



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 18-01739
)
)
Applicant for Security Clearance)

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: *Pro se*

August 29, 2019

Decision

Lokey Anderson, Darlene D., Administrative Judge:

On July 27, 2017, Applicant submitted a security clearance application (e-QIP). On June 25, 2018, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Executive Order 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 June 8, 2017.

Applicant answered the SOR on July 16, 2018, and requested a hearing before an administrative judge. The case was assigned to me on April 23, 2019. The Defense Office of Hearings and Appeals issued a notice of hearing on April 24, 2019, and the hearing was convened as scheduled on June 4, 2019. The Government offered six exhibits, referred to as Government Exhibits 1 through 6, which were admitted without objection. The Applicant offered eight exhibits, referred to as Applicant's Exhibit A through H, which were admitted without objection. Applicant testified on his own behalf. The record remained open until close of business on June 11, 2019, to allow the Applicant the opportunity to provide additional supporting documentation. Applicant

submitted three Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits I, J and K, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on June 17, 2019.

Findings of Fact

Applicant is 58 years old and divorced. He holds the position of pilot and is employed with a defense contractor. 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 alleges that Applicant has filed for two bankruptcies, and has an outstanding tax lien entered against him in the amount of \$25,799. Applicant admits each of the allegations set forth in the SOR. Credit reports of the Applicant dated March 13, 2018, and August 27, 2018, confirm the tax lien. (Government Exhibits 3 and 4.) Applicant attributes his financial problems to a series of unfortunate events that he states will not recur. (Applicant's Exhibit A.)

Applicant started working for his current employer in September 2008. He started as a pilot and over time was promoted to Lead Pilot, Chief Pilot, and is now Senior Pilot, serving as an instructor Pilot. Applicant has held a security clearance since 2007 that he obtained while working for another defense contractor. He has never had a security violation. The only disciplinary matter that he has encountered was in October 2018 when he was written up by his supervisor for falling asleep in the airport after being on duty for 24 hours. (Tr. p. 23.)

In 1999, Applicant was in business with his mother, who owned a large real estate company. The business was sued for \$10,000 regarding a contract. To protect his mother and her assets, upon the advice of counsel, in approximately November 1999 Applicant filed for Chapter 13 Bankruptcy. (Government Exhibit 6.) A month later, in December 1999 the Chapter 13 was dismissed. Applicant was not delinquent with his bills, and about \$3,000 in debt at the time. (Tr. p. 25.) In fact, he owed three properties that were all in good standing. The business eventually prevailed in the lawsuit.

Applicant and his wife were married in 2010. His wife was to handle paying the household bills, while Applicant worked overseas, as he was deployed a lot. Applicant put her on a personal spending budget of \$2,000 a month to cover her expenditures, which included getting her hair and nails done. (Tr. p 43.) Applicant's paycheck was directly deposited. It became customary for his wife to excessively spend. She not only

spent her monthly allowance, but also the money she should have been using to pay the bills. She went shopping and started living a lavish lifestyle they could not afford. In 2015, Applicant came home from assignment and was surprised to learn that they had a \$12,000 facial laser machine and a commercial two-station espresso machine. (Tr. p. 45.) In 2017, Applicant learned for the first time that his wife had also failed to file their state income taxes for tax years 2013 and 2014. (Tr. p. 17.) As a result, Applicant became indebted to a state for a tax lien entered against him in 2017 in the approximate amount of \$25,799. Applicant stated that the actual tax liability was about \$2,000 but because the tax returns were not filed, the Applicant was taxed and charged the penalties by the state using their calculations, and his indebtedness increased to \$25,799. He has now paid the tax lien in full through wage garnishment. The garnishment started in February 2017 and was completed in December 2017. (Tr. pp. 40-41 and Applicant's Exhibits BF)

In January 2016, Applicant's mother was in a car accident that resulted in a fatality. She hit two elderly women in her elder community, one died and the other one had a broken ankle. Both a criminal lawsuit and a civil lawsuit were filed against Applicant's mother. Legal fees for his mother were expensive and Applicant states that he spent over \$250,000 in attorney's fees. Applicant's mother lost both the civil and criminal cases. In the criminal case, she pled guilty, and is currently serving time in prison. She was also ordered to pay restitution. In the civil case, a judgment was entered against her for \$950,000 in damages. The insurance company paid \$200,000 and there is still a balance owed of \$550,000. The civil suit also names the Applicant, as he is the sole trustee of his mother's trust. Applicant states that under the circumstances he was forced to file for Chapter 11 bankruptcy. (Government Exhibit 5.)

