



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



In the matter of:)
)
) ISCR Case No. 19-00211
)
Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*
10/28/2019

Decision

HEINTZELMAN, Caroline E., Administrative Judge:

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

History of the Case

Applicant submitted a security clearance application (SCA) on June 9, 2016. On February 8, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guideline F (Financial Considerations). Applicant answered the SOR on March 8, 2019, and requested a hearing before an administrative judge (Answer).

I was assigned to the case on April 4, 2019. On April 12, 2019, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for May 14, 2019. I convened the hearing as scheduled. Government's Exhibits (GE) 1 through 5 were admitted without objection. Applicant and his wife testified, and Applicant's Exhibits (AE) A through E were admitted without objection. I received the transcript (Tr.) on May 22, 2019. The record was held open until June 7, 2019, to allow Applicant to submit additional documents. He timely submitted AE F through R, which were admitted without objection, and the record closed.

Findings of Fact

Applicant is 54 years old. He has been married to his wife for over 27 years, and they have two children, ages 24 and 20. He earned a bachelor's degree in 2015. He has worked for a state university (SU) as a network engineer since 2001, and he has continuously held a security clearance in this position. (GE 1; GE 2; Tr. 10-12, 15)

In 2004, just before the housing-market bubble burst, Applicant purchased two townhomes as investment properties. They each cost less than \$90,000. After he purchased the properties, the townhome complex became flooded with other investors, and the community deteriorated. As the neighborhood went downhill, it became more and more difficult for him to rent the properties. The renters he was able to find paid late, failed to pay, and damaged the properties. Additionally, the rent he collected was less than his monthly mortgage payments. Within a few years, the community pool, clubhouse, and tennis courts were closed due to a lack of sufficient homeowners' association dues and essential maintenance. Applicant was unable to sell or short-sell the properties. (Answer; GE 1 at 37-39; GE 2 at 5-6; Tr. 16-17, 25-29, 32-35)

Eventually, it became unsustainable for Applicant to maintain the properties and pay the mortgages. He stopped making the monthly mortgage payments in March 2011, and the properties were repossessed by the creditors in July and September 2011. (GE 2 at 5-6; Tr. 16-17, 25-29, 35)

In addition to the debt associated with the investment properties, Applicant and his wife had other unalleged financial issues related to her former business, which operated from 2006 to 2008. The business had a negative impact on their finances as she used their personal credit to support the business. This business began failing at about the same time that Applicant and his wife struggled to make payments for their investment properties. The debts associated with the former business have been resolved. (Tr. 39-41)

In 2011, Applicant received an Internal Revenue Service (IRS) Form 1099-C, Cancellation of Debt and an IRS Form 1099-A, Acquisition or Abandonment of Secured Property for the respective investment properties. The 1099-C cancelled an \$18,152 debt for Property A. The 1099-A showed that Applicant's mortgage for Property B was \$84,000, and the townhome was worth less than \$66,000. Applicant filed his 2011 state and Federal income tax returns in March 2013. He then entered into a payment arrangement with the IRS to resolve the tax obligations for both properties. Applicant made \$350 monthly payments for three years and resolved the \$13,000 tax debt. In January 2015, he entered into an installment agreement with the IRS for tax years 2012 and 2013. The 2011 tax debt delayed his ability to pay his taxes for subsequent tax years. His tax documents show these tax years have been resolved. (Answer; AE B; AE L; AE M; AE O; AE R; Tr. 29, 36-37)

In 2014, Applicant's mislaid his tax documents. Through his tax preparer, he filed for extensions for tax years 2014 and 2015, but did not file the returns when the extensions expired. The tax issues "cascaded" in conjunction with the family-related

problems mentioned above, as a result he failed to file his 2015 through 2017 income tax returns. He never intended not to pay his taxes, and always recognized that he had an obligation to file his income tax returns and pay his income taxes. Applicant testified that he should have been more diligent in addressing his outstanding income taxes. (Answer; GE 1 at 36; GE 2 at 4, 6-7; Tr. 25, 30-31, 43-45, 49-50)

In 2014, Applicant's mother-in-law moved in with his family due to suffering from metastatic breast cancer. She passed away in their home in October 2015. In addition to providing support for their then minor children, Applicant and his wife also provided some financial support to her late mother. Applicant's wife was diagnosed with breast cancer in 2016, and had a double mastectomy in June 2016. The same weekend of his wife's surgery, their youngest son's best friend killed himself. In October 2016, Applicant's wife's grandmother passed away as well. All of these family issues were overwhelming to Applicant and his family and contributed to his failure to address his tax obligations in a timely manner. (Answer; Tr. 37, 39-40, 46-47, 50-53, 71)

