



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



In the matter of:)
)
) ISCR Case No. 18-00095
)
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: Catie E. Young, Attorney At Law, Griffith, Young & Lass

March 25, 2019

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

On April 25, 2016, Applicant submitted a security clearance application (e-QIP). On January 24, 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*, effective within the DoD after June 8, 2019.

Applicant answered the SOR on April 30, 2018, and requested a hearing before an administrative judge. The case was assigned to me on June 15, 2018. The Defense Office of Hearings and Appeals issued a notice of hearing on November 15, 2018, and the hearing was convened as scheduled on December 7, 2018. The Government offered four exhibits, referred to as Government Exhibits 1 through 4, which were admitted without objection. The Applicant offered seven exhibits, referred to as Applicant's Exhibits A through G, which were admitted without objection. Applicant testified on his own behalf. The record remained open until close of business on

January 11, 2019, to allow the Applicant the opportunity to submit additional supporting documentation. Applicant submitted four Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits H through K, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on January 11, 2019.

Findings of Fact

Applicant is 64 years old. He is married with four grown children. He has two Master's degrees, one in Business Administration, and one in Law. He also holds various certifications. He is employed with a defense contractor as a Technology Consultant/Engineer. 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 identified four delinquent student loan or educational debts totaling in excess of \$100,000, as well as a Chapter 7 bankruptcy wherein he discharged approximately \$3.5 million in delinquent debt, most of which were delinquent mortgage accounts for six foreclosed properties. Applicant admits each of the allegations set forth in the SOR under this guideline. Applicant has been working for his current employer since April 2016. Credit Reports of Applicant dated July 9, 2016; and June 6, 2017, confirm the indebtedness listed in the SOR. (Government Exhibits 3 and 4.)

Applicant has a steady employment history. (Government Exhibit 1.) His wife, with whom he has been married for 35 years, also worked outside the home for a time, and generated income for the family. Applicant's explained that his wife is from a family of real estate professionals and at some point, she became a real estate broker. From 2001 to 2006, with the growing real estate economy in the state, Applicant and his wife took their excess disposable income, and purchased a number of investment properties, in hopes of it sustaining their expenses. At the time, Applicant was sending his four children to a prestigious private school and lived a comfortable lifestyle.

In 2006, Applicant's wife began to have a series of health problems which eventually caused her to stop working. By this time their children were in college and Applicant had cosigned for their student loans. As the value of their real estate properties started declining, renters started defaulting on rent. Applicant could not afford to pay the mortgages on their properties, nor did he have the money to pay his children's student loans. He tried to get deferments, or forbearance type of extensions on the student loan debt, but was unsuccessful. During this period, Applicant even relocated without his wife to take a higher paying job. More, recently, he has had to move his mother-in-law in with them, to take care of her.

1.a. In 2013, to clear up his financial problems, Applicant hired an attorney who recommended that they file for Chapter 7 Bankruptcy protection. In June 2013, Applicant filed for Chapter 7 Bankruptcy, and in September 2013, his debts of approximately \$3.5 million were discharged. Applicant was unable to discharge the student loans pursuant to Federal Bankruptcy Law. Related to this filing, Applicant received a certificate of financial counseling. (Applicant's Exhibit A.)

1.b. Applicant is indebted to a creditor for a student loan that was past due in the amount of \$2,231 with an approximate balance of \$48,319. Applicant cosigned on his daughter's student loan for college. When he entered into the agreement, he thought that his daughter would be able to pay the debt. The debt has been owing since 2009. Applicant has tried to initiate payment by website, but his account cannot be located. (Tr. p. 43) It is his intent to pay the debt if he can find out who to pay. He has also disputed the debt with the credit agencies. (Tr. p. 78.) Applicant's Post-Hearing Exhibit K indicates that Applicant has been made an offer to settle the debt by the creditor in the amount of \$371 monthly for eleven months beginning on January 15, 2019, with a balloon payment of \$5,919 due on December 15, 2019.

