



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



In the matter of:)
)
) ISCR Case No. 18-01356
)
Applicant for Security Clearance)

Appearances

For Government: Michelle Tilford, Esquire, Department Counsel
For Applicant: *Pro se*

04/11/2019

Decision

BENSON, Pamela C., Administrative Judge:

Applicant mitigated the security concerns under Guideline F (Financial Considerations). Applicant’s national security eligibility is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on September 12, 2016. On May 29, 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 within the DOD on June 8, 2017.

Applicant answered the SOR on June 18, 2018, and he requested a hearing before an administrative judge. On October 29, 2018, the case was assigned to me. On

December 31, 2018, the Defense Office of Hearings and Appeals (DOHA) issued a notice of Hearing, setting the hearing for January 15, 2019.

During the hearing, Department Counsel offered Government Exhibits (GE) 1 through 6 into evidence, which were admitted without objection. Applicant testified, but did not offer any documentation into evidence. I granted Applicant's request to leave the record open until February 15, 2019. On January 22, 2019, Applicant offered three documents, which I labeled as Applicant Exhibit (AE) A, B, and C, which were admitted without objection. DOHA received the hearing transcript (Tr.) on January 25, 2019. The record closed on February 15, 2019.

Findings of Fact

Applicant admitted the allegations cited as SOR ¶¶ 1.a through 1.f. 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 has been married since 1995. He has two daughters, ages 23 and 21. He earned his bachelor's degree in 2016. He has held a DOD security clearance since approximately 1997. He has been employed as an aviation project lead for a federal contractor since September 2007. His current salary is about \$85,000, and his wife's annual salary is about \$30,000. (Tr. 13-16)

Applicant and his spouse currently live in his parents' home. His parents have agreed to allow them to live in their home for free until both of their granddaughters have graduated from college. Applicant pays rent for his two adult daughters, one who graduated from college in May 2018, and the younger one, now a senior in college. He estimated that he pays approximately \$3,000 total each month for their rent, utilities, and food. He also pays for insurance on four cars, and for his daughters' cell phone service. He recently started paying \$210 a month for his oldest daughter's student loan, which became due shortly after her 2018 college graduation. He is paying this amount currently until his daughter is established and can start paying for her student loans. (Tr. 20-23, 41-42, 49)

Financial Considerations

The SOR alleged in ¶ 1.a that Applicant filed for Chapter 13 bankruptcy in March 2013. His liabilities totaled approximately \$250,603. The bankruptcy was discharged in April 2018. Applicant's financial issues are attributed to a real estate business his spouse started in approximately 2007. They also purchased a more expensive home that year, anticipating a second income from his spouse. Within a year or two, her real estate career ended after her business failed during the housing market crisis. In addition, in approximately 2010, his daughter suffered a sports-related injury, which required three surgeries. Without the anticipated income from his spouse, Applicant admitted they were living beyond their means. They started using credit cards to pay for their food and other living expenses. All of these factors contributed to Applicant's decision to file for Chapter 13 bankruptcy in 2013. He made monthly payments to the

bankruptcy trustee through payroll deduction until the bankruptcy was successfully discharged in 2018. (Tr. 24-29, 31-32; GE 2)

The SOR alleged in ¶¶ 1.b-e, four student loans referred for collection with the Department of Education (DOE), with a combined total of \$22,799. Applicant was a project lead with his employer working on DOD contracts. One of the DOD contracts required all project leads to have a bachelor's degree. Applicant only had an associate's degree. He took college classes online and graduated with his bachelor's degree in 2016. He took out student loans every semester for two years beginning in January 2014 to pay for his classes. Two years of his Federal tax refunds were intercepted to pay the outstanding balance of his student loans. Beginning in June 2018, he started a rehabilitation loan agreement where he is to pay \$329 a month for 11 consecutive months to rehabilitate his student loans. After his April 2019 payment, his loan will be considered rehabilitated and he can negotiate with the creditor for a lower monthly payment. Applicant's monthly payments are automatically deducted from his bank account. He provided a copy of his student loan rehabilitation agreement on January 22, 2019. (Tr. 34-41, 48-49; AE A)

The last delinquent debt alleged in the SOR (¶ 1.f) is a medical account in the amount of \$147. In Applicant's response to the SOR, he stated he was unaware of this account until the SOR was issued. In June 2018, he paid this account in full. He did not provide supporting documentation with his SOR response or during his hearing. Applicant provided a copy of his receipt on January 22, 2019. (Tr. 42-43; AE B)

Applicant and his spouse established a revised monthly budget in January 2019 after taking financial planning classes through their church. His youngest daughter will graduate from college in May 2019, and she expects to start working immediately thereafter. He expects a substantial decrease in their monthly expenses after they no longer have to pay her monthly expenses. With the new budget, Applicant's income covers all of the monthly expenses. They use a cash envelope system which works well for them and prevents use of credit cards to pay for monthly bills. His wife pays for the family health insurance through her employment. Her monthly net pay is approximately \$800, which they have been putting into a savings account. Applicant provided a copy of their monthly budget on January 22, 2019. (Tr. 50-52; AE C)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 access to classified information 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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 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; and
- (c) a history of not meeting financial obligations.

Applicant experienced financial difficulties beginning in 2007, with the startup and subsequent failure of his wife's real estate business, unexpected medical bills for his daughter's surgeries, and the added expense of putting his two daughters through college. Applicant filed Chapter 13 bankruptcy in 2013, and made monthly payments to the trustee, until it was successfully discharged in 2018. He accumulated over \$26,000 in student loans for his online college classes to keep his current position with his employer. 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

(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.

Applicant's financial problems, such as his wife's business failure and his daughter's unexpected medical expenses, were circumstances that were beyond his control. He filed for Chapter 13 bankruptcy protection, and he made consistent payments to the bankruptcy trustee until his bankruptcy was discharged in 2018. In June 2018, he entered into a student loan rehabilitation agreement with the DOE for his outstanding student loans in the amount of \$26,000. He has consistently made his monthly installments in accordance with the agreement, and his student loans will be rehabilitated in April 2019. He immediately paid a delinquent medical debt that he had not known existed. He has taken financial planning classes through his church, and revised his monthly budget in January 2019. He is taking responsible action to reduce his indebtedness and monthly expenses. Applicant's debt arose under such circumstances that is unlikely to recur, and he is adhering to a good-faith effort to repay his outstanding student loans. AG ¶¶ 20(a), (b), (c), and (d) apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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(a):

(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(a) were addressed under that guideline, but some warrant additional comment.

Applicant's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an individual with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a position of trust with the Government. The Government does not require Applicant to be debt-free, but he is required to manage his finances in such a way as to meet his financial obligations.

Applicant is 56 years old and has worked for his present employer since September 2007. He has held a DOD security clearance since approximately 1997. He has taken responsible action to address his debts, which arose under circumstances beyond his control. Applicant's conduct demonstrates his good judgment, reliability, and trustworthiness. Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concern arising under the financial considerations guideline.

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
Subparagraphs 1.a through 1.f:	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 continue Applicant's security clearance. Eligibility for access to classified information is granted.

Pamela C. Benson
Administrative Judge