



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



In the matter of:)
)
) ISCR Case No. 20-02359
)
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey De Angelis, Department Counsel
For Applicant: *Pro se*

September 1, 2021

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of the Case

On November 2, 2020, the Department of Defense (DOD) 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective for cases after June 8, 2017.

Applicant answered the SOR on November 30, 2020, and requested a hearing before an administrative judge. The case was assigned to me on March 4, 2021. The Defense Office of Hearings and Appeals issued a notice of hearing on June 10, 2021, and the hearing was convened as scheduled on July 23, 2021. The Government offered five exhibits, referred to as Government Exhibits 1 through 5, which were admitted without objection. The Applicant offered one exhibit, referred to as Applicant's Exhibit A, which was admitted without objection. Applicant testified on his own behalf.

The record remained open until close of business on August 13, 2021, to allow the Applicant the opportunity to submit additional supporting documentation. Applicant submitted nothing further. DOHA received the transcript of the hearing (Tr.) on August 4, 2021.

Findings of Fact

Applicant is 51 years old. He has a high school diploma and one year of college. He holds the position of Communications Technician with a defense contractor. He seeks to obtain a security clearance in connection with his employment in the defense industry.

Paragraph 1 Guideline F – Financial Considerations The Government alleges that the Applicant is ineligible for clearance because he is financially overextended and at risk of having to engage in illegal acts to generate funds.

The SOR alleges that Applicant failed to file his Federal and state income tax returns for tax years 2014 through 2017 in a timely fashion; and he is indebted to three separate creditors totaling less than \$1,000. In his Answer, Applicant admits allegations 1.a., and 1.c., and denied allegations 1.d., and 1.e., in the SOR. Credit reports of the Applicant dated August 11, 2018; October 17, 2019; and February 2, 2021, reflect that each of these debts were owing at one point. (Government Exhibits 3, 4, and 5.)

Applicant served honorably in the United States Army from 1990 to 1993, completing a full enlistment period. He served during Desert Storm and received accolades for his service. He is now a 30 percent disabled veteran. Applicant has worked for his current employer since February 1998, and has an excellent work history. At this time, a security clearance is needed for his position.

From 2014 through 2017, a number of traumatic events occurred in Applicant's life that caused him to become depressed and unable to keep up with his normal responsibilities. In 2014, his mother passed away on tax filing deadline day. Applicant immediately became responsible for handling her affairs, including her funeral arrangements, personal business, finances, taxes, and other estate matters. As time passed, Applicant became even more depressed and overwhelmed with everything. By 2015, he was so stressed out that he could not even do his job. He filed for short-term disability for a period. By this point things had spiraled out of control. Applicant had fallen behind with several bills and had failed to file his annual income tax returns. People in his life who normally helped him prepare and file his income tax returns had fallen very ill and were dying.

To further complicate matters, when Applicant relocated to Hawaii in 2018, he was forced to move four times before he settled into his home. During these moves, Applicant lost the paperwork and information he needed to prepare and file his income tax returns. As time passed, things gradually improved. Applicant eventually prepared and filed his Federal and state income tax returns for tax years 2014, 2015, 2016, 2017,

2018, and 2019 in July 2020. (Tr. p. 23-24, and 41.) Applicant stated that he has copies of all of his returns including the Federal and state income tax returns in question that he filed and sent in to the tax authorities. (Tr. p. 25.)

It was also during this depressing time in his life that the following delinquent debts listed in the SOR became owing. He has now settled and/or paid off each of the delinquent debts set forth below.

1.c. Applicant was indebted to a creditor for a delinquent medical account placed for collection in the approximate amount of \$709. Applicant settled the debt, and it is no longer owing. (Applicant's Exhibit A.)

1.d. Applicant was indebted to a creditor for a delinquent medical account placed for collection in the approximate amount of \$241. Applicant paid the debt, and it is no longer owing. (Tr. pp. 31-33.)

1.e. Applicant was indebted to a creditor for a delinquent medical account placed for collection in the approximate amount of \$60. Applicant paid the debt, and it is no longer owing. (Tr. pp. 31-33.)

Applicant states that he has no outstanding delinquent debts. He is also current with his regular monthly expenses. (Tr. p. 34.) Applicant's further states that his work performance evaluations always reflect that he is a top performer. (Tr. pp. 38-39.) He has been allowed to travel to different states to work. Applicant has worked in Colorado for five years, Texas for three years, Georgia for ten years, and Hawaii for almost three years.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 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 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 protect or 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 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 security concern for Financial Considerations is set out in AG ¶ 18, as follows:

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 under AG ¶ 19. Three are potentially applicable 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.

After Applicant's mother died, Applicant went through a period of grieving. For several years he was unable to focus and perform his normal responsibilities without distractions. During this period, Applicant failed to file his Federal and state annual income tax returns for several years, and several debts became owing and delinquent. The evidence is sufficient to raise the above disqualifying conditions.

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, or 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 understands that no matter what challenges, crises, or obstacles he encounters in life, he cannot be financially irresponsible in the future. He also knows that to be eligible for a security clearance he must file his Federal and state income tax returns on an annual basis and in a timely fashion. He has now filed all of the Federal

and state income tax returns in question. He owes no back taxes to any tax authority. He has also paid off his delinquent debts. The stress and depression he experienced from 2014 through 2017, triggered by his mother's death, was an isolated incident. It has now passed and will not recur. Applicant has now turned the corner in the grieving process, and has been able to focus on his responsibilities and get them accomplished without difficulty or delay. Applicant clearly understands the responsibilities that come with possessing a security clearance. He has demonstrated financial responsibility by filing his income tax returns, paying his taxes, and paying his debts. Under the circumstances, he has acted reasonably and responsibly, and has demonstrated good judgment, reliability, and trustworthiness. The Financial Considerations concern has been 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 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 without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, 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

Subparagraph 1.a.: through 1.e. 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 national security eligibility for a security clearance. Eligibility for access to classified information is granted.

Darlene Lokey Anderson
Administrative Judge