



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



In the matter of:)
)
) ISCR Case No. 18-01871
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: *Pro se*

11/06/2019

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On October 30, 2018, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. Applicant responded to the SOR on an indeterminate date and requested a hearing before an administrative judge. The case was assigned to me on June 12, 2019.

The hearing was scheduled for August 22, 2019, but was continued at Applicant's request. The hearing was convened as rescheduled on October 9, 2019. Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through E, which were admitted without objection. The record was held open for Applicant to submit additional information. He submitted an e-mail and attached documents that I have marked AE F and G and admitted without objection.

Findings of Fact

Applicant is a 57-year-old employee of a defense contractor. He has worked for his current employer since 2001. He seeks to retain a security clearance. He attended college for a period, but he did not earn a degree. He married in 1990 and divorced in 2012. He married for the second time in 2014. He has four children and two stepchildren. (Transcript (Tr.) at 30-31, 42-43; GE 1)

Applicant has a history of financial problems, including unpaid federal and state taxes. He has been paying the IRS through a payment plan for several years. His state filed tax liens against him for \$8,530 in 2007; \$6,408 in 2011; and \$8,727 in 2015. His finances became worse after his divorce, and he worried that he could lose his house to foreclosure or his state would seize it because of the unpaid taxes. He decided that Chapter 13 bankruptcy was his best recourse. (Tr. at 27-35; Applicant's response to SOR; GE 4-6)

Applicant filed a Chapter 13 bankruptcy case in May 2015. Under Schedule D, Creditors Holding Secured Claims, the petition listed \$247,368 in claims, including \$245,592 owed on a mortgage loan. Under Schedule E, Creditors Holding Unsecured Priority Claims, the petition listed an "Unknown" amount owed in state taxes. The petition listed \$3,937 in debts under Schedule F, Creditors Holding Unsecured Nonpriority Claims. Applicant's state filed a claim for \$23,156 in taxes, penalties, and interest for tax years 2004, 2005, and 2006. (Applicant's response to SOR; GE 2; AE D, G)

The bankruptcy plan, which was approved in February 2016, called for monthly payments of \$675 for months 1 through 11; \$800 for months 12 through 15; \$1,000 for months 16 through 21; \$1,200 for months 22 through 33; and \$1,425 for months 34 through 60. Court records indicate the payments were automatically withheld from Applicant's paychecks. (Tr. at 20; GE 2; AE G)

Applicant was nervous about losing his house, and he sought advice from a company that specializes in assisting individuals facing foreclosure. He was advised to file another Chapter 13 bankruptcy case. Either there was a miscommunication between Applicant and the company, or the company provided him poor advice because he was already in an active bankruptcy case. He filed a second Chapter 13 bankruptcy case in September 2018. In October 2018, the bankruptcy court consolidated the two cases under the case number of the first case. (Tr. at 17-19, 24; GE 3; AE B)

In March 2019, Applicant's state filed a claim in the 2018 bankruptcy case for \$7,735 in taxes, penalties, and interest for tax year 2006. I am satisfied that this was the state covering itself for the second bankruptcy case, and does not reflect additional taxes to what the state claimed in the 2015 case. (Tr. at 26-27; GE; AE F, G)

Applicant completed the payments required by the bankruptcy court, and his dischargeable debts were discharged in August 2019. The trustee's report indicates that Applicant paid \$51,576 into the plan, and had \$3,752 refunded to him, leaving a net of

\$47,823 that was paid to his attorney, trustee, and creditors. Of that amount, \$5,355 was paid to his attorney and the trustee, and the remainder to his creditors. The trustee paid \$18,741 toward Applicant's mortgage loan and \$23,156 to Applicant's state for his income taxes. (Tr. at 25; GE; AE E-G)

Applicant's state released a 2011 tax lien for \$7,004 in June 2018. The state released the 2011 tax lien for \$6,408 (SOR ¶ 1.c) in January 2019. The \$8,530 tax lien from 2007 (SOR ¶ 1.b) and the \$8,727 tax lien from 2015 (SOR ¶ 1.d) were still in effect in July 2018. There is no direct evidence that they have been released. However, I am satisfied that all of the underlying taxes owed to his state were paid by the trustee. (Tr. at 36-37; GE; AE A, C, F, G)

Applicant received financial counseling as a requirement of his bankruptcy. His finances are currently in order. He credibly stated that he is committed to fiscal responsibility and paying his taxes when due. (Tr. at 26, 29-31, 41-44; GE 2)

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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 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 the national security."

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 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 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following 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 a history of financial problems, including a Chapter 13 bankruptcy case and unpaid state taxes. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following 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

(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 divorce exacerbated his financial problems, but his tax issues predate his divorce. AG ¶ 20(b) has minimal applicability. He completed the payments required by the bankruptcy court, and his dischargeable debts were discharged in August 2019. The trustee paid \$23,156 to Applicant's state for his income taxes, and I am satisfied the state taxes are paid. He received financial counseling as a requirement of his bankruptcy. His finances are currently in order. He credibly stated that he is committed to fiscal responsibility and paying his taxes when due.

I find that Applicant established a plan to resolve his financial problems, and he took significant action to implement that plan. He acted responsibly and made a good-faith effort to pay his debts. His financial problems are under control. They occurred under circumstances that are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(c), 20(d) and 20(g) are applicable.

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 have incorporated my comments under Guideline F in my whole-person analysis.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant 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
Subparagraphs 1.a-1.d:	For Applicant

Conclusion

It is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge