



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



In the matter of:)
)
) ISCR Case No. 18-00695
)
)
Applicant for Security Clearance)

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: Edward O. Lear, Esq., Applicant's Counsel

July 2, 2019

Decision on Reconsideration

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On September 4, 2018, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline F. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

Applicant answered the SOR on September 27, 2018, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on January 8, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 14, 2019, scheduling the hearing for February 11, 2019. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 through 7, which were admitted into evidence. Applicant testified on his own behalf, and called one witness, his wife. Applicant offered eight documents, which I marked Applicant's Exhibits (AppXs) A through H, and admitted into evidence. The record was left open

until March 11, 2019, for receipt of additional documentation. On March 11, 2019, Applicant offered AppXs I through O, which were also admitted into evidence. Applicant's Counsel also "Proposed" four additional exhibits, AppXs J, and P~R, but submitted nothing further in this regard. DOHA received the transcript of the hearing (TR) on February 26, 2019.

On May 7, 2019, the undersigned issued a Decision denying Applicant's access to classified information. On May 22, 2019, Applicant submitted a Motion for Reconsideration (Motion) of the undersigned's Decision. Appended to that Motion are seven post-hearing exhibits (PH Xs) marked as PH Xs A~G. On June 13, 2019, Department Counsel opposed Applicant's Motion, averring "the appropriate remedy was to timely appeal the decision to the Appeal Board." Pursuant to Additional Procedural Guidance (APG) E3.1.10, I will consider Applicant's Motion and PH Xs A~G. Under APG E3.1.10 the undersigned "may rule on questions on procedure, discovery, and evidence and shall conduct all proceedings in a fair, timely and orderly fashion."

Findings of Fact

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

Applicant is a 47-year-old employee of a defense contractor. (TR at page 54 line 13 to page 60 line 1, and GX 1 at pages 5~6.) He has been employed with the defense contractor since 2003, and has held a security clearance since 2004. (TR at page 54 line 13 to page 60 line 1, and GX 1 at pages 15~16.) He is respected in the workplace. (AppXs E~G.)

Guideline F - Financial Considerations

Although Applicant had some health issues, as attested to by his wife (TR at page 23 line 12 to page 25 line 19), they attribute their financial difficulties to an inability to handle a sudden abundance of wealth, about \$200,000 from his mother-in-law's trust fund. (TR at page 18 line 5 to page 19 line 25, and at page 61 line 6 to page 62 line 2.) They began living beyond their means. (TR at page 61 line 6 to page 62 line 2.)

1.a. Applicant admits that he failed to file his state income tax return for tax year 2014. (GX 3 at page 22.) He has now offered documentation from his state demonstrating that Applicant has made this filing. This allegation is found for Applicant.

1.b. Applicant initially admitted that he failed to pay his state income taxes for tax years 2011~2014. However, the Government has offered evidence that Applicant has a "\$0.00" balance for tax years 2011 and 2013. (GX 3 at pages 25 and 27.) It also appears that Applicant has a payment plan with the state for tax years 2012 and 2014. (TR at page 86 line 8 to page 89 line 20, and GX 3 at pages 28~32.) This allegation is found for Applicant. (See also PH Xs B and F.)

1.c. Applicant initially admitted that he failed to file his Federal income tax returns for tax years 2011~2016. However, he has offered evidence that he has now filed his Federal tax returns for tax year 2016. (TR at page 65 line 24 to page 66 line 5, and AppX B.) As to the filings for tax years 2011~2015, Applicant has additionally offered PH Xs C and D demonstrating he has also made these filings. This allegation is found for Applicant.

1.d.~1.g. Applicant admits that he owes the Federal government about \$38,271 in past-due taxes for tax years 2011~2014. (TR at page 95 line 1 to page 96 line 13, and Answer at attachments B~E.) Applicant has submitted PH Xs showing a payment plan with the Internal Revenue Service (IRS). (PH Xs C, E and G.) These allegations are found for Applicant.

1.h. Applicant initially admitted that he failed to pay his past-due Federal income taxes for tax year 2015. In his Answer, Applicant has offered evidence showing this debt has been paid. (Answer at attachment F.) This allegation is found for Applicant.

1.i. Applicant admits that he has past-due student loans totaling about \$55,818. He has now set up a payment plan by which he will make monthly payments of \$332, beginning in February of 2019, towards this admitted past-due debt. (TR at page 76 line 21 to page 81 line 20.) This is evidenced by documentation submitted by Applicant. (AppX I.) I find that Applicant is making a good-faith effort to address his past-due student loans; and as such, this allegation is found for Applicant.

1.j. Applicant admits that he has a past-due medical debt for \$331, but has submitted nothing further in this regard. (TR at page 81 line 21 to page 83 line 14.) This allegation is found against Applicant.

1.k., 1.l and 1.q. Applicant admitted that he had additional past-due medical debts totaling about \$126, but has offered documentation that he has successfully disputed these medical debts. (TR at page 81 line 21 to page 83 line 14, and AppXs K and L.) These allegations are found for Applicant.

1.m. Applicant initially admitted that he had a past-due debt to Creditor M in the amount of about \$242, but has submitted post-hearing documentation that he is addressing this debt. (TR at page 83 line 15 to page 84 line 3, and AppX M.) This allegation is found for Applicant.

1.n. Applicant initially admitted that he had a past-due debt to Creditor N in the amount of about \$179, but has submitted post-hearing documentation that he is addressing this debt. (TR at page 84 lines 4~12, and AppX N.) This allegation is found for Applicant.

1.o. Applicant initially admitted that he had a past-due debt to Creditor O in an unspecified amount, but has submitted post-hearing documentation that he is addressing this debt. (TR at page 84 line 13 to page 85 line 9, and AppX O.) This allegation is found for Applicant.

1.p. Applicant admits that he has a past-due to Creditor P in the amount of \$29, but has submitted nothing further in this regard. (TR at page 85 lines 10~17.) This allegation is found against Applicant.

1.q. This allegation has been discussed, above.

1.r. Applicant admits that he has a past-due debt to Creditor R in the amount of \$763, but has submitted nothing further in this regard. (TR at page 85 line 18 to page 86 line 7.) This allegation is found against Applicant.

Policies

When evaluating an applicant's national security eligibility, 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 national security eligibility.

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. Directive ¶ E3.1.15 states 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 Executive Order (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. Five 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;
- (e) consistent spending beyond one's means or frivolous or irresponsible spending, which may be indicated by excessive indebtedness, significant negative cash flow, a history of late payments or of non-payment, or other negative financial indicators; 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 had failed to file both Federal and state income tax returns, had significant past-due tax debt, and had other past-due debts. The evidence is sufficient to raise these 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 and is adhering to 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;

(f) the affluence resulted from a legal source of income; 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's financial problems are ongoing. He has a long history of delinquencies. Applicant has yet to address a medical debt, and two other past-due debts. He has not demonstrated that future financial problems are unlikely. Mitigation under AG ¶ 20 has not been established.

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. Applicant is respected in the workplace.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate 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:	AGAINST APPLICANT
Subparagraph 1.a~i:	For Applicant
Subparagraph 1.j.	Against Applicant
Subparagraphs 1.k~1.o:	For Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	For Applicant
Subparagraph 1.r:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Richard A. Cefola
Administrative Judge