



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



In the matter of:)
)
) ISCR Case No. 18-01751
)
)
Applicant for Security Clearance)

Appearances

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

February 5, 2019

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of Case

On April 16, 2016, Applicant submitted a security clearance application (SF-86). (Government Exhibit 1.) On September 6, 2018, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F, Financial Considerations. The action was taken 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 within the DoD after June 8, 2017.

Applicant answered the SOR in writing on September 26, 2018, and requested a hearing before an Administrative Judge. DOHA received the request on October 29, 2018, and the case was assigned to the undersigned Administrative Judge that same day. The notice of hearing was issued on November 15, 2018, scheduling the hearing for December 6, 2018. The hearing was convened as scheduled. At the hearing the

Government presented four exhibits, referred to as Government Exhibits 1 through 4, which were admitted without objection. Applicant presented no exhibits at the hearing. The record remained open until close of business on December 20, 2018, to allow Applicant the opportunity to submit additional documentation. Applicant's submitted three Post-Hearing Exhibits, referred to as Applicant's Post-Hearing Exhibits A through C, which were admitted without objection. He also testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on December 17, 2018. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is 54 years old and is married with three grown children. He has a high school diploma and some college. He is employed with a defense contractor as a Security Associate. He is seeking to obtain a security clearance in connection with his employment.

Guideline F - Financial Considerations

The Government alleges 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 identified that Applicant failed to file his Federal income tax returns for tax years 2011, 2012, 2013, 2014, 2015, and 2016, and that he has four delinquent debts totaling approximately \$13,000. Applicant admits his failure to file his Federal income tax returns in a timely fashion, as well as the back taxes, but denies the other debts set forth under this guideline. Credit reports of Applicant dated June 25, 2016; and October 15, 2018, reflect that each of the debts remain outstanding. (Applicant's Exhibits 3 and 4.) Applicant has been working for his current employer since 2015.

Applicant states that for many years his wife was the breadwinner in the family, while he stayed home with the children. He also trusted his wife to handle the household finances as well as their taxes. During this period, they struggled financially and did not earn enough money to support the family. At some point, Applicant learned that their income tax returns were not being filed on time. Applicant states that they contacted the Internal Revenue Service (IRS) and set up a payment plan. During those years, Applicant was not involved in the family finances.

1.a., and 1.b. Applicant testified that things have changed with how the household finances are handled. Applicant is now much more involved in the family finances. Applicant has worked hard to make sure that all of his Federal income tax returns for tax years 2011 through 2016 have been filed. (Tr. p. 23.) He has provided copies of each of the Federal income tax returns in question. At the time of the issuance of the SOR, he owed approximately \$11,685 in unpaid back taxes. Since September 2018,

Applicant has been on a payment plan with the IRS and pays \$160 monthly toward his back taxes that is automatically deducted from his paycheck. On December 18, 2018, Applicant updated his installment agreement to include tax years 2014, 2016, and 2017. He now owes approximately \$16,393 in back taxes. Effective January 17, 2019, Applicant's new monthly payment to the IRS is \$200. (Applicant's Post-Hearing Exhibit C.)

1.d. A judgment was filed against the Applicant in August 2010 in the approximate amount of \$1,100. Applicant has no knowledge of the debt. He believes this is an identity theft issue or mix up as the judgment is not his. He contacted each of the three credit reporting agencies and disputed this debt. The debt was removed from two of his credit reports and is in the process of being removed from the third. (Applicant's Post-Hearing Exhibit B.)

1.e. A delinquent medical debt was placed for collection in the approximate amount of \$243. Applicant had no knowledge of the debt. After attempting several times to contact the creditor, who never answered the telephone, Applicant contacted each of the three credit reporting agencies and disputed this debt. The debt was removed from two of his credit reports and is in the process of being removed from the third. (Applicant's Post-Hearing Exhibit B.)

1.f. A delinquent medical debt was placed for collection in the approximate amount of \$45. Applicant has no knowledge of the debt. After contacting the creditor who could not provide him with any information, he contacted each of the three credit reporting agencies and disputed this debt. The debt was removed from two of his credit reports and is in the process of being removed from the third. (Applicant's Post-Hearing Exhibit B.)

Letters of recommendation from the Director of Security Administration who is also the Facility Security Officer, a Security Supervisor, and a representative from the human resources department reflect that Applicant is considered to be a valuable employee. He is described as a reliable, hard worker, who is honest and forthcoming. He has a solid work history, a strong sense of duty, a great deal of integrity, and constantly strives to make sure that he is doing the right thing. He also follows all security rules and regulations with regard to the proper handling of sensitive materials. (Applicant's Post Hearing Exhibit A.)

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. 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. 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 clearance 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 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:

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 debt 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;

For many years, Applicant was not involved in the family finances and taxes and allowed his wife to handle those matters, as they filed jointly. At some point, during those years, he learned that he failed to file his Federal income tax returns for tax years 2011, 2012, 2013, 2014, 2015, and 2016 on time. He also learned that he became indebted for back taxes in the amount of approximately \$11,685. His actions demonstrate both a history of not addressing his debt and an inability to do so. The evidence is sufficient to raise the above disqualifying conditions.

The following mitigating conditions under the Financial Considerations are potentially applicable under AG ¶ 20.

- (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.

For many years Applicant thought he could trust his wife to file their tax returns and he was not involved. From this experience, he has learned that he must be involved in all financial matters including the taxes in order to ensure

that they are timely filed. He is now involved in his household finances. He has filed all of the Federal income tax returns in question, and is making regular monthly payments to the IRS each month to resolve his debt. He has disputed the other three delinquent debts listed on his credit reports, and they have all been removed from two of the credit reporting agencies, and the third agency is in the process of removing them, as none of the three delinquent debts are actually his. There is a clear pattern of systematic payments to show financial responsibility. There is sufficient evidence here to show that he has acted responsibly under the circumstances and that he demonstrates reliability, trustworthiness, and good judgment.

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 relevant facts and circumstances surrounding this case. I conclude Applicant has mitigated the Financial Considerations security concern.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a.:	For Applicant
Subparagraphs 1.b.:	For Applicant
Subparagraphs 1.c.:	For Applicant
Subparagraphs 1.d.:	For Applicant
Subparagraphs 1.e.:	For Applicant
Subparagraphs 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 grant or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is granted.

Darlene Lokey Anderson
Administrative Judge