1.c. Applicant was indebted to a bank for a delinquent student loan that was charged off in the approximate amount of \$31,976. Applicant cosigned on his son's student loan for college. When he entered into the agreement, he thought that his son would be able to pay the debt. This debt was ultimately charged off. Applicant received a 1099-C cancellation of debt regarding the debt. (Applicant's Exhibits B and I.) Applicant stated that he has paid taxes on the amount of the forgiveness. (Tr. p. 48.)

1.d and 1.e. Applicant was indebted to a bank for two educational loan accounts that were charged off. Applicant cosigned on his childrens' loans for their education. Both loans were ultimately charged off by the creditor. Applicant received a 1099-C for each debt, which was a cancellation of the debts. (Applicant's Exhibit C, and Tr. p. 51.) Applicant stated that he has paid taxes on the amount of the forgiveness. (Tr. pp. 51-52.)

Applicant's credit report showed another charged-off account, not listed in the SOR, in the amount of \$31,997, showing a past-due amount of \$30,597. Applicant did not know about the debt. Post-Hearing Exhibit H, indicates that the creditor has extended an offer to Applicant to make payment arrangements to resolve the debt.

Since he has been working for his current employer, Applicant's financial affairs have been more stable. He has incurred no new delinquent debt. He now owns only one property, his primary residence, and is current on the mortgage payments. (Applicant's Exhibit D.) Applicant is also current with all of his consumer debt. He has learned a hard lesson from his mistakes in the past. He now lives within a budget, and makes smart decisions as to how he spends his money. Applicant recently started a 401(k) that has about \$3,000 in it. (Tr. p. 53.)

Letters of recommendation from Applicant's colleagues and friends reveal that Applicant is a true professional, who is committed to work, his family, and enjoying the

freedoms our country provides. He is respected by all who know him. He has consistently provided exceptional work effort and productivity. He is also described as being a hard-working, honest and trustworthy man of integrity, who is a wonderful father, co-worker, friend and human being. He is highly recommended for a security clearance. (Applicant's Exhibit F.)

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 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; and
- (c) a history of not meeting financial obligations.

Applicant became delinquently indebted due to a series of unexpected circumstances beyond his control. In hindsight, Applicant realizes that he made some risky and reckless decisions when he invested in real estate too quickly, and in too many properties, without a sufficient financial safety net. To complicate matters, his wife's illnesses prevented her from working, which negatively impacted their finances. The sudden downturn in the real estate market also caused them to fall behind on their mortgage payments. Applicant's children's inability and unwillingness to pay their student loans, leaving it all up to the Applicant, all contributed to his financial indebtedness. 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;

(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 a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant now understands the vastly unstable nature of the real estate market and that it can ruin one's financial status, if not careful. As a result, in 2013, he was forced to file for Chapter 7 bankruptcy, and discharged \$3.5 million dollars in debt. Unable to discharge the student loans, and unable to afford to make the payments, the debts were charged off. Applicant has paid taxes on the student loan debt that was cancelled or forgiven, and plans to follow a prescribed payment plan to resolve the only other remaining student loan that remains unaddressed in the SOR. Applicant's conduct shows growth and maturity toward handling his financial affairs. He has no other delinquent accounts and now understands the importance of maintaining financial responsibility. Going forward, Applicant must live within his means and continue to resolve his debts in compliance with his creditors. Under the particular circumstances of this case, Applicant has acted reasonably and responsibly with respect to his debts. Accordingly, it is found that his debts are now under control. Furthermore, Applicant has demonstrated that future financial problems are unlikely. If it is determined that he owes any other creditor, he will immediately set up a payment arrangement to resolve it. There are clear indications that his financial problems are being resolved.

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 on the job and performed favorably. He has also demonstrated reasonable and responsible conduct in resolving his delinquent debts. In addition, he has provided documentation from the creditors that confirm his testimony. Applicant has 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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 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 national interest to grant Applicant eligibility for a security clearance. National security eligibility for access to classified information is granted.

Darlene Lokey Anderson
Administrative Judge