



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 20-02040
)
Applicant for Security Clearance)

Appearances

For Government: Kelly Folks, Esq., Department Counsel
For Applicant: *Pro se*

05/06/2021

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On October 30, 2020, the Defense Counterintelligence and Security Agency (DCSA) issued to Applicant a Statement of Reasons (SOR) 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 adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on December 22, 2020. The case was assigned to me on March 4, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 18, 2021. I convened the hearing as scheduled on April 12, 2021. The Government offered exhibits (GE) 1 through 4. Applicant offered exhibits (AE)

A through M. The record was held open until April 27, 2021, for Applicant to submit an additional exhibit. He timely submitted AE N. Hearing Exhibit I is Department Counsel's email noting she had no objection. There were no objections to any exhibits and all exhibits were admitted into evidence without objection. DOHA received the hearing transcript on April 23, 2021.

Findings of Fact

Applicant admitted all of the SOR allegations. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 41 years old. He holds a bachelor's degree (2003), a master's degree (2005), and a Ph.D (2011). He married in 2014. He has two children from the marriage, ages six and four. He also has twin stepsons who are 14 years old. Applicant testified that he has always treated his stepsons like they were his biological children. He has assumed whatever expenses and responsibilities that were necessary for their well-being with little or no financial help from their biological father. One son has special needs. Applicant has willingly paid all of the necessary expenses associated with his stepsons' needs. Although entitled to child support, his wife receives sporadic child support from the biological father. Applicant has been employed by a federal contractor since January 2020. (Tr. 17-20; GE 1)

When Applicant married in 2014, he had a solid financial track record. He was working in academia, and his wife had been with the same employer for more than 10 years. Applicant paid his bills on time, including his student loans, and lived within his means. In 2014, Applicant was offered an academia job in a different state, and they moved. In August 2014, they obtained a mortgage and were able to purchase a house together. Applicant's wife was pregnant when they moved. They decided that she would not look for a job in their new location until after the baby was born. They had their first child in December 2014. (Tr. 20-26; GE 1)

During and after the pregnancy, Applicant's wife began to experience persistent and severe health problems. She was diagnosed with the following issues: fibromyalgia; bipolar disorder; post-traumatic stress disorder; an anxiety disorder, arising from events from her past and an abusive first marriage; and a chronic heart condition, which was exacerbated by her pregnancy. These health conditions made her ability to function outside the home difficult. When Applicant and his wife moved, they had every intention of maintaining a two-income household. They kept hoping that his wife's condition would improve and would not keep her out of work long term. Applicant testified that their second child was born in September 2016 and that this pregnancy was unplanned. They used their savings, loans, and credit cards to supplement the loss of her income, believing that they would pay the credit cards, loans, and replenish their savings when his wife returned to work. Under doctor's orders she was prohibited from returning to work after a normal period of maternity leave. As a result, their household income was severely reduced. (Tr. 23-26, 55-59; Answer to SOR; AE K)

Applicant's wife received temporary disability insurance from late 2014 to early 2015, which was exhausted after six months. His wife applied for Social Security disability in 2015. She was initially denied. She appealed, and the investigative process, interviews, and hearings took several years. Her claim was finally adjudicated in the fall of 2019, and she was approved for social security disability payments, which began in December 2019. The resolution of her claim came too late to help their financial problems. (Answer to SOR; AE B, J)

The reduction in Applicant's household income put a strain on their finances. His wife remained ill and required frequent and more complex treatments. Their medical bills increased in both number and amounts. Paying those bills on one income meant others did not get paid. Applicant's medical insurance was provided through the state where he worked, but was inadequate. Most of his wife's medical bills were only partially covered by insurance. In addition, some of his stepson's medical and special education expenses were not covered. He estimated in 2016 and 2017, his out-of-pocket expenses totaled between \$10,000 and \$15,000. Applicant described this as an inescapable cycle, where his wife could not get well without the medical treatments, but they would not be able to afford the treatments without more income. Their savings were depleted and their credit was exhausted as their debts grew. (Tr. 60-61; Answer to SOR)

