes large payments since 2014. He has addressed his delinquent debts. Some are settled or paid and others are in payment plans. He consolidated student loans and his credit reports reflect many accounts as "pays as agreed."

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) has application. Applicant as noted above made efforts to resolve all issues. FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem, and there are clear indications that the problem is being resolved, or is under control) applies.

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 an applicant's conduct and all the 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 41 years old. He worked as an independent contractor and has had periods of unemployment throughout the years that affected him financially. He is married and has two children. He purchased the home in 2007 based on a dual income. He unfortunately lost his home due to unemployment in 2011. His wife also became unemployed several times. He admits that this caused financial and marital tensions. While he does not make excuses, he acknowledges that for three years they did not come together to file their taxes married filing jointly. Applicant incurred other delinquent debts. He is a mature and educated man. He has held a security clearance without incident since 2008. He has made some good-faith efforts over the years. He has filed his taxes, both federal and state, for the years in question. He has repayment plans. Applicant has not incurred new delinquent debt and has not had any other difficulties. He provided sufficient documentation to meet his burden of proof.

Applicant presented sufficient information to carry his burden of proof in this case. He has mitigated the financial considerations security concern.

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 :	FOR APPLICANT
Subparagraphs 1.a-1.k:	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. Clearance is granted.

NOREEN A. LYNCH.
Administrative Judge