



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



In the matter of:)	
)	
)	ISCR Case No. 19-01280
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

03/03/2020

Decision

BENSON, Pamela C., Administrative Judge:

Applicant mitigated the security concerns arising from his financial and tax issues alleged under Guideline F (Financial Considerations). National security eligibility for access to classified information is granted.

Statement of the Case

On May 5, 2017, Applicant completed and signed his security clearance application (SCA). On July 9, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F (Financial Considerations). The action was taken 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 *National Security Adjudicative Guidelines* (AG) effective within the DOD on June 8, 2017.

Applicant submitted a response to the SOR with documentation on August 2, 2019. He admitted all of the SOR allegations, and he requested a hearing before an administrative judge. On December 4, 2019, the case was assigned to me. On January

8, 2020, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for January 13, 2020. Applicant did not receive the required full 15-day notice of his hearing, but he waived the 15-day hearing notice requirement via e-mail communication with Department Counsel. During the hearing, he also confirmed his waiver on the record, acknowledging that he did not require the full 15 days of notice of his hearing since he was ready to proceed. (Tr. 9-10) I found Applicant knowingly waived his 15-day hearing notice requirement, and the January 13, 2020 hearing proceeded as scheduled.

During the hearing, Department Counsel offered Government Exhibits (GE) 1-6. Applicant testified, and offered 12 documents, to include some documents previously submitted with the SOR Response, which I labeled Applicant Exhibits (AE) A through L. I admitted all proffered exhibits into evidence without objection. I held the record open for ten days after the hearing, in the event either party wanted to submit additional documentation. Applicant timely submitted three additional documents, AE M, N, and O, which I admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on January 22, 2020, and the record was closed on January 23, 2020.

Findings of Fact

Having thoroughly considered the evidence in the record, including Applicant's admissions, I make the following findings of fact: Applicant is 58 years old. He graduated from college with a bachelor's degree in 1985. In 1989, he married, but he was separated from his spouse in 2010, and in 2012, their divorce was finalized. They have four adult children. (Tr. 16, 19, 55; GE 1)

In 1992, Applicant started his own computer software consulting company. He was very successful for many years with his business. In mid-2000, Applicant was not receiving much income or profit from his business. In 2002, a doctor solicited Applicant to start up a medical software business. Applicant and the doctor became owners of the limited liability company, and the doctor provided his income and revenue while Applicant developed the software. Over time, Applicant invested more of his money and time into the medical software, to the detriment of his other consulting software business. He acknowledged at the hearing that developing new software was a risk, but he believed the medical software had great potential in the medical community. His income continued to steadily decrease over time. In 2010, his wife left him, and his income was reduced even more. In 2012, he borrowed money from his retirement fund, which caused additional adverse tax consequences for him. Applicant was unemployed with no income from approximately 2014 through the fall of 2016, and due to these circumstances, he experienced severe financial and tax complications. (Tr. 17-19, 58-59, 96)

Prior to development of the medical software in 2002, Applicant had an impeccable credit history and had timely filed all of his annual tax returns. In 2014, the doctor found another business partner, and Applicant was no longer receiving any income. Applicant did not have money for food, and with the failed business and his difficult divorce, he started to use alcohol to excess. In June 2014, Applicant was hospitalized after he stopped eating food and was only drinking alcohol. In October 2014, he realized that he

needed to turn his life around. He met with an attorney and filed his 2010-2014 tax returns in late 2014. He dissolved the medical software company in 2015, battled in court to maintain his rights to the medical software, and he filed Chapter 7 bankruptcy in September 2015. (SOR ¶ 1.a) His allowable bankruptcy liabilities were discharged in January 2016. (Tr. 19, 59- 64, 71, 88-89; GE 1, GE 2)

In April 2017, Applicant obtained employment with a DOD contractor as a software engineer. His employer is sponsoring him for a security clearance that is necessary for him to perform specific job duties. Since his employment, Applicant has received outstanding employee evaluations and regular increases in pay. His current annual salary is \$132,016. (Tr. 23, 57; GE 1; AE A, AE B, AE G, AE H, AE M)

SOR ¶¶ 1.b-1.e allege that Applicant is indebted to the Federal Government in the approximate amount of \$90,475, for the unpaid taxes for tax years 2011-2014. Applicant overpaid his Federal taxes for tax years 2016, 2017 and 2018. His combined Federal tax refunds in the approximate amount of \$16,243 were applied to his delinquent Federal tax debt. Applicant made an offer in compromise to the Internal Revenue Service, (IRS) in April 2019. Beginning in May 2019, he started making monthly payments of \$696 in accordance with his Offer in Compromise. After making seven consecutive monthly payments totaling \$4,872, he received notification from the IRS that his Offer in Compromise was not accepted. The IRS believed he was capable of paying his delinquent Federal taxes in full. Applicant received communication from an IRS representative informing him that if an installment agreement was established with the IRS, his monthly payments would be \$1,533. In December 2019, Applicant began making these monthly payments. As of January 2020, Applicant estimated he had repaid about \$28,181 of his delinquent Federal tax debt. He intends to continue paying his Federal tax debt until it is fully resolved. (Tr. 23-25, 89-94; AE C, AE D, AE F, AE L, AE O)

SOR ¶ 1.f alleges that Applicant is indebted to State A for delinquent taxes in the approximate amount of \$9,244. He admitted that state tax liens were filed against him, but he was not certain of the tax years upon which the liens were based. In December 2018, State A tax department asked him to start a payment plan. His 2016 and 2017 state taxes were overpaid, and the refunds from those tax years were applied to offset the unpaid tax balance. Beginning in January 2019, Applicant agreed to pay \$1,000 every month, and he paid faithfully until November 2019, when all State A tax liens were fully satisfied. (Tr. 22, 71-82; GE 5; AE J, AE K, AE N)

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(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 access to classified information will be resolved in favor of 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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 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 Executive Order 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).

Financial Considerations

AG ¶ 18 articulates the security concern for financial problems:

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. . . .

AG ¶ 19 includes three disqualifying conditions that could raise a security concern and may be disqualifying 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.” The evidence of record establishes AG ¶¶ 19(a), 19(c), and 19(f). Further inquiry about the applicability of mitigating conditions is required.

The SOR alleges: a 2015 Chapter 7 bankruptcy that was discharged in early 2016; delinquent Federal taxes totaling approximately \$90,000; and delinquent taxes with State A which resulted in about \$10,000 of state tax liens filed against him. The above disqualifying conditions apply.

Five financial considerations mitigating conditions under AG ¶ 20 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.

Beginning in mid-2000, Applicant suffered financial hardship due to a failed business and unsuccessful marriage. He was unable to pay his Federal and state taxes after his income was adversely affected by these unforeseen events. In October 2014, after hitting rock bottom, Applicant realized he needed to make positive changes in his life. He exercised reasonable diligence in addressing his business problems, financial, and tax issues. He took legal action to retain the rights to the medical software he developed, and he dissolved the failed business. He also wisely retained the services of

an attorney to file all of his late income tax returns and initiate Chapter 7 bankruptcy. He has satisfied all of his state tax liens and he continues to make monthly payments to the IRS.

Applicant established that his financial and tax problems arose from events and circumstances beyond his control. He has fully resolved his state tax issues, and he has repaid approximately a third of his delinquent Federal taxes. Applicant took responsible action to file and pay his Federal and state taxes before the SOR was issued in July 2019. He is committed to paying the monthly amount instructed by the IRS until his Federal tax debt is paid in full. Under the current circumstances, there are clear indications that his tax problem is being resolved, and his finances are under control. Financial considerations security concerns 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 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 and the AG ¶ 2(d) factors in this whole-person analysis.

The Federal government must be able to repose a high degree of trust and confidence in persons granted access to classified information. In deciding whether to grant or continue access to classified information, the Federal government can take into account facts and circumstances of an applicant's personal life that shed light on the person's judgment, reliability, and trustworthiness. Furthermore, security clearance decisions are not limited to consideration of an applicant's conduct during work or duty hours. Even if an applicant has a good work record, his off-duty conduct or circumstances can have security significance and may be considered in evaluating the applicant's national security eligibility.

Beginning in October 2014, Applicant made positive changes in his life and took responsible action in dealing with his failed business and tax problems. His strong work ethic is also evident with the submission of his outstanding employee evaluations and pay increases by his employer. He is committed to resolving his Federal tax obligation, and I find any future financial or tax problems are unlikely to recur. After evaluating all the evidence in the context of the whole person, I conclude Applicant has 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.g: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, I conclude that it is clearly consistent with national security to grant Applicant's national security eligibility. Eligibility for access to classified information is granted.

Pamela C. Benson
Administrative Judge