



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



In the matter of:)	
)	
)	ISCR Case No. 17-04110
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel
For Applicant: *Pro se*

June 21, 2019

Decision

Lokey Anderson, Darlene D., Administrative Judge:

On March 6, 2017, Applicant submitted a security clearance application (e-QIP). On August 13, 2018, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Executive Order 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.

Applicant responded to the SOR (Answer) on September 4, 2018. (Government Exhibit 2.) He requested that his case be decided by an administrative judge on the written record. Department Counsel submitted the Government’s written case on November 2, 2018. A complete copy of the File of Relevant Material (FORM), containing five Items, was received by Applicant on November 8, 2018. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant submitted a response to the FORM within the 30-day period. DOHA assigned the case to me on May 23, 2019.

Findings of Fact

Applicant is 41 years old. He is divorced with three children, ages 13, 18, and 20. He has a high school diploma. He holds the position as automotive painter and is employed with a defense contractor. He is applying for a security clearance in connection with his employment.

Guideline F - Financial Considerations

The Government alleged that Applicant is ineligible for a clearance because he made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about his reliability, trustworthiness, and ability to protect classified information.

The SOR alleges that Applicant has nine delinquent debts totaling approximately \$57,579, which include delinquent consumer debts, child support payments and Federal taxes that have either been charged off or sent to collections. Applicant admits each of the allegations set forth in the SOR except 1.i., which he claims has been paid. Applicant attributes his financial problems to an inability to afford to pay the debts incurred during his marriage as well as the perils of divorce. Applicant lost 50/50 custody of his children, and his child support was increased by \$1,500 a month. This made it extremely difficult for him to pay any of his previously incurred marital debts. Applicant and his wife divorced in 2012. Applicant's ex-wife filed for Chapter 13 Bankruptcy relief in May 2011. Applicant states that he intends to file bankruptcy to resolve his delinquent debt.

In response to the FORM, Applicant provided a letter from his attorney who was retained on November 9, 2018, to prepare and file a Chapter 7 Bankruptcy petition in court on behalf of the Applicant. Each of the unsecured debts listed in the SOR are also listed in the attorney's letter, indicating that they will be included in the Chapter 7 Bankruptcy petition. Applicant's attorney further indicates that upon entry of an Order of Discharge, the Applicant will be discharged from any legal obligation to pay the debts.

The following debts are listed in the SOR:

1.a. A delinquent debt owed to a creditor was charged off in the approximate amount of \$17,483. Applicant contends that the debt will be included in his Chapter 7 Bankruptcy petition. (Response to the FORM.)

1.b. A delinquent debt owed to a creditor was charged off in the approximate amount of \$9,785. Applicant contends that the debt will be included in his Chapter 7 Bankruptcy petition. (Response to the FORM.)

1.c. A delinquent debt owed to a creditor was charged off in the approximate amount of \$8,879. Applicant contends that the debt will be included in this Chapter 7 Bankruptcy petition. (Response to the FORM.)

1.d. A delinquent debt owed to a creditor was charged off in the approximate amount of \$1,283. Applicant contends that the debt will be included in his Chapter 7 Bankruptcy petition. (Response to the FORM.)

1.e. A delinquent child support debt owed to a creditor was placed for collection in the approximate amount of \$15,083. Applicant explained that this debt is not in collection. The current balance as of August 24, 2018, was \$5,405.49. Applicant is paying the debt by court-ordered garnishment from each paycheck in the amount of \$712.29. His back child support will be paid off after tax year 2018. (Answer to SOR.)

1.f. A delinquent debt owed to a creditor was placed for collection in the approximate amount of \$2,588. Applicant contends that this debt will be included in his Chapter 7 Bankruptcy petition. (Response to the FORM.)

1.g. A delinquent debt owed to a creditor was placed for collection in the approximate amount of \$753. Applicant contends that the debt will be included in his Chapter 7 Bankruptcy petition. (Response to the FORM.)

1.h. A delinquent debt owed to a creditor was placed for collection in the approximate amount of \$1,025. Applicant contends that the debt will be included in his Chapter 7 Bankruptcy petition. (Response to the FORM.)

1.i. A delinquent debt owed to the Federal Government for back taxes in the approximate amount of \$700 for tax year 2013. Applicant stated that this debt was paid off when his 2017 state tax refunds were intercepted. Applicant has provided a letter from the state tax authorities which he purports indicates that that his refund of \$716.58 was intercepted to pay his Federal tax debt for tax year 2013. (See Response to SOR and attachment.)

Letters of recommendation from the Program Manager and the ACT Paint and Sign Shop Lead, who Applicant has worked with for the past nine years plus, indicate that Applicant has had to deal with the difficulties in life, namely the perils of divorce, and tragedies such as the loss of his brother, and his mother, yet his professionalism and work product did not waver. Applicant is said to be a very skilled professional, who is an extremely hard worker. He is described as being reliable and trustworthy and dedicated to the mission. He has excellent work attendance and is considered to be an individual of sound moral character and judgment. They both recommended him for a security clearance. (Answer to SOR and attachments.)

Policies

When evaluating an applicant's suitability for a security clearance, 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 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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.

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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified information seeks to enter 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 protect or 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 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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Three are potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (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 became delinquently indebted during his marriage. After his divorce, he was unable to pay the debts he incurred during the marriage, since his child support payments were drastically increased. To resolve his delinquent debt, he has hired an attorney who is filing for Chapter 7 Bankruptcy relief on his behalf. Each of the creditors listed in the SOR will be included in the Chapter 7 Bankruptcy petition. Under the circumstances, the evidence is sufficient to raise the above disqualifying conditions.

AG ¶ 20 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 including:

- (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;

(d) the individual initiated 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; 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 has shown a good-faith effort to resolve his delinquent marital debt. He is or has filed for Chapter 7 Bankruptcy and the debts listed in the SOR will or have been discharged. There is nothing else in the record that leads one to believe that Applicant is not forthcoming or that he has been unreasonable and irresponsible. Applicant clearly understands that he must live within his means at all times, and pay his bills in a timely manner. He has paid off his Federal taxes and is paying his child support every pay period. Under the circumstances, he has acted reasonably and responsibly with respect to his debts. Assuming he has filed for Chapter 7, and his legal obligation to pay the debts has been discharged by the court, it is found that his debts are now under control. Furthermore, Applicant has not incurred any new debt since his marriage, as the debts listed in the SOR were incurred during his marriage. Thus, he has demonstrated that future financial problems are unlikely. There are clear indications that his financial problems are being resolved. In the event that Applicant does not follow through with his plan to file for Chapter 7 Bankruptcy and to have each of the debts listed in the SOR discharged that have not been paid, his security clearance will be in immediate jeopardy.

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(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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Applicant is well respected by his colleagues supervisor and management. He has shown good judgment and reliability and demonstrated that he is financially responsible.

Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has 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 ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a: through 1.i.	For Applicant

Conclusion

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

Darlene Lokey Anderson
Administrative Judge