



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



In the matter of:)
)
) ISCR Case No. 18-02305
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A Nagel, Esq., Department Counsel
For Applicant: *Pro se*

06/07/2019

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On October 15, 2018, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted 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 effective June 8, 2017 (AG).

Applicant answered (Answer) the SOR on November 7, 2018, and he requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 26, 2019, and the hearing was convened as scheduled on April 10, 2019. The Government offered exhibits (GE) 1 through 8, which were admitted into evidence without objection. The Government’s exhibit list was

identified as hearing exhibit (HE) I. Applicant testified and offered two exhibits (AE A-B), which were admitted without objection. The record remained open until May 10, 2019, to allow Applicant to submit documentary evidence. He submitted AE C through G, which were admitted without objection. DOHA received the hearing transcript (Tr.) on April 26, 2019.

Findings of Fact

Applicant admitted the SOR allegations, with explanations, and his admissions are incorporated into these findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 59-year-old employee of a defense contractor. He began working at his present job in November 2016. He served in the Air Force from 1982 until 1995 when he was passed over for promotion to major. He separated with an honorable discharge. He joined the Air Force Reserve in 1998 and earned a retirement. In 2003, he deployed to Iraq, while a reservist, and was awarded a meritorious service medal for his actions. He begins receiving retired pay later this month when he turns 60 years old. He has a master's degree. He was married in 1982 and divorced in 1994. He remarried in 1995 and divorced in 2016. He has eight children from both marriages. Two are minors for whom he pays child support.¹

The SOR alleged Applicant: filed a Chapter 7 bankruptcy petition in August 1996, which resulted in a discharge in November 1996; filed a Chapter 13 bankruptcy petition in October 2002, which was dismissed in May 2003; and filed a Chapter 13 bankruptcy petition in May 2003, which resulted in a discharge in November 2006. The SOR also alleged the following delinquent debts: a consumer collection debt of approximately \$17,249; a collection account to a state for unpaid child support of approximately \$1,054; a delinquent debt from a deficiency on a repossessed car of approximately \$13,149; and two delinquent medical debts of approximately \$1,599 and \$105. The bankruptcies are supported by court filings and the debts were listed in credit reports from March 2017 and July 2018.²

Applicant credibly explained that he filed his 1996 Chapter 7 bankruptcy because of debts he incurred during his first marriage. His 2002 Chapter 13 bankruptcy was filed and soon dismissed for a procedural irregularity. It was refiled in May 2003 and the repayment plan was successfully completed leading to Applicant's discharge of debts in November 2006. Applicant filed for bankruptcy in 2002-2003 because after "9-11" he went through a period of unemployment and underemployment leading to his financial difficulties. He has had no further bankruptcy filings.³

¹ Tr. at 6, 20-21, 23, 25; GE 1.

² GE 1-6.

³ Tr. at 21-24; Answer.

The status of his delinquent debts is as follows:

Child Support-\$1,054 (SOR 1.f). Applicant credibly explained that he became delinquent on his child support when he was laid off from his job in February 2015 and could only secure a minimum wage job until he was hired by his current employer in November 2016. At one point his arrearages were approximately \$10,000. He documented that automatic payments from his paycheck have paid the arrearages and that he is current on his monthly child support payments of approximately \$366. This debt is being resolved.⁴

Consumer account-\$17,249 (SOR 1.d). Applicant credibly explained that this was an SUV trailer that he and his wife purchased during his second marriage. At some point he was unable to make the payments and it was repossessed. He documented that any remaining obligation was assumed by his ex-wife and that she included this debt in her 2014 Chapter 13 bankruptcy. This debt is resolved.⁵

Repossession account-\$13,149 (SOR 1.h). Applicant credibly disputed that this was a repossession account. He admitted that he got behind on his car payments and the bank intended to repossess this car, but his father secured a loan to pay the car loan and Applicant reimbursed his father. He documented the payment to pay the car loan. This debt is resolved.⁶

Medical accounts-\$1,599; \$105 (SOR 1.e and 1.g). Applicant incurred these medical bills when he was out of work. He talked to the providing facility and it indicated the bill would be taken care of. When he was made aware the debts were on his credit report, he disputed the debts. Those disputes are documented on his credit report. These debts are being resolved.⁷

Applicant provided a written budget, which shows that he has a monthly residual of approximately \$200. He begins receiving his military retirement pay of approximately \$3,300 monthly in June 2019, which will up his monthly residual amount. Although a past-due amount is reflected on his most recent credit report for a mortgage (not alleged in the SOR), that debt is the responsibility of his second ex-wife as indicated in their divorce settlement. He received financial counseling as part of his bankruptcy. Applicant's 2018 job appraisal rated him an overall "4" indicative of his "high performance."⁸

⁴ Tr. at 25-26, 33, 35; Answer (attachment 9); AE A.

⁵ Tr. at 31-33; AE G (see Schedule F, p. 16 of 37).

⁶ Tr. at 37-39; Answer; AE D.

⁷ Tr. at 28-29; Answer; GE 8.

⁸ Tr. at 29-30, 43; Answer (attachment 5); AE C, F.

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(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, 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 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

AG ¶ 18 expresses the security concern for financial considerations:

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. I have considered all of them under AG ¶ 19 and the following potentially apply:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations;

Applicant had debts discharged in 1996 and 2006 through bankruptcy. He also incurred debts that he was unable to pay and became delinquent. I find both the above disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and the following potentially apply:

- (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

(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 last bankruptcy was a Chapter 13 in 2006 and he successfully honored the terms of his payment plan to discharge any qualifying debts. He documented that he paid or was not responsible for the remaining debts, including the medical debts, which he disputed. He credibly testified that his most recent debts were due to his second divorce and periods of unemployment and underemployment. Once he became gainfully employed, he set about to honor his obligations by taking responsible actions. All the above mitigating conditions have some applicability.

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 the 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 guideline 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 have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's military service, including his deployment to Iraq, his federal contractor service, his work appraisal, and the circumstances surrounding his indebtedness.

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 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.h: 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 eligibility for a security clearance. Eligibility for access to classified information is granted.

Robert E. Coacher
Administrative Judge