



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



In the matter of:)	
)	
)	ISCR Case No. 17-03370
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
 For Applicant: Pro se
 01/17/2019

Decision

KILMARTIN, Robert J., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on April 19, 2016. On November 21, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. An amended SOR, dated December 28, 2017, was also issued under Guideline F. The DOD CAF acted 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 (AGs) implemented by DOD on June 8, 2017.

Applicant answered the SOR on December 6, 2017, admitting all of the SOR allegations with explanations. Applicant answered the amended SOR on January 19, 2018, denying the allegation at SOR ¶ 1.d and admitting the allegation at SOR ¶ 1.e. He attached several documents to this answer including: copies of seven checks each in

the amount of \$200 made out to the homeowner's association creditor in SOR ¶ 1.d; a payment agreement with a state A department of revenue; a November 8, 2017, letter from a well-known financial counseling company with a 14-page-action plan. Applicant also requested a hearing before an administrative judge. The case was assigned to me on October 16, 2018. The Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for December 5, 2018. I convened the hearing as scheduled.

The Government's Exhibits (GE) 1 through 9 were admitted into evidence without objection. At the hearing, Applicant testified and submitted Applicant's Exhibits (AE) A through I, which were admitted without objection. The transcript (Tr.) was received at DOHA on January 2, 2019.

Findings of Fact¹

Applicant is 41 years old. He was married in 2003 and separated in 2014. His divorce became final in June 2017. (Tr. 73) Applicant and his ex-wife raised five children. The oldest three are adults, in the service or college. Applicant and his ex-wife share custody of the youngest two boys, ages 12 and 14. He obtained a bachelor's degree in 2010, and reports no military service. (Tr. 53-54) Applicant has been employed by a federal contractor as a consultant since November 2011. Applicant's ex-wife did not work outside the home.

The SOR alleged a debt to the federal government for past-due [sales] taxes in the amount of \$115,861 (SOR ¶1.a) and a debt to state A for past-due-income taxes in the amount of \$10,486 (SOR ¶ 1.b). It also alleged a charged-off debt for a credit card in the amount of \$62,147 (SOR ¶1.c). Applicant admitted all of the allegations in his Answer to the SOR. Applicant testified credibly that he initially had tax problems when he changed status from a W-2 to a 1099 employee in 2009-2010. (Tr. 58-60) He didn't understand that he was supposed to estimate and pay quarterly taxes. He had a certified public accountant (CPA) prepare and file returns at the end of each tax year (TY). However, he could not afford to pay the taxes due. So, he entered into a payment plan and has paid all income taxes owed for TY 2009-2010, which are not alleged in the SOR.

Applicant was working full time as a federal contractor in 2013. He decided to start a retail store to supplement his income. (Tr. 79) He provided the lease for Chatman Solutions, LLC, which required that he make payments of \$5,500 over five years starting on November 1, 2013. (AE B) This was his first venture into retail. Almost immediately, a large Walmart store opened up across the street from his store, siphoning off business. (Tr. 58) Applicant struggled and didn't even break even on the store. (Tr. 53-54) He slept on a couch in the back of the store as he separated from his wife in 2014. His ex-wife did not work, he had children in college, his store was failing,

¹ Unless stated otherwise, the source of the information in this section is Applicant's April 19, 2016, security clearance application (SCA).

and now he was headed for a divorce proceeding. (Tr. 53) Applicant admitted he did not pay the required quarterly taxes on his LLC for TY 2012 to TY 2016.

Applicant submitted answers to interrogatories on November 13, 2017, verifying an attached summary of his personal subject interview (PSI) conducted on June 12, 2017. (GE 2) He attached a packet of documents including: payment coupons to state A for delinquent sales tax as alleged in SOR ¶ 1.b. These confirmed his testimony that the state-tax lien is in a repayment plan; (Tr. 97) IRS tax transcripts reflecting a total balance of overdue federal taxes owed by the Chatman Solutions, LLC, for TY 2012 – 2016, of \$115,047 as of October 2017; a payment plan for overdue income-taxes owed to state A in the amount of \$10,486 with several tax lien expungements; and a portion of a divorce decree showing that [Applicant] husband was responsible for working out a payment plan with the IRS, and state A, for all tax debts. GE 8 reflects a series of intermittent payments of approximately \$458 made between May 2014 and July 2017 to satisfy the state tax liens. Applicant provided a sheaf of documents showing a continuous stream of \$200 payments to state A department of revenue from July 2012 to November 2018. (AE F) The remaining balance owed to State A is \$16,911.

Applicant testified and provided documents showing that he opened a credit card account in late 2012 to pay expenses for his retail store. (Tr. 81) He put in approximately \$60,000 to \$70,000 but the store always lost money. (Tr. 88) The credit card went into default in early 2014. (Tr. 88) GE 6 shows a judgment entered against Applicant in a county court in the amount of \$68,772 owed to this creditor. Applicant entered a repayment agreement and demonstrated a series of \$100 dollar check payments to the creditor or its collection agency from April 2016 to November 2018. (AE G)

Applicant testified and produced documentation showing that the lien entered against him in the amount of \$1,400 by a homeowner's association (HOA) as alleged in SOR ¶ 1.d has been paid in full. (Tr. 96) This was owed for a vacant parcel of land for which Applicant has a mortgage loan, and he agreed to keep making the payments pursuant to the divorce decree.