Applicant and his wife separated in February 2016, and divorced in December 2017. With his mother's on-going legal situation and his wife's excessive spending, he did not want the responsibility to have to pay for his wife's delinquent debts. He stated that even after they separated, he was in contact with her every day. He paid for her roof on her house and he bought her a car. (Tr. p. 55.) Applicant stated that he had tried to talk with his wife about her spending, as he still loved her. They even started credit counseling; but she was out of control, and it got to the point where he could no longer be responsible for her spending. Following their divorce, his ex-wife committed suicide on September 11, 2017.

In approximately March 2018, Applicant filed for Chapter 11 Bankruptcy with unsecured claims totaling approximately \$13,000. (Government Exhibit 5.) Applicant explained that most if not all of this debt listed in the bankruptcy was incurred by his ex-wife during their marriage. Applicant indicates that the Chapter 11 bankruptcy trustee is currently waiting until one of the properties, a house in the trust, is sold before distribution to the plaintiffs of the monies will occur. (Tr. p. 67.) Applicant also admitted that he had at one time transferred his mother's property into his name in order to protect her assets from the civil judgment. He was then told he committed fraud by transferring property to avoid paying the judgment. Applicant realizes that this was wrong and that the judgment must be paid.

Applicant currently earns between \$160,000 and \$190,000 annually. He states that he is frugal and responsible with his money. He is still supporting his ex-wife's sons. One is currently in college and the other will go next year. His current net worth is approximately 2 million dollars. He testified that he has the money to satisfy the judgment entered against his mother, and any other expenses that may come his way.

Two letters of recommendation from coworkers and friends of the Applicant indicate that he is considered to be trustworthy, dependable, loyal, and professional at all times. He is highly recommended for a position of trust. (Applicant's Exhibits G and H.)

Two letters of recommendation, one from a chief pilot, who has worked with the Applicant for about ten years, and another from a retired federal civil servant and long-time friend of the Applicant, attests to his "unbroken record of proper handling of classified information". Applicant is described as highly professional and loyal to the United States. He has consistently demonstrated integrity and high moral character, and is considered a staunch American patriot worthy of an appointment to a classified position. (Applicant's Post-Hearing Exhibits I and J.)

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 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. 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. Four 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; 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's first bankruptcy filing in 1999 was essentially strategic to protect his mother's business assets. It was dismissed a month or so later and nothing ever transpired. In 2017-2018, Applicant became delinquently indebted during his marriage due to the fact that his wife was not paying the bills as agreed, and did not file his state income tax returns for tax years 2013 and 2014. To resolve his delinquent debt, Applicant paid the lien that was against him for back taxes in the amount of \$25,799. He also filed for Chapter 11 Bankruptcy relief for the outstanding debt his wife incurred during their marriage without his knowledge and consent. Under the circumstances, 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;

(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 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; 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 has shown a good-faith effort to resolve his delinquent marital debt. He has filed for Chapter 11 Bankruptcy to reorganize the debts and get them paid. There is nothing else in the record that leads one to believe that Applicant is not forthcoming or that he has been unreasonable and irresponsible. Applicant clearly understands that he must live within his means at all times, and pay his bills in a timely manner. He has paid off his state taxes and is clearing up his other debts related to his mother's legal situation. Under the circumstances, he has acted reasonably and responsibly with respect to his debts. Assuming that he follows the trustees plan under the Chapter 11 and is not found liable for his mother's legal situation, or is found liable, and pays the debt, it is found that his debts are now under control, as he has the monies or can get the monies to pay the debt. Furthermore, Applicant has not incurred any new debt since the end of his marriage. He has demonstrated that future financial problems are unlikely. 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 by his professional colleagues, friends, supervisor, and management. He has shown good judgment and reliability and 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
Subparagraphs 1.a: through 1.c.	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