Applicant got a new job with the federal government in June 2016. His salary increased by approximately 20%. Despite this increase it was not enough to meet daily living expenses and pay down his debts. The amount he spent on gas increased because his new job required him to drive 216 miles each day. He fell behind in his mortgage and car payments. In 2017, both his vehicles were repossessed. Applicant's wife attempted to return to work in mid-2018. Due to her medical conditions, she missed multiple days of work per week. She was forced to leave her job in September 2018. While she worked they were able to catch up on some of their bills, but after she left her job, they were again in a dire financial crisis. (Tr. 24-29, 61-62; Answer to SOR)

On December 21, 2018, Applicant's employer notified him they were terminating his program and position, and his last official day would be January 5, 2019. Applicant said the termination was abrupt and unexpected. Applicant believed he was wrongfully terminated. He applied for unemployment insurance, and it was initially denied because his supervisor claimed his termination was due to poor performance. He and his supervisor had clashed in the past over how to run the research program. Despite the success of the program, Applicant believed his supervisor was attempting to get rid of him. His supervisor failed to follow procedural requirements for terminating Applicant. He appealed the decision and requested a hearing. Six months later in June 2019, the presiding administrative judge ruled in Applicant's favor. While employed, Applicant received two commendations and awards for his performance and service. During the six months that he waited for his hearing, Applicant had no income. He then received unemployment insurance payments for 12 weeks. He requested distribution of his retirement contributions from his federal government pension, but because he was employed less than three years, he only received his contributions and not what normally

would be matched by the employer. The amount was not enough to help him with his mortgage payments. (Tr. 24-33; Answer to SOR; AE C, D, F)

Applicant tried for months to prevent his house from foreclosure. He sought a loan modification and a loan deferment which were denied. He sought help through the state's foreclosure prevention fund. His application was denied. He attempted to sell the house, but the buyer wanted \$13,000 of repairs to be made first, which he could not afford. He attempted to get the mortgage company to approve a short sale, but it was unwilling. (Tr. 30-34; Answer to SOR; AE G)

In August 2019, Applicant and his family vacated their home and moved back to their home state and in with his wife's parents. He had no income and no means of purchasing necessities, such as food, for his family. Applicant found a part-time adjunct teaching position while he looked for permanent employment. He tried one more time to get a loan modification for the mortgage or a short sale approval from the mortgage company, which was again denied. The home was foreclosed in November 2019. (Tr. 33-34, 52; Answer to SOR; AE G)

Applicant interviewed for several jobs throughout the summer and fall of 2019 and was hired by his current employer in January 2020. He stated that he was adamant about trying to settle his debts, regardless of how long it took. However, with the foreclosure of his home and two vehicle repossessions, along with other debts he incurred to meet basic necessities for his family of six, it was not feasible for him to pay his delinquent debts in a reasonable timeframe. (Answer to SOR)

Applicant's new job pays well, but it is offset by the high cost of living in the area. He explained that his wife's social security disability benefit is helpful, but it is a small amount. His monthly medical bills for his wife and four children are significant. He noted that his stepson with special needs has celiac disease and requires a special diet that is more expensive. He also requires regular therapy and counseling, as part of his special education plan. Many of his stepson's education and medical needs are not covered by insurance. (Tr. 35-40; Answer to SOR; AE L, M)

Applicant has calculated that after paying for his family's necessities, including payments on his student loans, the small amount he could put towards a monthly payment schedule for his delinquent debts would mean a payoff period of 50 years. Based on his finances and advice from his attorneys, he filed Chapter 7 bankruptcy, instead of Chapter 13. He has participated in financial counseling as part of his bankruptcy. He maintains a detailed budget. (Tr. 40-45; Answer to SOR; AE L, M)

Until Applicant started his job, they were only receiving his wife's Social Security disability benefits while he was unemployed. Hence, they did not have the retainer fee to file bankruptcy. He was advised by the attorneys to not pay his delinquent debts in anticipation of filing bankruptcy. Applicant was able to retain the services of a law firm that pairs people with financial difficulties with local bankruptcy attorneys where a reasonable payment plan for their retainer is worked out. After working full time for six

months, Applicant felt financially secure enough to seek their services, which he did in June 2020. He made the required monthly payments and recently completed the retainer payment plan. Subsequently, Applicant's attorney filed Chapter 7 bankruptcy for him in April 2021. He expects his debts to be discharged by the end of the year. (Tr. 40-45, 48-52, 64-65; Answer to SOR; AE H, N)

