



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



In the matter of:)
)
) ISCR Case No. 17-03395
)
Applicant for Security Clearance)

Appearances

For Government: Raashid S. Williams, Esq., Department Counsel
Erin Thompson, Esq., Department Counsel
For Applicant: *Pro se*
06/03/2019

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

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

History of the Case

Applicant submitted a security clearance application (SCA) on August 31, 2015. On December 12, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F, financial considerations. Applicant answered the SOR on January 19, 2018, and requested a hearing before an administrative judge. The Government was ready to proceed on November 26, 2018, and the case was assigned to me on December 4, 2018. On December 13, 2018, I issued an order to both parties to produce their evidence by December 26, 2018, and the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for January 8, 2019. I convened the hearing as scheduled.

Government's Exhibits (GE) 1 through 3 were admitted, without objection. Applicant testified and Applicant's Exhibits (AE) A through D were admitted, without objection. I received the completed transcript (TR) on January 16, 2019. I held the record open until February 4, 2019, to allow Applicant to submit additional documentation. He timely submitted AE E through AE J, which I admitted without objection.

Findings of Fact

Applicant is 45 years old. He attended some college courses and is just short of an associate's degree. Applicant was married to his first wife from 2008 until they divorced in 2012. He married his second wife in May 2014, and they separated in July 2015, and divorced in January 2016. Applicant has worked for his current employer as an electrical installer since late 2016. (GE 1; Tr. 20-21, 34)

During his first marriage, Applicant paid the family mortgage and financially supported members of his wife's family. He used credit cards to supplement their income and cover household expenses. When they divorced in 2012, he was required to assume responsibility for all of the marital debts, including the debts alleged in the SOR, and his wife was awarded their house. After the divorce, Applicant was unable to continue to make the minimum monthly payments, in part, because he was laid off from his job in early 2013. He also financially supported his second wife throughout their marriage. When Applicant started working for his current employer, in late 2016, his salary nearly doubled. (Tr. 20-23, 27, 33, 37)

Applicant opened the credit card debt alleged in SOR ¶ 1.a. in 1996 and made payments until approximately 2013. The debt was charged off by the creditor in March 2014. In December 2017, Applicant was issued a 1099-C for cancellation of debt, which required him to pay \$6,500 in state and federal income taxes on the discharged debt. Applicant made payments toward these debts in 2018, and resolved the outstanding state and federal income tax liabilities in early 2019. (GE 2 at 4; GE 3 at 2; AE A; AE D; AE H; AE I; AE J; Tr. 17, 19-20, 22, 25, 30, 36)

Applicant opened the credit card account alleged in SOR ¶ 1.b. in 2006 and made payments until approximately 2012 or 2013. He attempted to make settlement arrangements with the creditor several times, but experienced difficulty communicating with the creditor. In January 2019, Applicant signed an agreement to settle the debt for just under \$8,000 and made a \$500 payment. (GE 2 at 4; GE 3 at 2; AE A; AE G; AE J; Tr. 22-24, 29-30)

Applicant's current finances are in good standing, and he has no new delinquent debts. He provided documentation that he has resolved and paid debts that were not alleged in the SOR. Finally, he attended credit counseling and follows a written budget. (AE A; AE B; AE C; AE E; AE F; AE J; Tr. 15-16, 31-35, 38, 49)

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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 national security eligibility will be resolved in favor of the 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.

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 concern under Guideline F (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

This concern is broader than the possibility that a person might knowingly compromise classified information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.¹

Applicant's admissions and the documentary evidence establish two disqualifying conditions under AG ¶ 19:

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

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

- (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.

Applicant experienced personal financial issues related to his two divorces and a period of unemployment. In late 2017, he learned that he had a tax debt related to the cancellation of one of his marital credit cards. Throughout 2018, he made payments

¹ ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Conclusion

I conclude that it is clearly consistent with the interests of national security of the United States to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is granted.

CAROLINE E. HEINTZELMAN
Administrative Judge