



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



In the matter of:)	
)	
)	ISCR Case No. 18-00559
)	
Applicant for Security Clearance)	

Appearances

For Government: David Hayes, Esq., Department Counsel
For Applicant: *Pro se*

01/24/2019

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 15, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to 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 on June 8, 2017.

Applicant answered the SOR on April 19, 2018, and requested a hearing before an administrative judge. The case was assigned to me on October 1, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 12, 2018. I convened the hearing as scheduled on November 7, 2018. The Government offered

exhibits (GE) 1 through 6.¹ Applicant testified and offered Applicant Exhibits (AE) A through G. There were no objections to any exhibits offered, and all were admitted into evidence. The record remained open until November 26, 2018, to permit Applicant to provide additional documents, which he did. They were marked AE H through AE U. There were no objections, and they were admitted into evidence. DOHA received the hearing transcript on November 16, 2018.

Findings of Fact

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

Applicant is 56 years old. He earned an associate's degree in 1981. He served in the military from 1982 to 1989 and was honorably discharged. He is pursuing a bachelor's degree. He married in 1982. He has two adult children, ages 35 and 23 years old. Both live with him. His oldest child, a daughter, has three children. She is separated from her husband. She and her children live with Applicant. His daughter does not receive child support. She sporadically contributes to the household.²

Applicant began experiencing financial difficulties in 2015. He purchased a house in July 2015. Shortly thereafter, he and his wife had marital problems. He moved out of the house in December 2015. His wife has medical issues and is unable to work. In January 2016, his daughter lost her job and moved in with Applicant's wife. Applicant started supporting two households, which included his daughter's family. This had a major impact on his finances. He lost his job in August 2017. He maintained the two households until he and his wife reconciled in November 2017, and he moved back into their house.³

In 2014, Applicant moved to a different state for a job. He withdrew money from his pension plan and believed the federal income tax was paid at the time of his withdrawal. In 2015, he learned that he owed more federal income taxes as the amount was not fully paid (SOR ¶ 1.a-\$21,578). He testified that he contacted the company that was handling his pension plan and was told that only a percentage of the tax was paid. He contacted the Internal Revenue Service (IRS) and arranged an installment agreement to pay the taxes owed. The agreement was to pay \$300 a month. The IRS involuntarily withheld subsequent annual tax refunds and applied them to the balance. He testified that he started the installment agreement sometime in 2015 and made the payments until he stopped in late 2017 when he lost his job. He said he contacted the IRS, but did not make another payment until March 2018. In October 2018, he entered into a new installment agreement with the IRS to pay \$150 a month until December 2019, when the amount will

¹ Hearing Exhibit (HE) I is the exhibit list and II is the discovery letter.

² Tr. 17-24.

³ Tr. 24-27, 35-36.

increase to \$375. He makes an automatic monthly payment. He provided proof of his most recent payment.⁴ It is being resolved.

In November 2016, Applicant fell behind on his mortgage payments because he was maintaining two households (SOR ¶1.b-\$10,725). He contacted the mortgage company and entered a loan modification agreement in May 2017. He made timely payments on the new mortgage agreement until he lost his job in August 2017. He contacted his mortgage company again and a new loan modification was approved in February 2018. He made a lump-sum payment of \$8,038 in October 2018 to catch up, and has been making the new payments. He provided proof of his November 2018 payment. He testified he obtained the lump-sum amount from a loan that he is repaying. He provided proof that he is paying the loan. Applicant and his wife have decided to sell the house and are working with a realtor to put it on the market. They intend to downsize and purchase a more affordable house. The mortgage in SOR ¶ 1.b (\$10,725) is being resolved.⁵

The credit-card debt in SOR ¶ 1.c (\$14,802) was used by Applicant when he was separated from his wife to help him pay expenses. He said he made some payments to the collection company. He provided a copy of a recent payment plan with the collection company, which required he pay \$2,000 in November 2018 and monthly payments thereafter of \$500 a month. He provided proof of his \$2,000 payment.⁶ The debt is being resolved.

