



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



In the matter of:)
)
) ISCR Case No. 18-02119
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

03/29/2019

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 September 28, 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 October 19, 2018, and requested a hearing before an administrative judge. The case was assigned to me on January 11, 2019.

The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 24, 2019, scheduling the hearing for March 6, 2019. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified, called three witnesses, and submitted Applicant's Exhibits (AE) A through T, which were admitted without objection.

Findings of Fact

Applicant is a 43-year-old employee of a defense contractor. He has worked for various defense contractors since about 2011. He seeks to retain a security clearance, which he has held since about 2011. He attended college for a period without earning a degree, and he has a number of information technology (IT) certifications. He is married with a 14-year-old daughter and three stepchildren.¹

Applicant's daughter was born prematurely, and she has had significant medical problems since birth, resulting in multiple surgeries, including eight surgeries on her legs alone. Her last surgery was in about December 2017. She had to be homeschooled at one point. Applicant's wife missed work while she stayed home to care for their daughter, and his wife eventually had to go to part-time employment. Applicant's wife also has had persistent medical problems. Their finances were adversely affected by her time off work, as well as expensive copayments and incidental costs that were not covered by insurance.²

Applicant's wife handled the family's finances, including filing their income tax returns. Applicant did not file his federal income tax returns when they were due for tax years 2012 through 2016, and he did not file his state income tax returns when they were due for tax years 2013 through 2016. He also had delinquent debts that he resolved before the SOR was issued.³

Applicant filed his 2012 federal income tax return in June 2013. He owed \$4,091 in taxes, and \$3,929 was withheld from his paychecks. In April 2017, \$244 was withheld from his refund for tax year 2016 and applied to the balance owed for 2012, satisfying the taxes owed for that year. He filed his 2013 and 2014 federal income tax returns in June 2018 and July 2018. As of February 24, 2019, he owed the IRS \$1,512 for 2013 and \$1,069 for 2014.⁴

Applicant filed his 2015 and 2016 federal income tax returns in December 2017. He filed his 2017 federal income tax return in July 2018. As of February 24, 2019, he owed the IRS \$4,289 for 2015 and \$2,725 for 2017. He received a refund for tax year 2016.⁵

Applicant filed his late state income tax returns in July 2018. He does not owe any additional state taxes.⁶

¹ Tr. at 25-26, 51-52; GE 1, 2; AE D, E.

² Tr. at 26-29, 36-38; Applicant's response to SOR; GE 1, 2; AE C, F, Q, R.

³ Tr. at 30-31; Applicant's response to SOR; GE 1, 2.

⁴ Tr. at 30-31; Applicant's response to SOR; GE 4; AE A, O.

⁵ Applicant's response to SOR; GE 3; AE O.

⁶ Tr. at 35; GE 4; AE B, N.

Applicant established an installment agreement with the IRS in July 2018. The agreement called for payments of \$125 per month for tax years 2013, 2014, and 2015, starting on September 28, 2018. He made the first \$125 payment in September 2018. He established another installment agreement with the IRS in October 2018, which added in the taxes owed for tax year 2017. The agreement calls for payments of \$150 per month starting on November 28, 2018. He established that he made the four monthly payments that were required as of the hearing date. As of February 24, 2019, he owed the IRS \$9,598 for tax years 2013, 2014, 2015 and 2017.⁷

Applicant has received financial counseling. He has worked two jobs to better provide for his family and pay his debts. He has an offer of employment with another defense contractor that will pay him an annual base salary of \$85,000, contingent upon the successful retention of his security clearance. His daughter's health is better; she is in high school; and Applicant's wife returned to full-time employment in January 2019. They have a budget that enables them to pay their bills and their back taxes. Applicant and his wife credibly testified that they are committed to their installment agreement with the IRS and that all future income tax returns will be filed when required.⁸

Applicant submitted documents and letters, and he called three witnesses who attested to his excellent job performance. He is praised for his trustworthiness, honesty, reliability, dependability, professionalism, work ethic, dedication, and integrity.⁹

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

⁷ Tr. at 32-33; Applicant's response to SOR; GE 4; AE P, S, T.

⁸ Tr. at 31-39, 42-52; AE J-M.

⁹ Tr. at 13-23; AE G-I.

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 is potentially applicable in this case:

(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 did not file his federal income tax returns when they were due for tax years 2012 through 2016, and he did not file his state income tax returns when they were due for tax years 2013 through 2016. The evidence is sufficient to raise the above disqualifying condition.

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; 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 daughter has had significant medical problems since birth, resulting in multiple surgeries and periods where she could not physically go to school. She had to be homeschooled at one point. His wife missed worked while she stayed home to care for their daughter, and his wife also has had persistent medical problems.

Applicant let his finances and taxes languish while he and his wife cared for their daughter. Applicant's failure to file his tax returns and pay his taxes when required raises some questions about his judgment. However, he filed all the tax returns before the SOR was issued. He owes the IRS, but he has an installment agreement with the IRS, and he is in compliance with that agreement. His daughter's health is better; she is in high school; and Applicant's wife returned to full-time employment in January 2019. Applicant and his wife credibly testified that they are committed to their installment

agreement with the IRS and that all future income tax returns will be filed when required.

Applicant's financial difficulties were the result of conditions that were beyond his control. He has a plan to resolve his financial problems, and he took significant actions to implement that plan. AG ¶¶ 20(c) and 20(g) are applicable. AG ¶¶ 20(a) and 20(b) are partially applicable. Security concerns about Applicant's finances are 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. I also considered Applicant's excellent character evidence. He is a hard-working man who was overwhelmed by his daughter's medical problems. She is doing better, and his finances are back on track.

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.c:	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