



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



In the matter of:)	
)	
)	ISCR Case No. 17-03839
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel Crowley, Esq., Department Counsel
For Applicant: Virginia Joehl, Esq.

04/22/2019

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 March 8, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued 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 June 13, 2018, and requested his case be decided on the record. He later withdrew this request and requested a hearing before an administrative judge. The case was assigned to me on December 6, 2018. This hearing was originally scheduled for March 13, 2019. Applicant requested a continuance, which

was granted. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, and I convened the hearing as scheduled on April 8, 2019. The Government offered exhibits (GE) 1 through 11. Applicant offered Applicant Exhibits 1 through 131. There were no objections and all exhibits were admitted into evidence. On April 9, 2018, I proposed to the parties that this case was appropriate for a summary disposition in Applicant's favor. Department Counsel did not object. The transcript was received on April 18, 2019.

Findings of Fact

Applicant admitted all of the SOR allegations. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is a 41-year-old employee of a defense contractor. He and his wife were separated in 2015 and went through an acrimonious divorce, which was completed in September 2017. In 2016, when he began the security clearance process, he learned that his wife had failed to file their federal and state income tax returns for tax years 2012-2015. It had been agreed by them that during their marriage she would handle the family finances. His wife remained in the marital home, but refused to pay the mortgage or vacate it so it could be sold and resolve some financial issues. Applicant did not want the house to be foreclosed. He took legal action to stay the foreclosure, which was granted. His wife left the premises. Applicant fixed the house for sale and retained a buyer, but his wife refused to appear to close on the house. Applicant took legal action through an emergency motion to appoint a trustee to stand in her place so Applicant could close on the house. This forced his wife to appear and close on the house. Included in the closing were payoffs to different entities, including Applicant's wife's student loan, for which he was a co-signor. There had been a judgment against both Applicant and his wife for the loan. In accordance with Applicant's divorce decree his wife is responsible for this debt and agreed to indemnify him.

Regarding the federal tax returns. Applicant filed and paid all delinquent federal income taxes. When he learned of the delinquent federal tax returns, he also discovered that his Human Resource Department, where he was formerly employed, had withheld state payroll taxes for the incorrect state. Applicant lived in State A and worked in State B. His tax preparer had also mistakenly prepared his past state tax returns for State B. Applicant has filed his past-due state tax returns for State A and paid the delinquent taxes. He attempted to recoup the taxes he paid to State B, but was advised he could only recoup the taxes for the past three years; so he was only eligible to recoup it for one year. Applicant provided supporting documents to show all of his federal and state income tax returns are filed and the taxes paid.

Applicant also provided documentation to show the past-due mortgage debt was resolved through the sale of the property, as were other debts. He provided documentation that all of the remaining debts are resolved. He credibly testified that one small debt was paid in 2016, and he requested the creditor provide him a receipt. He was waiting for the receipt to corroborate his statement. He credibly testified that some of the

smaller debts' invoices were mailed to the marital home when he was not living there, and he was unaware of them.

Applicant provided a detailed budget to show he has a significant surplus after he pays all of his monthly expenses. He was recently awarded custody of his eight-year-old son. He does not have any outstanding debts. He does not have any credit cards. He currently maintains sole responsibility for his finances.

I find that ¶¶ 19(c) and 19(f) were raised by the evidence. I find that AG ¶ 20(a) is applicable because it happened under unique circumstances that are unlikely to recur and does not cast doubt on Applicant's reliability, trustworthiness, or good judgment. It is not unusual for one spouse to rely on the other to handle the finances. Applicant trusted his partner to file and pay their taxes and debts. I find that although these circumstances were not totally beyond Applicant's control, when he learned of them, he acted responsibly to resolve all of his financial delinquencies. AG ¶ 20(b) partially applies.

Applicant sought assistance through his attorney and accountant to resolve all of his financial problems. He paid all of the delinquent debts and taxes. AG ¶¶ 20(c), 20(d), and 20(g) apply. Applicant has mitigated the financial considerations security concerns.

The concerns over Applicant's finances do not create doubt about his current reliability, trustworthiness, good judgment, and ability to protect classified information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence. I also gave due consideration to the whole-person concept. Accordingly, I conclude that he met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information. This case is decided for Applicant.

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-1.m:	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