



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



In the matter of:)
)
) ISCR Case No. 18-01350
)
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Department Counsel
For Applicant: *Pro se*

January 28, 2019

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of the Case

On June 13, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective for cases after June 8, 2017.

Applicant answered the SOR on July 2, 2018, and requested a hearing before an administrative judge. The case was assigned to me on August 29, 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 3, 2018. The Government offered six exhibits, referred to as Government Exhibits 1 through 6, which were admitted without objection. The Applicant offered four exhibits, referred to as Applicant's Exhibits A through D, which were admitted without objection. Applicant testified on his

own behalf. The record remained open until close of business on December 10, 2018, to allow the Applicant the opportunity to submit additional supporting documentation. Applicant submitted two Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits A and B, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on December 11, 2018.

Findings of Fact

Applicant is 48 years old. He is married a second time and has a son from a previous marriage. He has a high school diploma and a certificate in computer information systems. He holds the position of Material Supply Handler with a defense contractor. He seeks to obtain a security clearance in connection with his employment in the defense industry.

Paragraph 1 Guideline F – Financial Considerations The Government alleges that the Applicant is ineligible for clearance because he is financially overextended and at risk of having to engage in illegal acts to generate funds.

The SOR alleges that Applicant is indebted to eight separate creditors totaling approximately \$61,000 in debts that include state and Federal tax liens, credit cards and other miscellaneous debt. In his Answer, Applicant admits allegations 1.a., 1.b., 1.c., 1.d., and 1.h. set forth in the SOR. He denies the remaining allegations. Credit reports of the Applicant dated September 7, 2016; July 6, 2017; and June 4, 2018, reflect that each of these debts were owing at one point. (Government Exhibits 4, 5 and 6.) Applicant served honorably in the United States Navy from 1991 to 1995, completing a full enlistment period.

Applicant states that he began to have financial problems in about 2007. He attributes his financial problems in the past to his health problems that caused him to lose his job, as well as just simply mismanaging his money by not always living within his means. Applicant states that among other things, he was paying too high in interest on his car loan, and was paying a high monthly rent. Neither of which allowed him a tax deduction.

Applicant began having financial problems in 2007 when he became delinquent on his taxes and was unemployed. In regard to his tax issues, he has consistently been in contact with the respective tax authorities and has set up payment plans that he has followed or requested payment extensions during periods of financial hardship. He notes that in 2006 he suffered a stroke, and eventually lost his job. Following his stroke, he was out of work for about nine months. When his health improved, he went back to work, but he is not sure if he was able to catch up with his delinquent debt. In 2012, Applicant suffered a heart attack. When Applicant tried to go back to work he was told that he was being laid off due to budget cuts. Applicant was out of work for about two years from August 2014 to March 2016.

Applicant testified that without a house or children, he and his wife have had no tax deductions. As a result, each year, they owe taxes. To help cover living expenses when Applicant was out of work, each year, Applicant's wife would withdraw money from her 401(K), and sometimes sell her stock to help provide financially for the family.

Applicant testified that he believes that the reason he did not pay all of his taxes when they were due was not because he did not have enough money withdrawn from his paycheck to pay his taxes, but instead, because each of those years he had additional taxable income from 401(K) withdrawals and stock sales.

Since June 2017, when Applicant started working for his current employer, he has been working diligently to resolve his past delinquent debt. The following delinquent debts listed in the SOR became owing and are now paid off in full, or are being paid in regular systematic monthly payments.

1.a. Applicant was indebted to a state for a tax lien entered against him in 2010 in the approximate amount of \$9,334. Applicant provided a copy of an installment agreement with the state indicating that he is now making monthly payments of \$200 that goes to pay this debt. Applicant has been following an agreed upon payment plan with the state tax authority since 2010.

1.b. Applicant was indebted to the Federal Government for a tax lien entered against him in 2017 the approximate amount of \$5,391. Applicant provided a copy of a monthly installment agreement with the IRS indicating that he is now making monthly payments of \$1,000 that goes toward payment of this debt. Applicant has been following an agreed upon payment plan with the IRS since 2010.

1.c. Applicant was indebted to Federal Government for a tax lien entered against him in 2014 in the approximate amount of \$22,627. Applicant provide a copy of a monthly installment agreement with the IRS indicating that he is making monthly payments of \$1,000 that goes toward payment of this debt. Applicant has been following an agreed upon payment plan with the IRS since 2010.

1.d. Applicant was indebted to a creditor for an account that was placed for collection in the approximate amount of \$19,769. This was a voluntary vehicle repossession. When Applicant contacted the creditor to set up a payment plan, they had no information in their system about the debt. Applicant disputed this debt, and it was removed from his credit report. (Tr. p. 48.)

1.e. Applicant was indebted to a creditor for an account that was placed for collection in the approximate amount of \$555. Applicant submitted a receipt showing that the debt was paid in full in the amount of \$575 on September 8, 2018. (Applicant's Post-Hearing Exhibit B.)

1.f. Applicant was indebted to a creditor for an account that was placed for collection in the approximate amount of \$2,463. Applicant settled the debt in the amount of \$700.00. (Applicant's Exhibit A.)

1.g. Applicant was indebted to a creditor for an account that was placed for collection in the approximate amount of \$408. This was a cable bill. Applicant settled the debt in the amount of \$366.84. (Applicant's Exhibit B.)

1.h. Applicant was indebted to a creditor for an account that was past due in the approximate amount of \$1,129. Applicant was making regular monthly payments of \$51.25 toward the debt. It is now paid off. (Tr. p. 50.)

Applicant is currently earning about \$42,000 a year. His wife brings in about \$94,000. Applicant's tax advisor with whom he has been closely working to improve his credit rating, told him that it would be financially better for him to buy a house. Applicant recently purchased a house for \$530,000 that he moved into in November 2018. Using his VA benefits, there was zero required as a down payment and his monthly payments are \$2,936. Applicant has an interest rate of 5 percent and he now has a substantial tax write-off. Applicant states that going forward he plans to be more careful about how he spends his money. He plans to put more money in savings and always live within his means.

A letter of recommendation from Applicant's supervisor dated December 4, 2018, indicates that Applicant is well respected and held in high esteem by his colleagues. He is described as a person of the highest character, entrusted to control and direct the flow of costly materials. He is vigilant, detailed, and conforms to all required procedures. He is considered to be an excellent employee whose work is consistently exemplary and professional.

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 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 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.” The applicant has the ultimate burden of persuasion to obtain 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 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 for Financial Considerations is set out in AG ¶ 18, as follows:

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;
- (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 has incurred delinquent debts from extended periods of unemployment brought on by health problems, job lay-offs, and by simply mismanaging his money. As a result he accumulated delinquent debt that include tax liens and credit card debt. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations 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, or 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.

Since June 2017, Applicant has been working hard to pay off his delinquent debt. He has shown significant progress toward resolving the debt listed in the SOR. He has even improved his credit rating to become eligible to recently purchase a house that will in turn give him a tax write off. Applicant clearly understands the responsibilities that come along with possessing a security clearance. He has demonstrated financial

responsibility by resolving his delinquent indebtedness. Concerning his delinquent debt, he has acted reasonably and responsibly, and has demonstrated good judgment, reliability, and trustworthiness. The Financial Considerations concern has been mitigated.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. 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 section E3.1.25 of Enclosure 3 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
Subparagraph 1.f.:	For Applicant
Subparagraph 1.e.:	For Applicant

Subparagraph 1.f.:	For Applicant
Subparagraph 1.g.:	For Applicant
Subparagraph 1.h.:	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