The debt in SOR ¶ 1.d (\$2,802) became past due when Applicant lost his job. He has a payment plan with the creditor that agrees to monthly automatic withdrawals of \$231. He provided documented proof of the agreement with the creditor and his November payment.⁷ The debt is being resolved.

The debt in SOR ¶ 1.e (\$1,159) is a debt that became delinquent when Applicant lost his job. He provided documented proof that he is making payments to resolve the debt. He testified that he believed the remaining balance owes is about \$700.⁸ This debt is being resolved.

Applicant was unaware he owed the medical debt in SOR ¶ 1.f (\$89). He paid the debt in April 2018. He provided documented proof.⁹ This debt is resolved.

⁴ Tr. 32-35, 49-56; Answer to SOR; AE A, J, O.

⁵ Tr. 37-49; Answer to the SOR; AE B, L, P, Q, T.

⁶ Tr. 59-62; Answer to SOR; AE C, K, M.

⁷ Tr. 63-65; AE D, S.

⁸ Tr. 66-68; AE E, F, R.

⁹ Tr. 68; AE G.

Applicant provided a detailed copy of a budget he has been using for a couple of months. It includes all of his payment plans and debts. He testified that he and his family have significantly cut their expenses. They do not go out to eat. He does not take his grandchildren out for entertainment because he cannot afford it. In his post-hearing submission, he stated that his son and daughter are now paying the house's utility bills to help with the expenses.¹⁰

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, 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 ¶ 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." 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. Directive ¶ E3.1.15 states 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.

¹⁰ Tr. 56-59, 69; AE H, N.

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 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.

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

- (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 failed to timely pay a federal tax debt for the early withdrawal from his pension. Applicant lost his job and was unable to pay some bills, which became delinquent in about 2016. There is sufficient evidence to support the application of the above disqualifying conditions.

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 (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 and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; 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 began experiencing financial problems when he and his wife separated in late 2015; his daughter and her family then moved in with his wife; and he lost his job in 2017. Applicant also incurred a tax debt from an early withdrawal from his pension plan. He believed the tax was withheld, but later learned he owed the tax. Applicant is resolving all of the debts alleged in the SOR, but at this juncture, they remain ongoing and recent. AG 20(a) is not applicable.

As explained above, Applicant's financial problems were beyond his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant obtained loan modifications to ensure he could become current on his mortgage. He contacted the IRS when he became aware of the deficiency. He arranged an installment agreement with the IRS. When he lost his job, he could not make the payments. He has a new agreement that he is paying. He contacted other creditors and negotiated repayment agreements and is making payments to resolve the debts. Applicant did not ignore his financial obligations, but addressed them as best he could at the time. I find he acted responsibly under the circumstances. AG ¶ 20(b) applies.

There is insufficient evidence that Applicant sought financial counseling, but there are indications that Applicant's financial problems are under control. AG ¶ 20(c) does not apply. There is sufficient evidence that Applicant is adhering to repayment plans that he

initiated in a good-faith effort to repay overdue creditors. He is making payments on his installment agreement with the IRS and is paying his mortgage after receiving a loan modification. He is paying his other creditors. AG ¶ 20(d) applies.

Applicant contacted the IRS when he learned he owed additional taxes on his pension plan withdrawal. He made payments until he experienced financial difficulties after losing his job. He negotiated a new installment agreement with the IRS and provided sufficient proof that he is in compliance. AG ¶ 20(g) applies.

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 ¶ 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 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 ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 56 years old. Several circumstances contributed to his financial difficulties: unexpected problems after he purchased a house; his and his wife's separation; and the loss of his job. He subsequently maintained two households, when his daughter and her three children moved in with his wife. All of these factors caused him to get behind on his obligations. Applicant was not living beyond his means during that time, and he did not ignore his debts. He has payment arrangements with his creditors. He obtained a loan modification for his mortgage and has a new installment agreement with the IRS. Applicant's finances are coming under control, and he is acting responsibly by addressing his debts. He intends to sell his house and in the interim has lowered his expenses. He has a detailed budget that accommodates his expenses and debts. Applicant's past financial problems no longer raise questions about his judgment, reliability, or trustworthiness. The record evidence leaves me without questions or doubts