In October 2018, Applicant received DOD financial interrogatories. As a result of receiving the interrogatories, Applicant looked for the missing 2014 documents and ultimately found them in storage unit he had rented for his brother-in-law. In response to the interrogatories, his accountant helped him complete the 2014 to 2017 state and federal income tax returns, and Applicant mailed them to the appropriate authorities on December 4, 2018. (Answer; GE 3; Tr. 31, 43, 45, 49-50, 54-60)

In March 2019, Applicant, with the assistance of his accountant, entered into a payment agreement with the IRS. In May 2019, Applicant made a lump-sum payment of \$9,941.17 to the IRS, which resolved tax years 2015, 2016, and 2017. He then entered into a modified agreement with the IRS to make monthly payments of \$200 to resolve the \$11,211 balance for tax year 2014. (AE B; AE C; AE D; AE N; Tr. 22-24, 60-61)

Applicant's accountant filed for an extension for tax year 2018 in a timely manner. After the hearing, Applicant provided proof that his 2018 state and Federal income tax returns were filed and paid. He intends to resolve his outstanding IRS tax debt as soon as possible. Applicant's state taxes are current and paid. He has no outstanding obligation for any state tax year. Applicant credibly testified that he will never fail to file his income tax returns again. Applicant provided an updated credit report and copies of his most recent utility bills. He pays his bills in a timely manner and has no new delinquent debts. (AE A; AE E; AE F; AE H; AE I; AE K; AE P; AE Q; Tr. 40, 61-65, 72-73, 75)

Applicant and his wife have not attended credit counseling, but they have been working with their accountant to resolve their tax issues. Collectively, Applicant and his wife collectively earn between \$159,000 and \$169,000 annually. They have \$24,000 in savings and checking accounts, and their retirement accounts total \$420,000. They purchased their home in 2001 and paid off the mortgage in March 2018, and he drives a 12-year-old car. Applicant does not live beyond his means. They have the financial means to make the IRS payments and intend to resolve this debt as soon as possible. (AE I; Tr. 16, 67-70, 74-76)

Applicant submitted a 2018 performance evaluation, in which he is described as a team player, customer-focused, and diligent. His supervisor described his work as exemplary and stated that Applicant responded to an increased workload with enthusiasm. Additionally, he found Applicant's "long term perspective . . . is very grounding.... His technical acumen, always calm presence, an insights make him a valuable member of the . . . team." (AE G)

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 concern under Guideline F (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

Applicant's admissions and the documentary evidence establish the following disqualifying conditions under AG ¶ 19:

- (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.

AG ¶ 20 describes conditions that could mitigate security concerns. The following are potentially applicable in this case:

- (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 does not establish mitigation under AG ¶ 20(a), because his tax issues have been an ongoing issue since tax year 2011. He did not file his state and Federal income tax returns for tax years 2014 through 2017 in a timely manner due to personal and family-related issues. He receives partial mitigation under AG ¶ 20(b) due to experiencing circumstances beyond his control, but he admittedly should have been more responsible in addressing his tax issues. Applicant has not received credit counseling, but he has sought assistance from an accountant to resolve his tax issues. He received partial mitigation under AG ¶ 20(c).

In 2004, Applicant purchased two modestly-priced townhomes as investment properties. Due to the global housing crash, he fell behind on his payments, and the mortgages were charged off in 2011. The foreclosures on the two investment properties were the result, in part, of circumstances beyond his control. In 2013, Applicant entered into a payment arrangement with the Internal Revenue Service (IRS) to resolve the associated tax consequences, which also impacted his ability to pay his taxes for subsequent tax years. Applicant disclosed these financial issues in his June 2016 SCA and during his May 2018 personal subject interview (PSI). Applicant has no outstanding debt related to either townhome, they do not appear on his current credit report, and his IRS documents do not reflect an outstanding balance for tax years 2011 through 2013.

Prior to the issuance of the SOR, Applicant filed his state and Federal income tax returns for tax years 2014 through 2017. At the hearing, he demonstrated that he paid his state and Federal income taxes for tax years 2015, 2016, and 2017. He also demonstrated that he filed and paid his 2014 state income taxes. He filed his 2014 federal income tax return and before the hearing he entered into a payment agreement. After the hearing, he provided proof that his 2018 state and federal returns were filed and his taxes were paid during his valid extension. Applicant's past IRS payment arrangements show a track record of compliance that carries over to his arrangement to pay his 2014 Federal taxes. He "made a good-faith effort to become in compliance" with his tax and other financial obligations. Mitigation under AG ¶¶ 20(d) and 20(g) was established.

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 favorable character evidence.

Applicant has held a clearance for approximately 18 years. He experienced financial issues, and he has been working for several years to resolve these issues. His efforts demonstrate the actions of a responsible, reliable, and trustworthy person. I conclude Applicant met his burden of proof and persuasion. He mitigated the financial considerations security concerns.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a - 1.c: For Applicant

Conclusion

I conclude that it is clearly consistent with the national interest of the United States to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is granted.

CAROLINE E. HEINTZELMAN
Administrative Judge