



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



In the matter of:)	
)	
)	ISCR Case No. 20-00578
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicholas Temple, Esq., Department Counsel
For Applicant: David Johnson, Esq.

07/12/2021

Decision

Curry, Marc E., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Clearance is granted.

Statement of the Case

On May 21, 2020, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national interest to grant security clearance eligibility. The DOD CAF took the action 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 Adjudicative Guidelines (AG). On June 14, 2020, Applicant answered the SOR, admitting the allegations and requesting a hearing.

On April 22, 2021, the Defense Office of Hearings and Appeals (DOHA) issued a notice of DCS video-teleconference hearing, scheduling Applicant's case for April 27, 2021.

Applicant's counsel waived the requirement for 15-days of advance notice of the hearing. The hearing was held as scheduled. I received three Government exhibits (GE 1 – GE 3), together with the testimony of Applicant. Also, I received a copy of Department Counsel's discovery letter to Applicant (Hearing Exhibit I). At the close of the hearing, I left the record open at Applicant's request to allow him the opportunity to submit exhibits. Within the time allotted, he submitted seven exhibits, which I incorporated into the record as Applicant's Exhibit (AE) A through AE G. The transcript (Tr.) was received on May 10, 2021.

Findings of Fact

Applicant is a 63-year-old man with three adult children. He has been married to his current spouse since April 2015. He was married previously from 1985 to 2014 to the mother of his children. (Tr. 31) That marriage ended in divorce. Applicant earned a bachelor's of science degree in 1985. (GE 2 at 2) He has been hired by a federal contractor pending the outcome of the investigative process. (Tr. 16) Currently, he is making ends meet with financial help from his family members and through unemployment benefits. (Tr. 69)

Applicant and his former wife legally divorced in January 2014. Under a separation agreement, Applicant agreed to pay his ex-wife \$5,000 per month in alimony and \$500 per month in health insurance costs. (GE 3 at 55) The court calculated this support as a percentage of Applicant's annual salary, which had ranged from \$200,000 to \$290,000 over the years preceding the divorce. (Answer at 3; GE 3 at 258) Under the terms of the separation agreement, the settlement could be amended for changed circumstances. (Tr. 22)

Applicant paid alimony, as ordered, for nearly two years after the divorce. (Tr. 22) Then, in November 2015, he lost his job. Consequently, he was unable to make the alimony payments. The day after Applicant lost his job, he retained an attorney, and filed a motion to reconsider and modify the spousal maintenance order. (AE D) The hearing was scheduled for approximately June 2016. (Tr. 52) Although Applicant's ex-wife was subpoenaed, she failed to appear. (Tr. 53; GE 3 at 11)) The court then dismissed the case. A few months later, Applicant re-filed the motion. His ex-wife was again subpoenaed, but did not appear for the hearing. Rather than issue a default judgment, the court dismissed the case. (Tr. 53)

Subsequently, Applicant's attorney withdrew from the case. (AE E) Approximately two months later, in September 2016, Applicant retained another attorney. (Tr. 54) By then, Applicant's unemployment was beginning to stress him financially, as his unemployment benefits had ended approximately four months earlier. (GE 3 at 155) Consequently, he could not afford to continue paying his new attorney, whereupon, she withdrew from the case.

While Applicant was unemployed, he discovered that he had not been withholding enough money to pay his federal income taxes, resulting in a \$40,000 debt. (GE 3 at 155) Shortly after Applicant's second attorney withdrew from the case, Applicant sold his home,

used the profit to satisfy the income tax debt, and relocated to another state to live in his sister's home. (GE 1 at 9; GE 3 at 156)

After relocating, Applicant continued to have difficulty finding a job, and remained unemployed for another four months. (GE 3 at 156) In February 2017, he obtained a job and relocated again. (GE 3 at 156) In September 2018, Applicant was terminated from his employment. He has been either unemployed or underemployed since then, and has relocated three more times. (GE 3 at 11, 156)

Applicant made no spousal support payments for two years after losing his job in November 2015. This prompted his ex-wife's attorney to file a motion to enforce the judgment in late 2016. (GE 3 at 71) On January 23, 2017, the court entered a default judgment in favor of Applicant's ex-wife for delinquent spousal-support payments missed between November 2015 and January 2017, totaling \$132,000. (GE 3 at 76) Applicant received a copy of the judgment, but did not make any payments towards it, prompting his ex-wife in January 2019 to file a petition for enforcement and for breach of contract. (GE 3 at 76) Applicant was served with notice in March 2019. (GE 3 at 156) In June 2019, the court issued a default judgment in favor of Applicant's ex-wife, awarding her "\$457,675, together with post-judgment interest at a rate of 5% per annum until paid in full," and \$228,837 in attorney fees. (Answer at 6; Tr. 21)

In February 2017, Applicant's mother-in-law moved in with him and his spouse. (Answer at 4) Shortly thereafter, she had a heart attack. After spending nine months on life support, she died in November 2017. (Answer at 4) Pre-occupied with his mother-in-law's declining health and his frequent relocations while unemployed, Applicant failed to "look in on his ex-spouse's situation or what was happening in the courts." (Answer at 4)

In November 2019, Applicant retained an attorney to contest the judgment for support awarded his ex-wife. (Answer, Attachment F; GE 3 at 4) That month, Applicant's attorney informed Applicant's ex-wife's attorney that Applicant could not pay the judgment, and proposed paying a reduced amount of \$100,000, in \$1,400 increments for 71 months, to settle his support delinquency. (Answer, Attachment F at 2) Applicant talks with his attorney approximately once a month to discuss options for resolving the delinquency. (Tr. 24)

According to Applicant's divorce attorney, the ex-wife's counsel told him that he would consider the offer. As of June 2020, Applicant's divorce counsel had not received a response. (Answer, Attachment G) The parties have worked together to resolve other post-divorce matters. Specifically, Applicant's attorney in December 2019 negotiated the division of one of Applicant's 401k accounts.

Applicant is highly respected by his former coworkers and friends. According to one former coworker, who worked with him for several years between 2008 and 2015, Applicant was "the go-to guy for rolling out projects," who could always be counted on to perform a superior job. (GE 3 at 103) According to another former coworker, Applicant has a broad

skill-set and was always willing to help a coworker. (GE 3 at 181) Applicant is also a leader in his church, and is active in the community. (GE 3 at 176-177; Tr. 20)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall 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 ¶ 1(d) 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, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

Analysis

Guideline F: Financial Considerations

The security concerns about financial considerations are set forth in AG ¶ 18:

Failure or inability 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 An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds .

Applicant's outstanding judgment, entered against him for unpaid spousal support triggers the application of AG ¶ 19(a), "inability to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations."

The following mitigating conditions are potentially applicable:

AG ¶ 20(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;

AG ¶ 20(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source . . . , and there are clear indications that the problem is being resolved or is under control; and

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant paid his spousal support, as ordered, for the first two years after his divorce. He did not stop paying it until he lost his job and was unable to make payments. He acted promptly, filing a motion to amend the court order to reflect his changed circumstances. The court, however, never scheduled a hearing on Applicant's motion because his ex-wife repeatedly failed to appear. Subsequently, over the next three years, Applicant relocated four times in search of steady employment, and struggled to make ends meet because of a lack of income. Under these circumstances, I conclude Applicant's financial problems were incurred beyond his control.

Notwithstanding Applicant's problems gaining steady employment, he satisfied a \$40,000 tax debt, which was not alleged in the SOR. While his resolution of his tax debt is viewed favorably, Applicant made no effort to contact his wife after she obtained a default judgment against him in March 2017. In addition, he missed the hearing on his wife's

motion to compel him to pay spousal maintenance. This hearing, in June 2019, resulted in the judgment alleged in the SOR. Consequently, although circumstances beyond Applicant's control caused or contributed to his financial problems, he did not act responsibly enough to trigger the application of AG ¶ 20(b).

Applicant retained an attorney in November 2019, five months before the issuance of the SOR. Since then, Applicant's attorney has been attempting to negotiate a plan to pay a reduced, more affordable amount of delinquent spousal support. Applicant's attorney has also been working with Applicant's wife's attorney to resolve other divorce-related matters such as the division of one of Applicant's retirement accounts. Applicant remains in touch with his attorney, talking with him approximately once per month, to discuss resolution options. These good-faith efforts to resolve the outstanding judgment are sufficient to trigger the application of AG ¶ 20(d).

Whole-Person Concept

In addition to applying the Guideline F adjudicative factors, I have considered the whole-person factors listed at AG ¶ 2(d). Much of the litigation between Applicant and his ex-wife appears to have been characterized by an extreme lack of communication. Specifically, between June 2016 and January 2017, there was a motion to modify the spousal support order, to which Applicant's wife never responded, and a motion for contempt filed by the ex-wife, pending at the same time. This lack of communication may have been exacerbated by hostility not uncommon in such matters. Whatever the case, Applicant retained an attorney who has been working with his ex-wife's attorney to negotiate a payment plan for the judgment, and to resolve other divorce-related issues. Notwithstanding the disruption to his life and the multiple relocations caused by his lengthy unemployment, Applicant could have certainly been more attentive to the ongoing litigation. Given the cause of Applicant's cessation of spousal support payments, and the steps he is currently taking to resolve the outstanding judgment, I conclude the negative inference generated by the failure to pay the spousal support is sufficiently outweighed by the surrounding circumstances to mitigate the security concern.

In reaching this decision, I considered the positive character references from his friends, colleagues, and former coworkers. The evidence of good character provided by his former coworkers leads me to conclude that Applicant is not likely to allow the debt to be a source of undue financial coercion or pressure for him.

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.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Marc E. Curry
Administrative Judge