Applicant's current financial situation is stable. With his wife's Social Security disability benefits and his salary, they are able to meet their obligations. He has started a savings account for unexpected expenses and has approximately \$1,000 in it. He is participating in his employer's pension plan, making regular contributions that are matched. They rent their home. He is able to pay his wife's and stepson's out-of-pocket medical expenses. They live within their means and have approximately \$350 remaining each month after paying their bills. (Tr. 66-70)

Applicant testified that in the spring of 2018, he used his government credit card to pay for groceries for his family when he had no other money. He did it a few times over approximately three months. Each time, he paid the credit card bill when it was due. He was aware he was not authorized to use the card for his personal benefit. He acknowledged that what he did was wrong. He testified he does not have a defense for his actions, other than he was feeding his family. His command confronted him with his actions and he readily admitted his wrongdoing. He was required to complete a government credit card counseling program, which he did. His credit card was deactivated. No further action was taken. This was his only instance of misuse. (Tr. 45-48, 63-64; GE 4)

Applicant stated that his financial problems were caused by circumstances that were out of his control and he took reasonable action to try to resolve them. He and his family live within their means. He provided numerous letters from colleagues and family attesting to his outstanding character, integrity, and loyalty. He is described as trustworthy, honest, intelligent, hardworking, responsible, ethical, dedicated, and a person who exercises sound judgment. They further attest to how he handled his financial struggles and note that they were brought on by circumstances beyond his control. (Tr. 76-77; Answer to SOR; AE I)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. 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 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states 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 as to obtaining 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 as to 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

The security concern relating to the guideline for 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. 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.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, expense account fraud, mortgage fraud, filing deceptive loan statements and other intentional financial breaches of trust.

Applicant has numerous delinquent debts that have been delinquent for several years. He misused his government credit card several times. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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; 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 financial problems began in 2015 and can best be described as a "perfect storm." He moved his family to a new state for a new job. His wife was pregnant and they planned for her to return to work after she had the baby. They purchased a house. When his wife had serious medical issues during and after her pregnancy and was unable to work, their finances began to deteriorate. She applied for Social Security

benefits in 2015 and was denied. Her appeal took several years and by the time she was granted benefits it was too late to ameliorate their financial delinquencies. Applicant lost his job and was wrongfully denied unemployment benefits for six months. Again, when he finally received them it was too late to help. He withdrew his pension contributions to help his finances. He used savings, credit cards and loans to pay for necessities believing his wife would resume work. He attempted to prevent his house from foreclosure, seeking loan modifications, a deferment, and eventually attempted to sell the home. The offer to purchase the house came with a condition for making repairs, which Applicant could not afford. He attempted to do a short sale and was denied by the mortgage company. Applicant moved his family and lived with his in-laws. He worked as an adjunct professor until he found permanent employment.

Applicant eventually found a good job and moved his family again. He has been slowly recovering from financial distress. After reviewing all of his finances and indicating his willingness to repay his past debts, his calculations show that it would take 50 years for him to resolve them through a payment plan. He consulted with attorneys about filing bankruptcy. He hired an attorney who permitted him to pay his retainer fee through a payment plan. He recently completed the plan and filed Chapter 7 bankruptcy.

Applicant's financial problems were caused by conditions beyond his control as noted above. He lost his job; his wife had medical problems and was unable to work; there was a lengthy delay in receiving unemployment benefits and Social Security disability benefits; and his stepson has special expenses that are not covered by insurance. Applicant acted responsibly under the circumstances, attempting to pay his bills from his savings and pension contributions. He also used credit cards and loans that he intended pay, but when his wife could not resume work, he was unable. Applicant recently filed Chapter 7 bankruptcy in accordance with his lawyer's advice. I believe under these circumstances filing bankruptcy is prudent. I have considered all of the evidence and do not believe Applicant was living beyond his means or acting irresponsibly. Life events seriously impacted his finances and he struggled to provide for his family. I considered his misuse of a government credit card to be an aberration in his behavior. He has a budget and participated in financial counseling as part of his bankruptcy. Applicant's financial problems occurred under unique circumstances and are unlikely to recur. I find the above mitigating conditions apply.

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 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.

Overall the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant successfully mitigated the security concerns arising under Guideline F, financial considerations.

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.w:	For Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge