



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



In the matter of:)
)
) ISCR Case No. 17-02617
)
Applicant for Security Clearance)

Appearances

For Government: David Hayes, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

01/23/2019

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On January 16, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on February 5, 2018, and requested a hearing before an administrative judge. The case was assigned to me on October 1, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 12, 2018. I convened the hearing as scheduled on November 6, 2018. The Government offered

exhibits (GE) 1 through 7. Applicant objected to GE 2. The objection was sustained and it was not admitted. GE 1, 3, 4, 5, 6, and 7 were admitted into evidence. Applicant and two witnesses testified. Applicant offered Exhibits (AE) A through P. There were no objections and all exhibits were admitted into evidence. The record was held open until November 20, 2018, to allow Applicant time to submit additional documents. He provided documents AE Q and R, which were admitted without objection, and the record closed.¹ DOHA received the hearing transcript on November 15, 2018.

Procedural Matters

The Government withdrew SOR ¶ 1.b. There was no objection.

Findings of Fact

Applicant admitted the allegations in the SOR in ¶¶ 1.d and 1.e. He denied the allegations in ¶¶ 1.a, 1.c, 1.f, and 1.g. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 46 years old. He earned a bachelor's degree in 1995. He was married from 2000 to 2014, and has three children, ages 16, 14, and 11 years old from the marriage. The children live with their mother. He pays \$850 per month in child support. He remarried in 2015 and has two stepchildren. Applicant has been employed by federal contractors since 2001.²

The debts alleged in the SOR are corroborated by Applicant's admissions and credit reports from March 2016 and July 2017.³

Applicant attributed his delinquent debts to his ex-wife who he said managed their finances and was responsible for paying their bills. They had agreed early in their marriage that she would handle the finances. He had always lived frugally and was raised in a fiscally responsible family. He first learned that she was not paying their bills in 2001 or 2002. He testified he had been saving money to take a trip. When he went to withdraw the money, the account was empty. Applicant stated that this happened several times. Each time his wife told him she had used the money to pay bills. He admitted to being naive. He wanted to believe she was doing the right thing. He was unaware that her spending habits were escalating, and her purchases were for high-end and luxury items.

¹ Hearing Exhibit (HE) I is the Government's discovery letter. HE II is Applicant's email submitting additional documents. HE III is Government Counsel's email noting there were no objections to Applicant's additional exhibits. Applicant's attorney timely submitted additional documents that he marked as AE O and P. He previously submitted exhibits marked AE O and P. I have remarked the additional exhibits as AE Q and R.

² Tr. 32-36, 95; GE 1.

³ GE 1, 3, 4.

He stated he was never a shopper and did not notice her expensive choices. She used credit cards to purchase these items.⁴

When Applicant and his wife divorced, as part of the marital distribution, he received the house and was responsible for the two mortgages (SOR ¶¶ 1.a-\$49,696 and 1.d). He was also responsible for the credit card debt in SOR ¶ 1.f (\$7,548). The house was foreclosed. In 2015, he received an IRS Form 1099-A, abandonment of secured property from the lender. He testified he filed the form with his federal income tax returns.⁵ Applicant remained responsible for the second mortgage (SOR ¶ 1.a).⁶

In April 2016, Applicant's ex-wife filed Chapter 13 bankruptcy to address the marital debts she was responsible for in the divorce decree. Included in her bankruptcy were the debts in SOR ¶¶ 1.a, 1.c, 1.f and 1.g. Applicant testified that he never discussed including his debts in her bankruptcy. He is listed as the co-debtor for the debts in SOR ¶¶ 1.a, 1.c, and 1.g. Applicant provided a notarized letter from his ex-wife that she is current on her Chapter 13 bankruptcy payments. Applicant testified that he did not pursue resolving any of the debts that his ex-wife included in her bankruptcy. He assumed they would be resolved by the bankruptcy. They are being paid through the bankruptcy.⁷

Applicant admitted responsibility for the debt in SOR ¶ 1.e (\$9,726). He made payment arrangements in September 2013 and paid \$35 until December 2017. He increased his payments to \$100 in January 2018 and has made consistent payments.⁸ This debt is being resolved.

Applicant testified that he has participated in financial counseling. He provided a detailed written budget. His wife is employed and he manages their finances. He has savings and investments. He provided copies of awards and character letters. He is described as outstanding, hardworking, responsible, valued, honest and trustworthy.⁹

A character witness testified that he has known Applicant for 11 months and considered him knowledgeable and experienced. He has never seen him act

⁴ Tr. 39-44; Answer to the SOR.

⁵ AE O.

⁶ Tr. 42-47, 53-61, 86-88; GE 5, 6.

⁷ Tr. 43-94; GE 3, 4; AE A, L, M, N, Q. Although the debts in SOR ¶¶ 1.a and 1.f are being paid through Applicant's ex-wife's Chapter 13 bankruptcy, Applicant, as the joint owner and co-debtor may still be liable for the debts once his ex-wife's bankruptcy is discharged. Applicant is also listed in the bankruptcy as co-debtor for SOR ¶¶ 1.c and 1.g.

⁸ Tr. 49-50, 61-67; AE K, R.

⁹ Tr. 51-52, 73-81; AE E, G, H, I, J.

untrustworthy. A second witness testified that he has known Applicant for a year. He considers him very reliable and honest.¹⁰

Policies

When evaluating an applicant's suitability for national security eligibility, 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 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 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 national security eligibility 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. Directive ¶ E3.1.15 states 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, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to 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 decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant

¹⁰ Tr. 22-32.

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.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

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

Applicant had delinquent debts that he failed to pay or resolve for several years. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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, a death, divorce or separation, clear

victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant and his first wife divorced in 2014. He testified that she mismanaged their finances and failed to pay their creditors. Their divorce decree divided their delinquent debts. She was not held solely responsible for the debts in SOR ¶¶ 1.a and 1.f. However, in order to resolve her debts she filed Chapter 13 bankruptcy and included all of the delinquent debts in the SOR, except SOR ¶ 1.e. Applicant is making payments on this debt. His ex-wife is making the Chapter 13 payments. At this juncture, Applicant provided evidence that his current finances are stable. AG ¶ 20(a) has some application.

Applicant testified that his financial problems were the result of his ex-wife's mismanagement. This was somewhat beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly. Applicant was aware as early as 2001 and at other times throughout his marriage that his wife was mismanaging their finances. However, he continued to let her handle the finances and did not provide oversight. He was aware of the problem when he attempted to use money from his savings and discovered she had depleted it. He did not act responsibly under the circumstances. AG ¶ 20(b) has minimal application.

Applicant received financial counseling and there are clear indications that his financial problems are being resolved and under control. AG ¶ 20(c) applies. Applicant's ex-wife included the debts in SOR ¶¶ 1.a and 1.f in her bankruptcy, both of which Applicant remains potentially responsible. Applicant's ex-wife is making the Chapter 13 payments. Applicant has a payment plan for the debt in SOR ¶ 1.e and is making consistent payments. AG ¶ 20(d) applies to the SOR debts.

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 the 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 46 years old. During his first marriage he and his wife accumulated numerous delinquent debts. Applicant was aware she was mismanaging their finances, but trusted her to resolve the problem. They eventually divorced and their debts were divided, holding each accountable for certain ones. His ex-wife filed Chapter 13 bankruptcy and all of the debts in the SOR, except ¶ 1.e, are being paid through the bankruptcy. Applicant may become legally liable at some point. He is making payments on the debt in SOR ¶ 1.e. Currently, Applicant's finances are stable. He has met his burden of persuasion. The record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline F, financial considerations.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Withdrawn
Subparagraphs 1.c-1.g:	For Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge