



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-01097

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel

For Applicant: *Pro se*

05/23/2016

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On October 10, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 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 by the DOD on September 1, 2006.

Applicant responded to the SOR on October 21, 2015, and requested a hearing before an administrative judge. The case was assigned to me on January 6, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 12, 2016, scheduling the hearing for February 2, 2016. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence without

objection. Applicant testified and submitted Applicant's Exhibit (AE) A, which was admitted without objection. The record was held open for Applicant to submit additional information. He did not submit any additional documentary evidence. DOHA received the hearing transcript (Tr.) on February 9, 2016.

Findings of Fact

Applicant is a 46-year-old employee of a defense contractor. He has worked for his current employer since October 2008. He worked for another defense contractor from 2000 to October 2008. He seeks to retain a security clearance. He has a bachelor's degree that was awarded in 1995. He is married with two minor children.¹

Applicant developed financial problems in about 2007 when his wife lost her job. He prioritized his bills, but he still fell behind on a number of accounts. He had multiple accounts with the same financial institution (Bank A), including car loans, a credit card, a loan, and a home equity line of credit. Bank A is a membership organization that is open to certain groups, primarily the military and their families. Applicant maintained his mortgage loan and home equity line of credit payments, but two other accounts with Bank A became delinquent.²

Applicant worked with Bank A, and started repaying one of the accounts in February 2012. The balance was more than \$20,000. He made regular monthly payments until the account was paid in July 2014. This debt was not alleged in the SOR.³

Applicant had a loan through Bank A (SOR ¶ 1.b - \$16,780) that became delinquent in 2008. Bank A charged off the account. Applicant was not delinquent on his home equity line of credit through Bank A (SOR ¶ 1.a - \$23,377) when Bank A cancelled his membership and charged off the account in October 2012.⁴

When Applicant completed paying the \$20,000 loan through Bank A in July 2014, he asked about the two charged-off accounts. Bank A would only accept lump-sum payments. Bank A has a lien on his home for the home equity line of credit. It will be paid if Applicant sells the home or refinances his mortgage loan. The other delinquent account is no longer listed on his credit report because it is past the seven-year reporting period. Applicant indicated he remains willing to resolve both accounts if Bank A works with him like they did for his other loan. He hopes to pay the debts and reestablish his membership. His house has appreciated in value, and he may be able to refinance the mortgage loan and pay both accounts.⁵

¹ Tr. at 43, 44, 48; GE 1, 3.

² Tr. at 20-22, 26, 43; Applicant's response to SOR; GE 2-4; AE A.

³ Tr. at 28-30, 40; GE 2, 4; AE A.

⁴ Tr. at 21-29, 37-39, 47; Applicant's response to SOR; GE 2-4; AE A.

⁵ Tr. at 20, 25-29, 38-42, 46; Applicant's response to SOR; GE 2-4; AE A.

Applicant paid the remaining two delinquent utility debts alleged in the SOR (SOR ¶¶ 1.c - \$83 and 1.d - \$376). He paid other debts that were not alleged in the SOR. His wife is employed. His current finances are sound. He has not received financial counseling.⁶

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 the adjudicative process. The administrative judge's overarching 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.

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."

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." The applicant has the ultimate burden of persuasion to obtain a favorable security 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. Decisions include, by necessity, consideration of the possible risk the 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.

⁶ Tr. at 31-34, 41, 43; Applicant's response to SOR; GE 2, 4; AE A.

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 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. The following are potentially applicable in this case:

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

Applicant has delinquent debts that he was unable to pay. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c) as disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (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;
- (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;
- (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

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

Applicant developed financial problems in about 2007 after his wife lost her job. When his finances stabilized, he began to pay his past-due debts. He paid the debts alleged in SOR ¶¶ 1.c and 1.d, and he paid debts that were not alleged in the SOR. He made payment arrangements with Bank A and paid a \$20,000 debt over the course of two and a half years. Surprisingly, Bank A charged off the home equity line of credit even though Applicant was current on that account. Bank A maintains a lien on his home and will be paid eventually. Applicant is willing to pay both remaining Bank A accounts if it will work with him, as it did on the \$20,000 loan. He may be able to resolve both debts by refinancing his mortgage loan. Applicant's current finances are sound.

AG ¶¶ 20(b) and 20(d) are completely applicable; AG ¶¶ 20(a) and 20(c) are partially applicable. Applicant's financial issues are mitigated.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the financial considerations security concerns.

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 F:	For Applicant
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Subparagraphs 1.a-1.d:	For Applicant
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Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge