



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



In the matter of:	)	
	)	
	)	ISCR Case No. 18-02974
	)	
Applicant for Security Clearance	)	

**Appearances**

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

11/21/2019

**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 January 9, 2019, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations (the SOR was incorrectly styled as an ADP case, but based upon representations by Department Counsel, it was determined that it should properly be considered as an ISCR case). 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 February 27, 2019, and he requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 9, 2019, and the hearing was

convened as scheduled on September 24, 2019. The Government offered exhibits (GE) 1 through 6, which were admitted into evidence without objection. The Government's exhibit list was identified as hearing exhibit (HE) I. Applicant testified and offered one exhibit (AE A), which was admitted without objection. The record remained open until October 11, 2019, to allow Applicant to submit documentary evidence. He submitted AE B-C, which were admitted without objection. DOHA received the hearing transcript (Tr.) on October 21, 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 39-year-old employee of a defense contractor. He began working at his present job in 2017. He is a high school graduate, has attended firefighter I and II courses, and is certified as an emergency medical technician (EMT). He currently performs duties as an emergency responder to workmen who deal with hazardous material at their work site. He married in 2001 and divorced in 2015. He has three children, ages 18, 11, and 9. The oldest has special needs. Applicant and his ex-wife worked out an informal child-support arrangement. (Tr. 8, 24-25, 28-29; GE 1)

The SOR alleged that Applicant filed a Chapter 7 bankruptcy petition in November 2018, which listed his total liabilities at approximately \$66,000. The SOR went on to allege seven charged-off or collection accounts listed in the bankruptcy. The SOR also alleged that Applicant's bankruptcy petition disclosed that he owed federal taxes in an unknown amount to the IRS.

Applicant credibly testified that he married young and started a family. He put himself through firefighters' and EMT school at a total cost of approximately \$7,000 without incurring any loan debt. His financial troubles began in approximately 2015 when he was laid off from a well-paying firefighter job with a railroad company. He filed to receive unemployment benefits, but his appeal was denied. He also went through his divorce in 2015. This required him to start a second household for himself thereby incurring new expenses. He also incurred half of the marital debt from the divorce settlement. He gained employment in the private sector, but was unable to pay his obligations. (Tr. 20, 25-27, 31; AE A)

After struggling to pay his debts, Applicant filed for Chapter 7 bankruptcy protection in November 2018. All the debts listed in the SOR were included in the petition. Applicant's 2018 federal tax return refund was intercepted and applied to the bankruptcy costs and debts. Applicant is current on all his federal income tax filings and payments. His debts were discharged by the bankruptcy court in September 2019. Applicant's September 2019 credit report shows that he is current on all his debts. Applicant's financial statement from November 2018 shows that he has approximately \$1,400 left over monthly after paying his expenses and other obligations. He has a savings account with approximately \$3,000. He has no credit cards. He received

financial counseling through his bankruptcy case and used that knowledge to develop a monthly budget. (Tr. 23, 32-37; GE 2; AE B-C)

## **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 2019 through bankruptcy. 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; and

(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.

Applicant's incurred debts that he was unable to resolve because of his unemployment and his divorce, which were conditions beyond his control. He used bankruptcy to discharge the listed debts. He has recovered financially, has established a budget, and is now current on all his financial obligations. 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 federal contractor service, his unemployment, his divorce, 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.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 eligibility for a security clearance. Eligibility for access to classified information is granted.

---

Robert E. Coacher  
Administrative Judge