Applicant's IRS tax transcripts and W-2's were attached to his answers to interrogatories. (GE 2) They reveal his adjusted gross income (AGI) of \$247,000 in TY 2012; \$158,000 in TY 2013; \$143,000 in TY 2014; \$160,000 in TY 2015; and \$124,000 in TY 2016. He testified that he filed federal and state income tax returns timely each year, but he could not afford to pay the taxes owed due to his alimony and child support payments, failing store, and divorce. (Tr. 66, 139) He admits to also making some bad decisions about money. (Tr. 120) He contemplated filing for bankruptcy protection, but considered that to be a cop out, and avoided it. (Tr. 145)

Applicant testified about an earlier installment payment plan that he had with the IRS in 2013 for overdue taxes from TY 2011. He detrimentally relied on a CPA who led Applicant to believe this was in a non-collectible status. (Tr. 126-128) His repayment agreement with the IRS fell apart after 18 months when Applicant encountered financial

distress with his retail store, and became separated in 2014. (Tr. 122) On March 21, 2018, Applicant entered into an Offer in Compromise with the IRS after providing all of his financial information to the IRS. (Tr. 106) The IRS used a formula to set the amount of the payment due and he settled for \$8,000, conditional upon his timely filing and paying all taxes due for five years. (AE E, Tr. 113-117) An October 7, 2018, letter from the IRS to Applicant accepted his offer in compromise and included a copy of a check to IRS from Applicant for \$6,575. This was the balance owed for TY 2012, according to IRS tax transcripts. (AE E) The tax transcripts reflect a zero balance owed for TYs 2013, 2014, 2015, and a \$15,185 balance for TY 2016. (AE E) Applicant testified credibly that all of his overdue federal taxes have now been paid off. (Tr. 117-118)

Applicant provided evidence of financial counseling from his aunts and a well-known company with an action plan to formulate a budget and payment plan. (AE D, Tr. 145) He also provided 16 character reference letters, all attesting to his positive attitude, integrity, work ethic, trustworthiness and reliability. (AE A) Applicant had his pastor testify on his behalf at the hearing. (Tr. 37-42) He testified that Applicant is a family man and actively involved in his church and he was even elected recently to the vestry or leadership. Applicant volunteers his time in the community and he is well respected, trustworthy, and reliable. The pastor has no reservations about Applicant holding a security clearance.

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, 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, Appendix A, ¶ 2(a), the adjudicative process is an examination of a sufficient period and a careful weighing of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG, Appendix A, ¶ 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. Under Directive ¶ E3.1.15, 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 risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

The security concern relating to 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 abuse, 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.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual’s self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

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

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

(f) failure to file or fraudulently filing annual federal, state, or local income tax returns or failure to pay annual federal, state or local income tax as required.

Applicant's past-due taxes and delinquent debts alleged in the SOR are confirmed by his credit reports, answer to the SOR, and documents submitted at the hearing. The Government produced substantial evidence to support the disqualifying conditions in AG ¶¶ 19(a), 19(c) and 19(f), thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.²

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 . . . , 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 non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant endured a series of setbacks including a downturn in the economy, an expensive divorce, and a bad business investment. His ex-wife did not work and they had five children. He pays alimony and child support. These conditions were beyond his control. He has done everything possible to pay off delinquent debts and enter into repayment plans for his past-due taxes. He documented strict compliance with these repayment plans through a stream of continuous payments to the state taxing authority and satisfaction of his past-due federal tax debt. He has now produced relevant and responsive documentation, demonstrating that he acted responsibly under the circumstances. Applicant appropriately engaged a CPA to address his financial problems with his retail store. He also had independent financial counseling. All of his debts and past-due taxes alleged in the SOR, have been paid in full or they are in repayment plans. He has met his burden to show that his financial problems are under

² Directive ¶ E3.1.15. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep 22, 2005) (An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government).

control, and that his debts were incurred under circumstances making them unlikely to recur. The mitigating conditions enumerated above in AG ¶ 20 apply.

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, Appendix A, ¶ 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, Appendix A, ¶ 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, Appendix A, ¶ 2(d) were addressed under that guideline. Applicant is ambitious, hard-working, and extremely well respected in his church and community. He helped in raising five children. He has been gainfully employed for most of his adult life, often working two jobs. He recognizes and accepts that he made a bad business decision with the retail store. He has struggled to overcome his financial travails and pay off his past-due taxes. He was organized and well prepared for his hearing and demonstrated a continuous stream of payments to the state A taxing authority, and satisfaction of the IRS tax debt. Applicant testified credibly and persuasively that his finances are now under control. Applicant has addressed the specific allegations in the SOR and taken affirmative measures to resolve them.

Applicant's finances no longer are a security concern. The record evidence leaves me with no questions or doubts as to Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has 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

Subparagraphs 1.a through 1.e: For Applicant

Conclusion

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

Robert J. Kilmartin
Administrative Judge